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8 Attorneys for Plaintiff(s),
9 RENE LOPEZ, and all others similarly situated
10 (Additional attorneys for Plaintiff(s) on following page)

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

12 **FOR THE COUNTY OF SACRAMENTO**

13 **(UNLIMITED JURISDICTION)**

14 RENE LOPEZ and ALYSIA FORD, on behalf of
15 themselves and all others similarly situated, the
16 general public, and as “aggrieved employees” on
17 behalf of other “aggrieved employees” under the
Labor Code Private Attorneys General Act of
2004,

18 *Plaintiff(s),*

19 vs.

20 BOAVIDA COMMUNITIES, LLC, a California
21 limited Liability company; THE BOAVIDA
22 GROUP, LP, a California limited partnership;
and DOES 1–50, inclusive,

23 *Defendant(s).*

Case No. 34-2021-00299610-CU-OE-GDS

CLASS ACTION

**DECLARATION OF DAVID SPIVAK
IN SUPPORT OF PLAINTIFFS’
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing Date: July 29, 2022
Hearing Time: 1:30 p.m.
Hearing Dept.: Dept. 25
The Hon. Jill H. Talley

Action filed: April 28, 2021
Trial Date: Not Set



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1 7. The Parties thereafter engaged in an informal, voluntary exchange of information
2 in the context of privileged settlement discussions to facilitate an early mediation. Defendants
3 produced Plaintiffs' entire personnel files (including policies and agreements they signed and
4 acknowledged), copies of their relevant company written policies, time-keeping records, email
5 messages, and paycheck data and records for the putative class, and more detailed time and
6 payroll data for a random sample of putative class members specifically selected by Plaintiffs'
Counsel.

7 8. On February 4, 2022, following the foregoing informal discovery and exchange
8 of information, the Parties participated in a mediation session presided over by Mediator Francis
9 J. "Tripper" Ortman, an experienced class action mediator. During the mediation, the Parties had
10 a full day of productive negotiations and reached agreement on a class-wide and PAGA
11 settlement during the mediation session. During the mediation session, each side, represented by
12 their respective counsel, recognized the risk of an adverse result in the Action and agreed to settle
13 the Action and all other matters covered by this Agreement pursuant to the terms and conditions
of this Agreement.

Ascertainable and Numerous Class

14 9. A class is ascertainable when it may be readily identified without unreasonable
15 expense or time by reference to official records. Here, Plaintiffs maintain that the above-defined
16 Class is ascertainable because its members may be identified by reference to Defendants' records
17 and Defendants have agreed to share the relevant information from their records to facilitate the
18 settlement process. Therefore, the Settlement Class is ascertainable.

19 10. The Settlement Class has sufficiently numerous members to render joinder
20 impractical. No set number is required as a matter of law to maintain a class action. The California
21 Supreme Court has upheld a class of as few as 10 individuals. Defendants estimate that there are
22 approximately 198 Class Members. Plaintiffs maintain that it would be impractical and
23 economically inefficient to require each Settlement Class Member to separately maintain an
24 individual action or be joined as a named plaintiff in this action. In light of these considerations,
the Settlement Class's membership is sufficiently numerous.

Predominant Common Questions

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

19 *Typicality*

20 12. Plaintiffs contend that their claims are typical for the purposes of certifying the
21 Settlement Class. Plaintiffs assert that they, like absent Class Members were subject to the same
22 relevant policies and procedures governing their compensation, hours of work and meal and rest
23 periods. Because Plaintiffs contend that they were subject to the same general course of conduct
24 as absent Class Members, resolving the common questions as they apply to Plaintiffs will
25 determine Defendants' *prima facie* liability to all Class Members. Moreover, Plaintiffs' claims
26 could potentially be subject to the same primary affirmative defenses as those of absent Class
27 Members. Accordingly, Plaintiffs' claims are typical of the Class.

28 *Adequacy*

13. The adequacy requirement is met where the Plaintiffs are represented by counsel
qualified to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to
the class's interests. In other words, where the plaintiff has adequate counsel, the plaintiff may



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1 represent the entire class absent any disabling conflicts of interest that might hinder the plaintiff's
2 ability to represent the class.

3 14. To the best of my knowledge, neither Plaintiff Lopez nor I have any conflicts of
4 interest with the absent Settlement Class Members. Plaintiffs contend that they are adequate class
5 representatives. Plaintiffs and the Class Members have strong and co-extensive interests in this
6 litigation because they all worked for Defendants during the relevant time period, allegedly
7 suffered the same alleged injuries from the same alleged course of conduct, and there is no
8 evidence of any conflict of interest between Plaintiffs and the Class Members. Moreover,
9 Plaintiffs have demonstrated their commitment to the Settlement Class by, among other things,
10 retaining experienced counsel, providing counsel with documents and extensively speaking with
11 them to assist in identifying the claims asserted in this case, assisting them in identifying
12 witnesses, as well as exposing themselves to the risk of attorneys' fees and costs awards against
13 them if this lawsuit had been unsuccessful. Thus, Plaintiffs are adequate to serve as settlement
14 class representatives.

15 *Background of Class Counsel*

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

19 16. In December of 1995, the Supreme Court for the State of California admitted me
20 as an Attorney and Counselor at Law and licensed me to practice law in all the Courts of this
21 State. On May 11, 2012, I also became admitted to the District of Columbia Bar. In February
22 2013, I became admitted to the New York State Bar.

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

27 18. I have tried many cases before California and federal courts, government agencies
28 and neutral arbitrators. I am a member of the California Employment Lawyers Association
(CELA).

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



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

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

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

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



1 e. *Rick Pierce v. Department of Treasury*, Merit Systems Protection Board
2 (1999). Administrative Judge awarded compensatory damages to wrongfully terminated
3 Customs Agent, followed by an award of Attorneys' fees and costs.

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

8 g. *Alina Ghrdilyan v. RJ Financial, Inc., et al.*, LA Superior Court case no.
9 BC430633 (2012), the Honorable Ronald Sohigian presiding. To my knowledge, this case is the
10 first and only case to be successfully prosecuted through trial under the Labor Code Private
11 Attorney Generals Act of 2004, Labor Code §§ 2698, et seq. on behalf of plaintiffs and other
12 aggrieved employees against someone other than an employer for civil penalties including unpaid
13 wages. The case involves claims of unpaid overtime, unprovided rest and meal periods, unpaid
14 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.

15 20. Since 2007, I have prosecuted several traditional wage & hour class actions as the
16 sole or primary attorney for the plaintiffs, including *Pudelwitts v. Regent Parking, Inc.*, *Singery*
17 *v. Quality Vessel Engineering*, *Tesillo v. LA Executive Towing Service, Inc.*, and *Madison v. The*
18 *Limousine Connection*. One such case is *Jose Tapia v. Mangan Group, Inc.*, LASC case no.
19 BC377114, a garden-variety wage & hour class action with many of the same claims at issue in
20 this case. The Honorable Jane Johnson of the Los Angeles Superior Court, presiding over the
21 motion for final approval of the Settlement Class action settlement in *Tapia*, had no quarrel with
an hourly rate of \$525.00 for my services.

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

24 22. I have been involved in the prosecution of numerous wage and hour class actions
25 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:



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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

15 ***Class Action Treatment Is Superior***

16 23. A class action is also superior to other means of adjudicating the issues in this
17 action. The predominance of common legal and factual questions shows that this Court could
18 fairly adjudicate the claims of Class Members through a single class action. In view of the
19 *theoretical* alternatives that proposed class members could potentially utilize—a representative
20 PAGA action (where there is less relief available), individual civil lawsuits or wage claims
21 through the Division of Labor Standards Enforcement (where there would be relatively little
22 money at stake, but the claims would be time-consuming to litigate)—a class action is plainly
23 superior to all of them. Thus, this consideration supports conditional class action treatment for
24 purposes of this Settlement only.

25 ***The Settlement is Presumptively Fair***

26 24. The class settlement here satisfies all of the *Kullar* factors. The Settlement
27 resulted from thorough, arms’ length, negotiations between experienced counsel with the
28 assistance of a respected mediator after sufficient discovery was exchanged to assess the relative
strengths and weaknesses of their respective cases and Defendants’ estimated exposure. Both
defense counsel and I are particularly experienced in employment law and wage and hour class
actions. We are experienced and qualified to evaluate the class claims, the viability of the



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1 defenses, and the risks and benefits of settlement versus trial on a fully informed basis. I have
2 negotiated many wage and hour class settlements, including many involving the same issues
3 presented here. Counsel on both sides share the view that the Settlement is a fair and reasonable
4 settlement in light of the complexities of the case and uncertainties of class certification and
litigation, and a fair result for the Class Members.

5 *Exposure & Risk Analysis*

6 25. At issue in this Class and PAGA action is Defendants' liability to their hourly,
7 non-exempt employees for their alleged failure to pay employees all earned wages, failure to
8 provide meal periods, failure to authorize and permit rest periods, failure to indemnify for
9 business expenses, failure to issue proper wage statements, failure to timely pay wages, and
10 related violations of the Labor Code and applicable Wage Order. Plaintiffs prepared "damages"
11 estimates in advance of the mediation. In advance of the mediation, Plaintiffs determined
12 Defendants' maximum exposure for restitution and penalties to be approximately \$2,172,484.00
13 (consisting of \$345,204.00 in unpaid wages, \$448,430.00 in missed meal period premium wages,
14 \$635,655.00 in missed rest break premium wages, \$304,000.00 for wage statement penalties,
15 \$379,265.00 for waiting time penalties, and \$427,800.00 for civil penalties). True and correct
16 copies of the spreadsheets Plaintiffs' counsel prepared for mediation of this Action are
17 collectively attached to this declaration as **Exhibit 5**. The estimates are in essence "home run"
18 projections that omit data points that will undoubtedly reduce the maximum possible damages
19 award and do not factor in any of the risks involved in litigating this Action. Plaintiffs calculated
20 the damages based on the number of workweeks and pay periods provided by Defendants,
21 Plaintiffs' reports, and the sample data. *Id.* Plaintiffs also considered the possibility that
22 Defendants could launch a *Pick Up Stix* campaign and pursue individual release agreements from
23 the Class Members. Defendants also represented that they had interviewed many of Defendants'
24 current employees regarding Plaintiffs' claims, all of whom would provide declarations, under
25 penalty of perjury, that were favorable to Defendants with respect to the relevant factual issues
26 at issue in Plaintiffs' action. Plaintiffs' Counsel applied discounts to the maximum exposure to
27 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



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majority of the Class Members. A settlement for approximately 12.6% of the potential recovery is a proportion substantially in excess of recovery proportions sanctioned by existing case law.¹

26. 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 \$275,000.00 is fair and reasonable.

27. **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 Plaintiffs’ 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 actions against Defendants, Plaintiffs 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, Plaintiffs 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 motion brought by Plaintiffs. Because different defenses would apply to some Class Members and not others – i.e., the existence of signed arbitration agreements – there is a risk that the Court could determine that Plaintiffs’ claims present too many individualized inquiries to justify class certification.

28. **Risks Associated with Unpaid Wages Claim.** There is a risk that Plaintiffs’ recovery for unpaid wages would be extremely limited at best, largely because Defendants’ written policies throughout the relevant time period prohibited off-the-clock work. Off-the-clock claims are difficult where a defendant requires in its written policies that all work must take place

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



1 while clocked in. *See Jong v. Kaiser Foundation Hospital* (2012) 226 Cal.App.4th 391 (employer
2 must have notice of off-the-clock work for it to be compensable). *Id.* In their written employment
3 policies, Defendants mandate that employees must record all time worked accurately on their
4 time records and strictly prohibit employees from performing any work off-the-clock. Moreover,
5 while Defendants dispute that off-the-clock work occurred, they contend that any time spent off
6 the clock was *de minimis*. The California Supreme Court in *Troester v. Starbucks Corp.* (2018)
7 5 Cal. 5th 829, 835 suggested that irregular and minute periods of time may still be subject to a
8 *de minimis* defense even if compensable. (Stating that “We do not decide whether there are
9 circumstances where compensable time is so minute or irregular that it is unreasonable to expect
10 the time to be recorded.”). Following *Troester*, Defendants contend that the *de minimis* doctrine
11 may apply here because the time spent off the clock were minute and insignificant. Accordingly,
12 a large award of penalties seems unlikely with respect to this claim.

13 29. The difficulty inherent in proving that off-the-clock work occurred poses a
14 significant hurdle to Plaintiff. Plaintiffs will rely on declarations and witness statements to prove
15 this claim. Generally, a court will not certify a class unless it can determine an appropriate class-
16 wide methodology. *See, e.g., Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014). Here,
17 Plaintiffs may rely heavily on anecdotal evidence to prove the off-the-clock work claim,
18 especially given the lack of records indicating when such off-the-clock work may have taken
19 place. Individualized inquiries would need to be conducted person-by-person, day-by-day, to
20 determine if an individual in fact worked “minutes” off-the-clock on a “regular” basis.
21 Accordingly, there is a significant risk that the Court would consider this evidentiary showing
22 insufficient as a class-wide methodology.

23 30. **Risks Associated with the Meal Period Claim.** There are risks to Plaintiffs’ meal
24 period claim. Defendants contend that, to establish a violation for missed meal periods, a plaintiff
25 must do more than show that a meal break was not taken. *Brinker*, 53 Cal. 4th at 1004. So long
26 as an employer provides employees with a “reasonable opportunity” to take a duty-free meal
27 period, it has no further duty to “police meal breaks and ensure no work thereafter is performed.”
28 *Id.* at 1040-41. *Id.* Instead, a plaintiff must show the employer impeded, discouraged, or
prohibited the employee from taking a proper break, or otherwise failed to release the employee
of all control. *Id.* “Thus, the crucial issue with regard to the meal break claim is the reason that a



1 particular employee may have failed to take a meal break.” *Washington v. Joe’s Crab Shack*
2 (N.D. Cal. 2010) 271 F.R.D. 629, 641. *Id.*

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

12 32. **Risks Associated with the Rest Break Claim.** There are risks to Plaintiffs’ rest
13 period claim. Employers are not required to record rest periods and such periods are paid.
14 Defendants contend they provided non-exempt employees the opportunity to take rest periods in
15 accordance with California law. Further, Defendants’ written policies on meal and rest periods
16 are consistent with the Wage Order. Thus, unlike meal periods, where there are often records
17 showing whether an employee clocked out or not, there is no such evidence to prove a missed
18 rest period or that the employer refused to authorize and permit one. *Id.* Managing such claims
19 at trial has become exceedingly difficult. Plaintiffs will depend on sample witness testimony and
20 surveys to prove the claims. While a victory with such evidence is certainly possible, relevant
21 caselaw makes such claims risky from a trial management and due process perspective. *See*
22 *Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1, 31 (explaining “[I]f sufficient common
23 questions exist to support class certification, it may be possible to manage individual issues
24 through the use of surveys and statistical sampling.”); *Tyson Foods, Inc. v. Bouphakeo* (2015)
25 136 S.Ct. 382; *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426.

26 33. **Risks Associated with the Failure to Indemnify Claim.** There is a risk that the
27 Court may consider Plaintiffs’ claims as to Defendants’ alleged failure to indemnify for business
28 expenses to be individual in nature and thus decline to certify the class. Plaintiffs allege that
29 Defendants required Plaintiffs and the Class Members to use their personal items including
30 cellular phones, computers and other electronic devices, vehicles, and tools, and failed to
31 indemnify them for these business expenses. Defendants presented evidence that they have



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1 supplied their employees with tools, equipment, and other supplies and had an expense
2 reimbursement policy. As such, there is a risk that the Court may consider Plaintiffs' claims to
3 be individual in nature and unfit for class wide resolution.

4 34. **Risks Associated with the Statutory "Wage Statement" Penalty Claim.**

5 Plaintiffs also assert claims for wage statement violations, untimely wage violations, and PAGA
6 penalties. Under Labor Code section 226, wage statements must include various information,
7 including the applicable rates of pay, corresponding hours worked, and gross pay. Here,
8 Plaintiffs' wage statement claim has the same underlying risks as the above claims, as it is
9 derivative of them. On their face, the wage statements issued by Defendants comply with the
10 requirements of Labor Code section 226. Further, to the extent that Plaintiffs claim Defendants'
11 wage statements were inaccurate because they did not include wages or premium payments that
12 they contend Defendants should have paid, Plaintiffs' claims were subject to additional risk at
13 the time the Parties negotiated this Settlement, as case law suggested that such premium
14 payments were not to be considered wages, and therefore do not give rise to claims under section
15 203. *Id. See Jones v. Spherion Staffing, LLC*, 2012 U.S. Dist. LEXIS 112396 at * 26 (C.D. Cal.
16 Aug. 7, 2012) (no claim for Labor Code section 203 penalties based on meal period claims
17 because "the underlying violation that gives rise to a section 226.7 [meal period] claim is not the
18 nonpayment of wages"); *Nguyen v. Baxter Healthcare Corp.* 2011 U.S. Dist. LEXIS 141135 at
19 * 24 (C.D. Cal. Nov. 28, 2011) (holding that Section 226(a) does not even cover meal period
20 premium pay). Accordingly, the *Jones* and *Nguyen* decisions will likely foreclose this claim.²

21 35. **Risks Associated with the Waiting Time Penalties Claim.** Plaintiffs' claims for

22 untimely wages are predicated on Labor Code section 201 to 203. Defendants can argue based
23 on the *Jones* and *Nguyen* decisions, *supra*, that meal or rest premium pay is not a "wage" for
24 purposes of Labor Code section 203 penalties. Further, in the recent decision *Ferra v. Loews
Hollywood Hotel, LLC* (2019) 40 Cal.App. 5th 1239, the Court of Appeal held that unlawful meal
25 and rest periods under section 226.7 cannot serve as a basis for recovery of penalties under
26 section 203. *Id.* at 1252 ("We conclude that the administrative and legislative history of the

27 ² Moreover, the Court of Appeal's decision in *Naranjo v. Spectrum Security Services, Inc.* (2019)
28 40 Cal.App.5th 444, holding that a defendant's failure to pay meal premiums does not give rise
to violations of Labor Code sections 226 or 203, was pending before the California Supreme
Court when the Parties reached a settlement.



1 statute indicates that . . . the Legislature intended section 226.7 first and foremost to *compensate*
2 employees Section 226.7’s additional hour of pay is a premium wage . . .not a
3 penalty.”)(internal citations and quotation marks omitted). Under the *Loews* decision, it is highly
4 unlikely that the Court will permit untimely wage penalties for Defendants’ alleged failure to
5 provide meal and rest period penalties.

6 36. **Risks Associated With the PAGA Claim.** Regarding PAGA, a court has
7 discretion to award a lesser amount than the maximum penalty. Lab. Code § 2699(e)(2); *Thurman*
8 *v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA
9 award). As set forth above, Defendants have posed valid defenses to the Labor Code claims
10 underlying Plaintiffs’ PAGA allegations. Thus, the PAGA claims likewise face significant
11 uncertainty. There is a risk that the Court would consider the maximum civil penalty available to
12 be confiscatory. Moreover, the current COVID-19 pandemic could motivate the Court to further
13 reduce the penalty award to avoid what it may consider a confiscatory taking.

14 37. This uncertainty increases Plaintiffs’ risk of pursuing the PAGA claims and
15 required a significant discount for settlement purposes. For mediation purposes, Plaintiffs’
16 Counsel estimated a maximum exposure of approximately \$427800.00 in civil penalties. This
17 estimate did not take into account any of the risks discussed above and assumed a violation for
18 every single pay period. *Id.* Plaintiffs’ Counsel also assessed multiple penalties for the same pay
19 period for the same alleged violations of different Labor Code provisions and derivative
20 violations. Although two federal district court decisions held that “stacking” PAGA penalties in
21 this fashion may be appropriate to determine the amount in controversy for purposes of removal
22 jurisdiction, Plaintiffs’ Counsel are not aware of any California state courts awarding plaintiffs
23 multiple PAGA penalties for the same violation for the same pay period under different Labor
24 Code provisions. This may be because the PAGA does not provide for what many employers
25 characterize as claim splitting and not merely stacking.

26 38. I am aware of only two significant awards under the PAGA in a contested
27 proceeding, both issued by federal district courts.³ PAGA penalty awards are often small even
28

29 ³ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2019) U.S. Dist. LEXIS 13253, the court awarded
30 civil penalties under the PAGA of approximately \$25 million, representing a 25% reduction from
31 plaintiff’s claim for approximately \$33 million. *Bernstein* represents a unique set of
32 circumstances that is distinguishable from the case at hand. Notably, the plaintiffs in *Bernstein*
33 suffered a particularly sizeable injury – the court found that the defendant’s policies caused



1 for egregious, intentional violations of the Labor Code.⁴ For instance, on October 24, 2017, the
2 Los Angeles Superior Court awarded a prevailing PAGA plaintiff, represented by very
3 experienced counsel, civil penalties totaling only \$50.00. *Shields v. Security Paving Company,*
4 Inc., LA Superior Court case no. BC492828. Further, in *Carrington v. Starbucks Corp.*, 30
5 Cal.App.5th 504, 529 (2018), the Court of Appeal affirmed judgment which provided for a
6 PAGA penalty of only \$5 per pay period for the defendant's meal period violations. A similar
7 result could occur here.

8 39. Also, the United States Supreme Court announced on December 15, 2021 that it
9 was going to hear the matter of *Viking River Cruises, Inc. v. Moriana*, No. 20-1573, and decide
10 whether or not to overrule the California Supreme Court's decision in *Iskanian v. CLS*
11 *Transportation* (2014) 59 Cal.4th 348 that a private arbitration agreement cannot deprive an
12 employee of his right to sue under PAGA in a court of law. At the time the Parties negotiated
13 this Settlement, there was a risk that the Supreme Court could decide that Plaintiffs' PAGA claim
14 is subject to an arbitration agreement allowing only bilateral arbitration and, consequently,
15 inhibiting the claim altogether.

16 damages to the plaintiffs in excess of \$45 million. *Id.* at 20. Additionally, the defendants in
17 *Bernstein*, who the court noted had received "millions of dollars from the state of California" to
18 train their flight attendants, engaged in glaring violations of the labor code, such as failing to
19 compensate its flight attendants for work performed outside of "block time" (time during which
20 the aircraft is moving), including time spent participating in pre-flight briefings, boarding
21 passengers, and deplaning. *Bernstein v. Virgin Am., Inc.* (N.D. Cal 2017) 227 F. Supp. 3d 1049,
22 1055-1058. Indeed, the defendant's liability was so clear in *Bernstein* that the case was resolved
23 on the plaintiffs' motion for summary judgment. *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2019)
24 U.S. Dist. LEXIS 13253.

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

28 ⁴ In 2012, I tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number
BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. A true and
correct copy of the complaint is attached as **Exhibit 11**. The plaintiff sought in excess of \$9
million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M.
Sohigian awarded approximately \$325,000 in civil penalties under the PAGA. A true and correct
copy of the statement of decision is attached as **Exhibit 12**, 19:8-20:19. Also, on October 24,
2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff, represented by very
experienced counsel, civil penalties totaling only \$50.00. *Shields v. Security Paving Company,*
Inc., LA Superior Court case no. BC492828. A similar result could occur here.



40. **Risks Associated With A Pick-Up Stix Campaign.** An employer enjoys the right to settle a putative class member’s disputed wage claims individually, without the consent or involvement of class counsel. (See *Chindarah v. Pick Up Stix, Inc.* 171 Cal. App. 4th 796 (2009)). As discussed above, Defendants may launch a “pick off” settlement campaign to pursue individual release agreements from the Class Members, thereby potentially narrowing the size of the Settlement Class – 198 members - until it is no longer numerous enough for class certification. Plaintiffs, then, may not have a sufficient number of employees to represent. This led to a significant reduction of claim value in settlement negotiations.

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

Allocation of the PAGA Payment

42. The settlement of PAGA penalties in the sum of \$4,000.00, of which 75% (\$3,000.00) will be paid to the LWDA and 25% (\$1,000.00) will be distributed to the PAGA Members, is reasonable and appropriate under the circumstances. The Parties negotiated a good faith amount for PAGA penalties to be paid to the LWDA and to the PAGA Members. The portion to be paid to the LWDA was not the result of self-interest at the expense of other Class Members.

Attorneys' Fees and Costs

43. My co-counsel and I intend to request Class Counsel Attorneys' Fees of \$91,666.67 (one-third of the MSA) and Class Counsel's litigation costs incurred in prosecuting

1 this Action, which Class Counsel currently estimate to be approximately \$19,822.51 and will be
2 no more than \$35,000.00 at the conclusion of matters related to the Settlement. In view of my
3 efforts and risks in pursuing this case these amounts are well within the range of reasonableness
4 and thus warrant this Court's preliminary approval. In addition, based on my experience in wage
5 and hour class action matters, fee awards of approximately one-third of the settlement fund are
6 routinely approved as reasonable. I have been awarded attorneys' fees equaling approximately
7 one-third of the fund in several recent wage and hour class actions, including: *Alvarez v. Gary*
8 *Grace Enterprises, LP*, Marin County Superior Court, Case No. CIV1002553 (one-third of fund);
9 *Calderon v. Greatcall, Inc.*, San Diego Superior Court, Case No. 37-2010-00093743-CU-OE-
10 CTL (one-third of fund); *Butler v. Lexxiom, Inc.*, San Bernardino County Superior Court, Case
11 No. CIVRS1001579 (one-third of fund); *Perez v. Southwest Dealer Services, Inc.*, Los Angeles
12 County Superior Court, Case No. BC439253 (one-third of fund); *O'Brien v. Optima Network*
13 *Services, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1107056 (one-third of
14 fund); *Noyd v. The Cristcat Group, et al.*, Los Angeles County Superior Court, Case No.
15 BC439558 (one-third of fund); *Huynh v. Carefusion Resources, LLC, et al*, San Diego Sup.Ct.,
16 Case No. 37-2009-00103277-CU-OE-CTL (one-third of fund); *Cunningham v. DPI Specialty*
17 *Foods West, Inc.*, Los Angeles Sup.Ct., Case No. BC465017 (one-third of fund); *Stucker v.*
18 *L'Oreal USA S/D, Inc.*, Los Angeles Sup. Ct., Case No. BC456080 (one-third of fund); *Valdez v.*
19 *Healthcare Services Group, Inc.*, Los Angeles Sup.Ct., Case No. BC462917 (one-third of fund);
20 *Hernandez, et al v. HSBC*, U.S. District Court, Central District of California, Case No. 10-CV-
21 4753 (one-third of fund); *Sandoval, et al. v. Thrifty Payless, Inc.*, et al. Los Angeles Sup.Ct., Case
22 No. BC431249 (one-third of fund); *Alafa v. Custom Built Personal Training, Inc.*, Tulare County
23 Superior Court, Case No. VCU-245496 (one-third of fund); *Nardone v. Sequoia Beverage*
24 *Company, LP*, Tulare Sup.Ct., Case No. VCU-248370 (one-third of fund); *Rosen v. Image*
25 *Transfer*, Los Angeles Sup.Ct., Case No. BC511702 (one-third of fund); *Tucker v. Maly's West,*
26 *Inc.*, Los Angeles Sup.Ct., Case No. BC483920 (one-third of fund); *King v. Build.com*, Butte
27 Sup.Ct., Case No. 159985 (one-third of fund); *Clifford v. Anderson Hay & Grain*, Los Angeles
28 Sup.Ct., Case No. BC517625 (one-third of fund); *Nichols, et al. v. Vitamin Shoppe*, Contra Costa
Sup.Ct., Case No. CIVMSC13-01136 (one-third of fund); *Clarke v. Insight Global*, U.S. District
Court, Southern District of California, Case No. 13-CV-0357 (one-third of fund); *Fischer, et al.*
v. National Distribution Centers LP, et al., Riverside Sup.Ct., Case No. RIC1114952 (one-third



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

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

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

24 ***Enhancement Payments***

25 46. The Settlement provides that Plaintiffs may seek Enhancement Payments of
26 \$15,000.00 each. This amount is entirely reasonable given each Plaintiff's efforts in this Action
27 and the risks s/he undertook on behalf of Class Members. Here, Plaintiffs have devoted many
28 hours advancing the interests of the Settlement Class. Each Plaintiff has done this by, among
other things, retaining experienced counsel, providing them with information about her/his work
history with Defendants and Defendants' policies and practices with respect to the wage and hour



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1 claims at issue, assisting counsel in identifying witnesses, traveling to and participating in
2 mediation, and being actively involved in the settlement process to ensure a fair result for the
3 Settlement Class as a whole. In doing this, each Plaintiff has been exposed to significant risks,
4 including the risk of an order to pay Defendants' attorneys' fees and costs if this action had been
5 unsuccessful (See Labor Code §§ 218.5-218.6). The efforts and risks that each Plaintiff undertook
6 on behalf of the Settlement Class shows that the proposed Enhancement Payments are fair,
adequate, and reasonable, and thus warrant preliminary approval.

7 ***Individual Settlement Payment***

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

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

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



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1 proposed Notice fully complies with California Rules of Court 3.766(d) and 3.769(f) and will
2 allow Class Members to make informed responses to the proposed settlement.

3 ***Settlement Administration Duties***

4 49. The duties of the Settlement Administrator are spelled out in section III(C) of the
5 Settlement and in the bid provided by Settlement Administrator a true and correct copy of which
6 is attached hereto as **Exhibit 6**.

7 ***Settlement Administration Costs***

8 50. With regard to the settlement administration costs provision (Settlement §IX), it
9 is reasonable. Before agreeing to Phoenix Class Action Administration Solutions the Parties
10 sought and reviewed bids from other reputable third-party administrators: (A) ILYM Group, Inc.
11 = \$6,990.00; (B) Settlement Administrator = \$9,000.00; and C) CPT Group, Inc. = \$10,000.00.
12 A true and correct copy of the bid from ILYM Group, Inc. is attached hereto as **Exhibit 7**. A true
13 and correct copy of the bid from CPT Group, Inc. is attached hereto as **Exhibit 8**. The bid
14 provided by Settlement Administrator Phoenix was comparable. Thus, settlement administration
15 costs provision should be given preliminary approval.

16 ***Notice of Settlement to the LWDA***

17 51. Pursuant to Labor Code § 2699(1)(2), Plaintiff Lopez submitted a copy of the
18 Settlement with the Labor and Workforce Development Agency (“LWDA”) at the same time
19 Plaintiffs’ motion is being filed with the Court. A true and correct copy of Plaintiff Lopez’s
20 submission with the LWDA and a confirmation email is attached hereto as **Exhibit 9**.

21 52. Pursuant to Labor Code § 2699(1)(2), Plaintiff Ford submitted a copy of the
22 Settlement with the Labor and Workforce Development Agency (“LWDA”) at the same time
23 Plaintiffs’ motion is being filed with the Court. A true and correct copy of Plaintiff Ford’s
24 submission with the LWDA and a confirmation email is attached hereto as **Exhibit 10**.

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

27 Executed on Thursday, July 07, 2022 at Los Angeles, California.

28 

DAVID SPIVAK,
Declarant



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Attorneys for Plaintiffs Rene Lopez and Alysia
 Ford

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

ALYSIA FORD, individually, and on behalf of
 others similarly situated;

Plaintiff,

v.

BOAVIDA COMMUNITIES LLC, a California
 limited liability company; THE BOAVIDA
 GROUP, LP, a limited partnership; and DOES 1
 through 10, inclusive,

Defendants.

Case No. 34-2021-00299610

**JOINT STIPULATION OF CLASS
 ACTION AND PAGA SETTLEMENT**

Action Filed: April 28, 2021

Trial Date: Not Yet Assigned

1
2 This Joint Stipulation of Class Action and PAGA Settlement (“Agreement” or “Settlement
3 Agreement”) is made by and between the Plaintiffs RENE LOPEZ and ALYSIA FORD
4 (collectively “Plaintiffs”), on their own behalf and on behalf of all members of the Settlement Class,
5 as defined below, on the one hand, and Defendants BOAVIDA COMMUNITIES, LLC and THE
6 BOAVIDA GROUP, LP (“Defendants”) on the other hand (Plaintiffs and Defendants collectively
7 referred to as the “Parties”), in the lawsuit entitled *Alysia Ford v. BoaVida Communities, LLC; The*
8 *BoaVida Group, LP*, filed in Sacramento County Superior Court, Case No. 34-2021-00299610
9 (“Litigation”). This Settlement resolves all claims that were asserted or could have been asserted
10 against Defendants pertaining to the claims in the Litigation.

11 **I. DEFINITIONS**

12 **A. “Administration Costs”** means all administrative costs of settlement, including
13 costs of notice to the Settlement Class, settlement administration, and any fees and costs incurred
14 or charged by the Settlement Administrator in connection with the execution of its duties under this
15 Settlement.

16 **B. “Class Counsel” or “Plaintiffs’ Counsel”** mean David Spivak of The Spivak Law
17 Firm and Justin Marquez of the Wilshire Law Firm, and all the lawyers of these firms acting on
18 behalf of Plaintiffs and the Settlement Class.

19 **C. “Class Members”** means all current and former hourly-paid or non-exempt
20 employees who worked for Defendants within the State of California at any time during the
21 Settlement Period (collectively referred to as the “Class”).

22 **D. “PAGA Group Members”** means all current and former hourly-paid or non-
23 exempt employees who worked for Defendants within the State of California at any time during
24 the PAGA Period (collectively referred to as the “PAGA Members” or “PAGA Group Members”).

25 **E. “Court”** means the Superior Court of the State of California for the County of
26 Sacramento.

27 **F. “Effective Date”** means: the later of: (a) if no timely objections are filed or if all
28 objections are withdrawn, the date upon which the Court enters Final Approval; (b) if an objection

1 is filed and not withdrawn, the date for filing an appeal and no such appeal being filed (c) if any
2 timely appeals are filed, the date of the resolution (or withdrawal) of any such appeal in a way that
3 does not alter the terms of the settlement.

4 **H. “Final Approval Order”** as used herein mean the final formal judgment entered by
5 the Court granting final approval of this Agreement.

6 **I. “Plaintiffs”** as used herein means Rene Lopez and Alysia Ford.

7 **J. “Net Settlement Fund”** means the Settlement Amount minus any Court-approved
8 award of Attorneys’ Fees to Class Counsel, Litigation Costs to Class Counsel, Administration Costs
9 to the Settlement Administrator, Enhancement Payments to Plaintiffs, and LWDA Payment to the
10 Labor and Workforce Development Agency (“LWDA”), and as provided in Sections VIII, IX, and
11 XIV-XVII.

12 **K. “Individual Settlement Payments”** means payments made to the Participating
13 Class Members from the Net Settlement Fund as part of the Settlement.

14 **L. “Settlement”** means the disposition and agreement to resolve the Litigation.

15 **M. “Settlement Administrator”** means Phoenix Settlement Administrators
16 (“Phoenix”), the settlement administrator selected by the Parties, and which will be responsible for
17 the administration of the Settlement Amount, as defined below, and all related matters. The Parties
18 each represent that they do not have any financial interest in the Settlement Administrator or
19 otherwise have a relationship with the Settlement Administrator that could create a conflict of
20 interest.

21 **N. “Maximum Settlement Amount”** means the sum of Two Hundred Seventy Five
22 Thousand Dollars (\$275,000.00), which shall be paid by Defendants, and from which all Individual
23 Settlement Payments, Court-approved Attorneys’ Fees and Litigation Costs pursuant to Section
24 XIV, Administration Costs pursuant to Section IX, Enhancement Payment pursuant to Section XV,
25 and PAGA Penalties pursuant to Section XVII, except as provided herein.

26 **O. “Settlement Payment”** means the payment of \$275,000.00 due at final approval of
27 the settlement by the Court.
28

1 **P. “Settlement Class Member”** means a Class Member who does not opt out of the
2 Settlement.

3 **Q. “Class Settlement Period” or “Class Period”** means the period from July 1, 2019
4 through the date of Preliminary Approval of the Settlement by the court or 90 days from the date
5 of the full execution of this Settlement Agreement, whichever is earlier.

6 **R. “PAGA Settlement Period” or “PAGA Period”** means the period from December
7 13, 2019 through the date of Preliminary Approval of the Settlement by the court or 90 days from
8 the date of the full execution of this Settlement Agreement, whichever is earlier.

9 **S. “Workweeks”** means the number of weeks that a Class Member worked for
10 Defendants as an hourly-paid or non-exempt employee during the Settlement Period (based on the
11 number of workweeks in the Class List that Defendants provide to the Settlement Administrator).
12 Each Class Member will be credited with at least one (1) Workweek. A Workweek includes any
13 week in which a Class Member had a time worked entry in Defendants’ timekeeping system.

14 **II. BACKGROUND.**

15 **A.**On February 16, 2021, Plaintiff Lopez filed Case No. 21STCV06244 in Los Angeles
16 County Superior Court, which is a representative action for civil penalties pursuant to the Private
17 Attorneys General Act (the “PAGA”) against Defendant BoaVida Communities, LLC. In this
18 PAGA action (“Lopez Action”), Plaintiff Lopez sought civil penalties on behalf of himself and
19 other aggrieved employees for the following alleged violations of the California Labor Code: (1)
20 California Labor Code sections 226.7, 512, 1198 and Sections 11 and 12 of the Wage Order (failure
21 to provide rest breaks and meal breaks); (2) California Labor Code section 2802 and Section 9 of
22 the Wage Order (failure to indemnify for business-related expenses); (3) California Labor Code
23 sections 226.2, 510, 1194, 1197, 1198 and Sections 2, 3, and 4 of the Wage Order (failure to pay
24 all wages earned for all hours worked); (4) California Labor Code sections 226 and 226.2 (failure
25 to provide complete and accurate wage statements); (5) California Labor Code section 204 (failure
26 to timely pay wages during employment); and (6) California Labor Code sections 201, 202, and
27 203 (failure to timely pay wages upon termination).

28 **B.**On April 28, 2021, Plaintiff Ford filed Case No. 34-2021-00299610 in Sacramento

County Superior Court, which is a wage and hour class action against Defendants BoaVida Communities, LLC and The BoaVida Group, LP. In this class action (“Ford Action”), Plaintiff Ford alleges, *inter alia*, on behalf of herself and all others similarly situated, that Defendant violated California state wage and hour laws, the California Business and Professions Code Section 17200 *et seq.* as a result of Defendants’ California wage and hour policies and practices. Specifically, Plaintiff Ford alleged that Defendants violated: (1) California Labor Code sections 204, 1194, 194.2, and 1197 (failure to pay minimum and straight time wages); (2) California Labor Code sections 1194 and 1198 (failure to pay overtime wages); (3) California Labor Code sections 226.7 and 512 (failure to provide meal periods); (4) California Labor Code section 226.7 (failure to authorize and permit rest periods); (5) California Labor Code sections 201-203 (failure to timely pay final wages at termination); (6) California Labor Code section 226 (failure to provide accurate itemized wage statements); (7) California Labor Code sections 2800 and 2802 (failure to indemnify employees for expenditures); and (8) California Business & Professions Code sections 17200, *et seq.*

C. The Lopez Action and the Ford Action are collectively referred to herein as “the Litigation.”

D. Class Counsel conducted discovery concerning the claims set forth in the Litigation, such as class datapoints (including the number of putative class members, workweeks, pay periods, and average hourly rate of pay). Class Counsel also received detailed payroll reports and timekeeping details; and other relevant documents, including but not limited to employee handbooks and stand-alone policies related to the claims at issue during the Class Period.

E. Plaintiffs and Class Counsel have engaged in good faith, arms-length negotiations with Defendant concerning possible settlement of the claims asserted in the Litigation. The Parties participated in mediation before mediator Francis “Tripper” Ortman, Esq., on February 4, 2022. Mr. Ortman is a well-respected wage-and-hour class action mediator, that resulted in settlement of the Litigation memorialized in this Settlement Agreement after extensive negotiations about the terms and conditions of the Settlement at the mediation and during the subsequent drafting of a Memorandum of Understanding which was executed by both Parties in February 2022.

1 **F.** Class Counsel has conducted an investigation of the law and facts relating to the
2 claims asserted in the Litigation and has concluded, taking into account the sharply contested issues
3 involved, the defenses asserted by Defendants, the expense and time necessary to pursue the
4 Litigation through trial and any appeals, the risks and costs of further prosecution of the Litigation,
5 the risk of an adverse outcome, the uncertainties of complex litigation, and the substantial benefits
6 to be received by Plaintiffs and the members of the Class pursuant to this Agreement, that a
7 settlement with Defendants on the terms and conditions set forth herein is fair, reasonable,
8 adequate, and in the best interests of the Class. Plaintiffs, on their own behalf and on behalf of the
9 Class, have agreed to settle the Litigation with Defendants on the terms set forth herein.

10 **G.** Defendants have concluded that, because of the substantial expense of defending
11 against the Litigation, the length of time necessary to resolve the issues presented herein, the
12 inconvenience involved, and the concomitant disruption to their business operations, it is in
13 Defendants' best interest to accept the terms of this Agreement. Defendants deny each of the
14 allegations and claims asserted against them in the Litigation. However, Defendants nevertheless
15 desire to settle the Litigation for the purpose of avoiding the burden, expense and uncertainty of
16 continuing litigation and for the purpose of putting to rest the controversies engendered by the
17 Litigation.

18 **H.** This Agreement is intended to and does effectuate the full, final and complete
19 settlement of all allegations and claims that were asserted, or could have been asserted, in the
20 Litigation by Plaintiffs and members of the Class as set forth in Sections II.A-B.

21 **III. JURISDICTION**

22 The Court has jurisdiction over the Parties and the subject matter of this Litigation. The
23 Litigation includes claims that, while Defendants deny them in their entirety, would, if proven,
24 authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted
25 final approval of the Settlement and after the Court has ordered the entry of Judgment, pursuant to
26 California Code of Civil Procedure Section 664.6 the Court shall retain jurisdiction of this action
27 solely for the purpose of interpreting, implementing, and enforcing this Settlement consistent with
28 the terms set forth herein.

1 **IV. STIPULATION OF CLASS CERTIFICATION**

2 The Parties stipulate to the certification of the Class for purposes of settlement only. This
3 stipulation is contingent upon the preliminary and final approval and certification of the Class only
4 for purposes of settlement. Should the Settlement not become final, for whatever reason, the fact
5 that the Parties were willing to stipulate provisionally to class certification as part of the Settlement
6 shall have no bearing on, and shall not be admissible in connection with, the issue of whether a
7 class should be certified in a non-settlement context in the Litigation. Defendants expressly reserve
8 the right to oppose class certification and/or proactively move to deny certification should this
9 Settlement be modified or reversed on appeal or otherwise not become final.

10 **V. MOTION FOR PRELIMINARY APPROVAL**

11 Plaintiffs will bring a motion before the Court for an order preliminarily approving the
12 Settlement including the Notice of Class Action Settlement ("Notice"), which is attached hereto as
13 "**Exhibit A**", and including certification of the Class for settlement purposes only.

14 The date that the Court grants preliminary approval of this Agreement will be the
15 "Preliminary Approval Date." Class Counsel will be responsible for drafting all documents
16 necessary to obtain preliminary approval of the Settlement and will provide these papers to
17 Defendants' counsel three (3) business days in advance of such filing. Defendants may review and
18 suggest revisions to Plaintiffs' Motion for Preliminary Approval, which Plaintiffs will consider.
19 Defendants agree that they will not oppose Plaintiffs' Motion for Preliminary Approval, nor shall
20 they seek to delay the hearing on this motion for more than thirty (30) days from the date obtained
21 by Plaintiffs. This is a material term of the Settlement and any delay or opposition by Defendants
22 will be grounds for Plaintiffs to withdraw from the Settlement.

23 **VI. STATEMENT OF NO ADMISSION**

24 **A.** Defendants deny liability to Plaintiffs and to the Class upon any claim or cause of
25 action. This Agreement does not constitute, and is not intended to constitute, an admission by
26 Defendants as to the merits, validity, or accuracy of any of the allegations or claims made against
27 them in the Litigation.
28

1 **B.** Nothing in this Agreement, nor any action taken in implementation thereof, nor any
2 statements, discussions or communications, nor any materials prepared, exchanged, issued or used
3 during the course of the negotiations leading to this Agreement or the Settlement, is intended by
4 the Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be
5 admissible in any way in this case or any other judicial, arbitral, administrative, investigative or
6 other forum or proceeding as evidence of any violation of any federal, state, or local law, statute,
7 ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. The
8 Parties themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in
9 this case or any other judicial, arbitral, administrative, investigative, or other forum or proceeding,
10 as purported evidence of any violation of any federal, state, or local law, statute, ordinance,
11 regulation, rule or executive order, or any obligation or duty at law or in equity, or for any other
12 purpose. Notwithstanding the foregoing, this Agreement may be used and filed in any proceeding
13 before the Court that has as its purpose the interpretation, implementation, or enforcement of this
14 Agreement or any orders or judgments of the Court entered in connection with implementation of
15 the Settlement.

16 **C.** None of the documents produced or created by Plaintiffs or the Class in connection
17 with settlement procedures constitute, and they are not intended to constitute, an admission by
18 Defendants of any violation of any federal, state, or local law, statute, ordinance, regulation, rule,
19 or executive order, or any obligation or duty at law or in equity.

20 **D.** The Parties agree that class certification pursuant to California Code of Civil
21 Procedure Section 382 under the terms of this Agreement is for settlement purposes only. Nothing
22 in this Agreement will be construed as an admission or acknowledgement of any kind that any class
23 should be certified or given collective treatment in the Litigation or in any other action or
24 proceeding. Further, neither this Agreement nor the Court's actions with regard to this Agreement
25 will be admissible in any court or other tribunal regarding the propriety of class certification or
26 collective treatment. In the event that this Agreement is not approved by the Court or any appellate
27 court, is terminated, or otherwise fails to be enforceable, Plaintiffs will not be deemed to have
28 waived, limited, or affected in any way any claims, rights, or remedies in the Litigation, and

1 Defendant will not be deemed to have waived, limited, or affected in any way any of its objections
2 or defenses in the Litigation.

3 **VII. WAIVER, RELEASE AND CONFIDENTIALITY**

4 **A. Release As to All Settlement Class Members.**

5 Upon the date on which the Court's Final Approval Order becomes "Final" (as that term is
6 defined in Section I(F) above), Plaintiffs and all Settlement Class Members waive, release,
7 discharge Defendants, and their divisions, affiliates, predecessors, successors, shareholders,
8 officers, directors, employees, agents, trustees, representatives, administrators, fiduciaries, assigns,
9 subrogees, executors, partners, parents, subsidiaries, joint employers, insurers, clients, customers,
10 suppliers, vendors, and related corporations ("Released Parties") of any and all wage-related claims
11 that were alleged in the Litigation or which could have been alleged in the Litigation based on the
12 facts asserted in the Litigation arising during the Settlement Period, including the following claims,
13 under any legal theory of liability, for: (1) alleged failure to pay all hours worked pursuant to
14 California Labor Code sections 200, 226, 1197, and 1198 and the IWC Wage Orders; (2) alleged
15 failure to provide meal periods pursuant to California Labor Code sections 200, 226.7 and 512 and
16 the IWC Wage Orders; (3) alleged failure to provide rest periods pursuant to California Labor Code
17 sections 200 226.7, and 512 and the IWC Wage Orders; (4) alleged failure to furnish accurate
18 itemized wages statements pursuant to California Labor Code section 226 and the IWC Wage
19 Orders; (5) alleged failure to pay all wages owed at termination pursuant to California Labor Code
20 sections 201-203 and the IWC Wage Orders; (6) alleged failure to pay all wages in a timely manner
21 during employment pursuant to California Labor Code section 204 and the IWC Wage Orders; (7)
22 alleged failure to maintain adequate payroll records pursuant to California Labor Code section 1174
23 and IWC Wage Orders; (8) alleged failure to reimburse all necessary business expenses pursuant
24 to California Labor Code sections 2802 and 2804 and the IWC Wage Orders; (9) alleged violations
25 of California Business & Professions Code sections 17200, *et seq.*; and (10) alleged violations of
26 California Labor Code section 2698-2699, *et seq.* ("Released Claims").

27 **B. General Release by Plaintiffs Only.**

28

1 In addition to the release made in Section VII (A), Plaintiffs make the additional following
2 general release of all claims, known or unknown. Plaintiffs release the Released Parties from all
3 claims, demands, rights, liabilities and causes of action of every nature and description whatsoever,
4 known or unknown, asserted or that might have been asserted, whether in tort, contract, or for
5 violation of any state or federal statute, rule or regulation arising out of, relating to, or in connection
6 with Plaintiffs' relationship with Defendants as well as any and all acts or omissions by or on the
7 part of Defendants. (The release set forth in this Paragraph B shall be referred to hereinafter as the
8 "General Release.")

9 With respect to the General Release, Plaintiffs stipulate and agree that, upon the date on
10 which the Court's Final Approval Order becomes "Final", Plaintiffs shall be deemed to have
11 expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and
12 benefits of Section 1542 of the California Civil Code, or any other similar provision under federal
13 or state law, which provides:

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

18 This release specifically excludes claims for unemployment insurance, disability, social security,
19 and workers compensation (with the exception of claims arising pursuant to California Labor Code
20 Sections 132(a) and 4553). Accordingly, if the facts relating in any manner to this Settlement are
21 found hereafter to be other than or different from the facts now believed to be true, the release of
22 claims contained herein shall be effective as to all unknown claims.

23 **VIII. SETTLEMENT PAYMENT**

24 **A. Consideration for This Agreement.**

25 As consideration for this Agreement, Defendants will make a settlement payment that totals
26 the Maximum Settlement Amount of \$275,000.00. The payment of the Maximum Settlement
27 Amount represents full and complete settlement of this matter. The Maximum Settlement Amount
28 includes all attorneys' fees and costs, administration costs, enhancement award to the class and

PAGA representatives, and payment to the California Labor and Workforce Development Agency (“LWDA”). The balance after deduction of attorneys’ fees and costs, administration costs, payment to the LWDA, the enhancement awards, will be the Net Settlement Amount. Defendants’ employer taxes shall be paid separately and in addition to the Maximum Settlement Amount.

B. Potential Increase to the Settlement Amount.

Defendant has represented that there are no more than 8,500 workweeks from July 1, 2019 to December 15, 2021. In the event the number of workweeks from July 1, 2019 to December 15, 2021 is more than 9,350 (i.e., greater than 10% more than 8,500), then the Gross Settlement Amount shall be increased proportionally by the workweeks in excess of 9,350, multiplied by the workweek value. For example, if there were 9,350 workweeks represented to exist from July 1, 2019 to December 15, 2021, but there are actually 9,500 workweeks from July 1, 2019 to December 15, 2021, and the actual workweek value is \$30.00 per workweek, Defendants would have to increase the Maximum Settlement Amount by \$4,500.00 (9,500 workweeks – 9,350 workweeks = 150 workweeks x \$30.00/workweek). In the alternative, if the number of workweeks exceeds 9,350, Defendants may exercise the option of cutting off the Class Period at the point where the workweeks equal 9,350.

IX. SETTLEMENT ADMINISTRATOR

Plaintiffs and Defendants, through their respective counsel, have selected Phoenix as a Settlement Administrator to administer the Settlement, which includes but is not limited to distributing and responding to inquiries about the Notice, determining the validity of any disputes and opt-outs, and calculating all amounts to be paid from the Net Settlement Fund. Charges and expenses of the Settlement Administrator, estimated to be no more \$9,000.00, will be paid from the Settlement Amount. Any charges and expenses of the Settlement Administrator greater than the allocated \$9,000.00 will be paid from the Settlement Amount. If the actual Administration Costs are less than the Parties’ estimation, the difference between the actual and estimated Administration Costs will be part of the Net Settlement Fund. The Parties agree that this Agreement may be provided to the Settlement Administrator to effectuate its implementation of the settlement procedures herein.

1 **X. NOTICE, OBJECTIONS AND EXCLUSION RIGHTS**

2 **A. Notice.**

3 Plaintiffs and Defendants, through their respective attorneys, have jointly prepared the
4 Notice, which in substance will be provided to the Class Members as follows:

5 As soon as practicable following preliminary approval of the Settlement, but no later than
6 fourteen (14) calendar days after the Court enters the Order granting preliminary approval of the
7 Settlement, Defendants will provide to the Settlement Administrator the following information for
8 each Class Member: (1) full name; (2) last known home address; (3) last known telephone number;
9 (4) dates of employment with Defendants as an hourly-paid or non-exempt employee, as well as
10 hours worked and total workweeks for each class member; (5) total Workweeks during the Class
11 Period; (6) total Workweeks during the PAGA Period; (7) Social Security number; and (8) last
12 known email address. Defendants further agree to consult with the Settlement Administrator prior
13 to the production date to ensure that the format will be acceptable to the Settlement Administrator.
14 Plaintiffs' Counsel shall also receive a redacted Class List that shall only disclose an identification
15 number attributed to each Class Member and their dates of employment, hours worked, and
16 associated workweeks.

17 The Settlement Administrator shall run all the addresses provided through the United States
18 Postal Service NCOA database (which provides updated addresses for any individual who has
19 moved in the previous four years who has notified the U.S. Postal Service of a forwarding address)
20 to obtain current address information, and shall mail the Notice to the Class Members via first-class
21 U.S. Mail using the most current mailing address information available, within ten (10) calendar
22 days of the receipt of the Class List from Defendants.

23 The Notice will include information regarding the nature of the Litigation; a summary of
24 the terms of the Settlement; the definition of the Class; a statement that the Court has preliminarily
25 approved the Settlement; the nature and scope of the claims being released; the procedure and time
26 period for objecting to the Settlement, the date and location of the Final Approval Hearing;
27 information regarding the opt-out procedure; the number of Workweeks credited to each Class
28 Member, and the estimated Individual Settlement Payment for the Class Member.

1 If a Notice is returned as undeliverable after the initial mailing, the Settlement Administrator
2 will perform a skip trace in an attempt to locate a more current address. If the Settlement
3 Administrator is successful in locating an updated address, it will re-mail the Notice to the Class
4 Member. Further, any Notices returned with a forwarding address to the Settlement Administrator
5 before the Response Deadline (as defined in Section X.B. below), shall be re-mailed to the
6 forwarding address affixed thereto. With respect to any Notice that is re-mailed, the Response
7 Deadline for the Class Member whose Notice is re-mailed will be extended an additional fifteen
8 (15) calendar days.

9 No later than twenty-five (25) days before the Final Approval Hearing, the Settlement
10 Administrator shall provide counsel for Defendants and Class Counsel with a declaration attesting
11 to the completion of the settlement notice administration process, including the number of attempts
12 to obtain valid mailing addresses for and re-sending of any returned Notices, as well as the number
13 of Workweeks Disputes, Requests for Exclusion, and objections received.

14 **B. Objections.**

15 Any Class Member making an objection must not submit a Request to be Excluded (i.e.,
16 must not opt out). To object to the Settlement, a Settlement Class Member may send a written
17 objection to the Settlement Administrator or appear at the Final Approval Hearing with or without
18 submitting a written objection to the Settlement. The Settlement Class Member may appear
19 personally or through an attorney, at his or her own expense, at the Final Approval Hearing to
20 present his or her objection directly to the Court. However, any attorney who will represent an
21 individual objecting to this Settlement must file a notice of appearance with the Court and serve
22 Class Counsel and Defendants' Counsel no later than sixty (60) calendar days after the Notice was
23 initially mailed to the Class Members ("Response Deadline"). A written objection to the Settlement
24 must: (1) contain the case name and number of the Litigation; (2) contain the Settlement Class
25 Member's name, address, telephone number, signature, and last four digits of his or her Social
26 Security number; (3) clearly state the grounds for the objection; (4) state whether the Settlement
27 Class Member intends to appear at the Final Approval Hearing; and (5) be mailed to the Settlement
28 Administrator, postmarked no later than the Response Deadline. If a Class Member objects to the

1 Settlement, the Class Member will remain a Settlement Class Member and if the Court approves
2 this Agreement, the Settlement Class Member will be bound by the terms of the Settlement and
3 Final Approval Order in the same way and to the same extent as a Settlement Class Member who
4 does not object to the Settlement. The date of mailing of the Notice to the objecting Settlement
5 Class Member shall be conclusively determined according to the records of the Settlement
6 Administrator. The Court retains final authority with respect to the consideration and admissibility
7 of any objections to the Settlement from Settlement Class Members.

8 **C. Opportunity to Be Excluded and Defendants' Opt-Out Threshold.**

9 In order for any Class Member to validly exclude himself or himself from the Settlement
10 (i.e., to validly opt out), a written request for exclusion from the Settlement ("Request to be
11 Excluded") must: (1) contain the case name and number of the Litigation; (2) contain the Class
12 Member's full name, address, telephone number, and last four digits of his or her Social Security
13 number; (3) be signed by the Class Member or his or her authorized representative; (4) contain a
14 clear statement that the Class Member requests to be excluded from the Settlement; and (5) be sent
15 to the Settlement Administrator, postmarked by no later than the Response Deadline. The Notice
16 shall contain instructions on how to opt out.

17 The date of the initial mailing of the Notice, and the date the signed Request to be Excluded
18 was postmarked, shall be conclusively determined according to the records of the Settlement
19 Administrator. Any Class Member who timely and validly submits a Request to be Excluded will
20 not be entitled to an Individual Settlement Payment, will not be bound by the terms and conditions
21 of the Settlement, and will not have any right to object, appeal, or comment thereon.

22 Any Class Member who does not timely submit a Request to be Excluded to the Settlement
23 Administrator will be deemed included in the Settlement in accordance with this Settlement. All
24 PAGA Group Members, the LWDA, and State of California shall release claims arising under
25 PAGA for the PAGA Period. All PAGA Group Members shall release claims arising under PAGA
26 regardless of their decision to participate in the class settlement.

27 In the event that five percent (5%) or more of the Class Members exercise their right to
28 exclude themselves and opt out of the Settlement, Defendants retain the exclusive right, but not the

1 obligation, to withdraw from and terminate the Settlement and return all parties back to their same
2 position before the Settlement was reached and the Settlement Agreement was entered into. In the
3 event that Defendants exercise such rights under this paragraph, Plaintiffs and Defendants shall
4 resume the Litigation through and until there is a final resolution of the Litigation. Defendants
5 must notify Class Counsel and the Court in writing of such a decision to withdraw and terminate
6 the Settlement no later than five (5) days prior to the date of the Final Approval Hearing. In the
7 event of Defendants' withdrawal, no party may use the fact that the Parties agreed to the Settlement
8 for any reason, and Defendants shall pay all administration expenses incurred through the date of
9 its termination of the Settlement.

10 **D. Cooperation.**

11 The Parties and their respective counsel agree not to encourage members of the Class to
12 refrain from participating in the Settlement, to opt out of the Settlement, or to object to the
13 Settlement, directly or indirectly, through any means. However, if a Class Member contacts Class
14 Counsel, Class Counsel may discuss the terms of the Settlement and the Class Member's options
15 with respect to the Settlement.

16 **XI. DISPUTES PROCEDURE**

17 If a Class Member disputes his or her number of Workweeks set forth in the Notice, such
18 Class Member must submit a written Workweeks dispute ("Workweeks Dispute") that: (a) contains
19 the case name and number of the Litigation; (b) contains the Class Member's full name, address,
20 telephone number, signature, and last four digits of his or her Social Security number; (c) contains
21 a statement setting forth the number of Workweeks that such Class Member believes is correct and
22 attaches any relevant documentation in support thereof; and (d) is submitted to the Settlement
23 Administrator by mail, postmarked no later than the Response Deadline. If a Class Member does
24 not dispute his or her number of Workweeks, the number of Workweeks set forth in the Notice will
25 govern the Individual Settlement Payment to the Class Member and such Class Member need not
26 take further action to participate in the Settlement.

27 Upon timely receipt of any such challenge, the Settlement Administrator, in consultation
28 with Class Counsel and counsel for Defendants, will review the pertinent records showing the dates

1 the Class Member worked for Defendants in California and the number of weeks worked, which
2 records Defendants agree to make available to the Settlement Administrator and Class Counsel.

3 After consulting with Class Counsel and counsel for Defendants, the Settlement
4 Administrator shall compute the number of Workweeks to be used in computing the Class
5 Member's *pro rata* share of the Net Settlement Fund. In the event that there is a disparity between
6 the number of Workweeks a Class Member claims he or she worked during the Settlement Period
7 and the number of Workweeks indicated by Defendants' records, Defendants' records will control
8 unless inconsistent with records provided by the Class Member (or bona fide copies thereof), in
9 which case the records provided by the Class Member will control. The Settlement Administrator's
10 decision as to the total number of Workweeks shall be final and non-appealable. The Settlement
11 Administrator shall send written notice of the decision on any such dispute to the Class Member,
12 to Class Counsel, and counsel for Defendants within ten (10) calendar days of receipt of the
13 Workweeks Dispute.

14 Should any Class Member timely submit a timely Workweeks Dispute with a deficiency,
15 the Settlement Administrator shall, within five (5) calendar days of receipt, send a deficiency
16 notice. The deficiency notice will provide the Class Member the later of the Response Deadline or
17 fourteen (14) calendar days from the mailing of the deficiency notice to postmark a written response
18 to cure all deficiencies. The failure of a Class Member to timely respond to a notice of deficiency
19 shall invalidate the dispute unless all Parties' counsel agree to allow the dispute.

20 **XII. COMPUTATION AND DISTRIBUTION OF PAYMENTS**

21 **A. Distribution Formula.**

22 Settlement Class Members (i.e., Class Members who do not opt out of the Settlement) will
23 receive a lump sum payment as good and valuable consideration for the waiver and release of
24 Released Claims set forth in Section VII(A), above, in an amount determined by the Settlement
25 Administrator in accordance with the provisions of this Agreement.

26 Each Settlement Class Member's Individual Settlement Payment will be determined as
27 follows:

- 28 1. Defendants will calculate the total number of Workweeks of each Settlement Class

1 Member during the Settlement Period.

2 2. The value of each Workweek shall be determined by the Settlement Administrator
3 by dividing the Net Settlement Fund by the total number of Workweeks of all
4 Settlement Class Members (“Workweek Point Value”).

5 3. Each Settlement Class Member’s Workweeks will be multiplied by the Workweek
6 Point Value to derive his or her Individual Settlement Payment. Individual
7 Settlement Payments for each Settlement Class Member will be reduced by any
8 required legal deductions for the employee’s share of taxes and withholdings on the
9 wages portion of the Individual Settlement Payments.

10 **B. Funding of Settlement.**

11 Within twenty-one (21) calendar days following the Effective Date, Defendants will deposit
12 the Settlement Payment equal to the Maximum Settlement Amount into an interest-bearing account
13 established by the Settlement Administrator. At no time prior to the Effective Date shall
14 Defendants be required to escrow any portion of the Settlement Amount.

15 **C. Time for Distribution.**

16 The Settlement Administrator shall cause the Settlement Amount (inclusive of the Net
17 Settlement Fund, the Court-approved Attorney’s Fees and Litigation Costs to Class Counsel, Court-
18 approved Enhancement Payment to Plaintiffs, Court-approved Administration Costs to the
19 Settlement Administrator, and the LWDA Payment, and the PAGA Payment to PAGA Group
20 Members) to be distributed within ten (10) calendar days following the payment as detailed in
21 Section VIII(B) of the Agreement.

22 If an Individual Settlement Payment check is returned to the Settlement Administrator as
23 undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing
24 address by performing a skip trace search and, if another address is identified, shall mail the check
25 to the newly identified address.

26 Any checks issued by the Settlement Administrator to Settlement Class Members and
27 PAGA Group Members will be negotiable for at least one hundred eighty (180) calendar days. If a
28 Settlement Class Member or PAGA Group Member does not cash his or her settlement check

1 within 180 days, the uncashed funds, subject to Court approval, shall be provided to the California
2 Unclaimed Property Fund, pursuant to California Civil Procedure Code § 384. The Individual
3 Settlement Payment provided to Settlement Class Members and PAGA Group Members shall
4 prominently state the expiration date or contain a statement that the settlement check will expire in
5 one hundred eighty (180) days, or alternatively, such a statement may be made in a letter
6 accompanying the Individual Settlement Payment. Expired Individual Settlement Payments will
7 not be reissued, except for good cause and as mutually agreed by the Parties in writing. The Parties
8 agree no unclaimed funds will result from the Settlement.

9 The Parties each represent that they do not have any financial interest in the California
10 Unclaimed Property Fund or otherwise have a relationship with the California Unclaimed Property
11 Fund that could create a conflict of interest.

12 **XIII. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN**

13 The amounts paid under this Agreement do not represent a modification of any previously
14 credited hours of service under any employee benefit plan, policy, or bonus program sponsored by
15 Defendants. Such amounts will not form the basis for additional contributions to, benefits under,
16 or any other monetary entitlement under, benefit plans (self-insured or not) sponsored by
17 Defendants, policies or bonus programs. Any payments made under the terms of this Settlement
18 shall not be applied retroactively, currently or on a going forward basis as salary, earnings, wages,
19 or any other form of compensation for the purposes of Defendants' benefit plan, policy or bonus
20 program. Defendants retain the right to modify the language of its benefit plan, policies and bonus
21 programs to effect this intent and to make clear that any amounts paid pursuant to this Settlement
22 are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as
23 defined by applicable plans, policies and bonus programs for purpose of eligibility, vesting, benefit
24 accrual, or any other purpose, and that additional contributions or benefits are not required by this
25 Settlement.

26 **XIV. CLASS COUNSEL ATTORNEYS' FEES AND LITIGATION COSTS**

27 Defendant shall not oppose an application by Class Counsel for, and Class Counsel shall
28 not seek or receive an amount in excess of 33.33% of the Settlement Amount (i.e., \$91,666.67) for

all past and future attorneys' fees necessary to prosecute, settle and administer the Litigation and this Settlement ("Attorneys' Fees"). Additionally, Defendants shall not oppose an application by Class Counsel for, and Class Counsel shall not seek or receive an amount in excess of \$35,000.00, which represents all past and future litigation costs and expenses necessary to prosecute, settle and administer the Litigation and this Settlement ("Litigation Costs"). Any Attorneys' Fees or Litigation Costs awarded to Class Counsel by the Court as part of the Settlement shall be deducted from the Settlement Amount for the purpose of determining the Net Settlement Fund. The "future" aspect of these amounts includes, without limitation, all time and expenses expended by Class Counsel in defending the Settlement and securing preliminary and final approval (including any appeals therein). There will be no additional charge of any kind to either the members of the Class or request for additional consideration from Defendants for such work. The Attorneys' Fees and Litigation Costs shall include all attorneys' fees, litigation costs, and expenses for which Plaintiffs and Class Counsel could claim under any legal theory whatsoever with respect to the Litigation. Within ten (10) calendar days following the Effective Date, the Settlement Administrator shall disburse payment to Class Counsel from the Settlement Amount for the Court-approved Attorneys' Fees and Litigation Costs. Should the Court approve a lesser percentage or amount of Attorneys' Fees and/or Litigation Costs than the amount that Class Counsel ultimately seeks, then any such unapproved portion or portions shall be part of the Net Settlement Fund to be distributed to Settlement Class Members on a *pro rata* basis.

XV. ENHANCEMENT PAYMENT TO PLAINTIFFS

Defendants shall not oppose an application by Plaintiffs, and Plaintiffs Lopez and Ford shall not seek or receive an amount in excess of \$15,000.00 each for their participation in and assistance with the Litigation ("Enhancement Payments"). Any Enhancement Payments awarded to Plaintiffs by the Court as part of the Settlement shall be deducted from the Settlement Amount for the purpose of determining the Net Settlement Fund and shall be reported on IRS Form 1099. If the Court approves an Enhancement Payment of less than \$15,000.00 to Plaintiffs Lopez and Ford, then the unapproved portion or portions shall be part of the Net Settlement Fund to be distributed to Settlement Class Members on a *pro rata* basis.

1 **XVI. TAXATION AND ALLOCATION**

2 The Parties agree that all employment taxes and other legally required withholdings will be
3 withheld from payments to the Settlement Class Members and Plaintiffs based on the Parties
4 stipulated allocation of the Net Settlement Fund as provided for in this Section.

5 In Defendants' sole discretion, and to which Plaintiffs and Class Counsel do not object, the
6 amount of federal income tax withholding will be based upon a flat withholding rate for
7 supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or
8 supplemented. Income tax withholdings will also be made pursuant to applicable state and/or local
9 withholding codes or regulations.

10 For withholding tax characterization purposes and payment of taxes, the Individual
11 Settlement Payments to Settlement Class Members shall be deemed and are as twenty percent
12 (20%) wages and eighty percent (80%) penalties and interest.

13 Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by
14 the Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement, by the
15 Settlement Administrator. If the Code, the regulations promulgated thereunder, or other applicable
16 tax law, is changed after the date of this Agreement, the processes set forth in this Section may be
17 modified in a manner to bring Defendants into compliance with any such changes.

18 Finally, the employer's share of payroll taxes and contributions on the wages portion of
19 Individual Settlement Payments will be paid by Defendants in addition to and not as a deduction
20 from the Settlement Amount.

21 **XVII. PAGA ALLOCATION**

22 In order to implement the terms of this Settlement and to settle claims alleged under the
23 Private Attorneys General Act, California Labor Code section 2698 *et seq.*, the Parties agree to
24 allocate \$4,000.00 from the Settlement Amount as penalties authorized by the PAGA ("PAGA
25 Penalties"). Seventy-five percent (75%), which is \$3,000.00 of the PAGA Penalties will be
26 distributed to the Labor and Workforce Development Agency ("LWDA Payment") and twenty-five
27 25%, which is \$1,000.00, of the PAGA Penalties will be distributed on pro-rata basis to the
28 Settlement Class Members who worked during the PAGA period ("PAGA Payment to PAGA

1 Group Members"). Within ten (10) calendar days following the payment funding the Settlement,
2 the Settlement Administrator shall disburse the LWDA Payment to the LWDA, and Plaintiffs'
3 Counsel will provide notice to the LWDA of the fact that the Settlement has been approved by the
4 Court along with a copy of the Final Approval Order through the appropriate LWDA/DIR website.

5 PAGA Group Members shall receive their portion of the PAGA Payment regardless of their
6 decision to opt-out of the class settlement.

7 **XVIII. COURT APPROVAL**

8 This Agreement and the Settlement is contingent upon final approval by the Court and entry
9 of judgment. Plaintiffs and Defendants agree to take all steps as may be reasonably necessary to
10 secure both preliminary approval and final approval of the Settlement, to the extent not inconsistent
11 with the terms of this Agreement and will not take any action adverse to each other in obtaining
12 approval by the Court, and, if necessary, appellate approval, of the Settlement in all respects.
13 Plaintiffs and Defendants expressly agree that they will not file any objection to the terms of the
14 Settlement or assist or encourage any person or entity to file any such objection.

15 In the event it becomes impossible to secure approval of the Settlement, the Parties shall be
16 restored to their respective positions in the Litigation, as of the date on which the Settlement was
17 reached, except as otherwise provided in Section XIX, below.

18 **XIX. MISCELLANEOUS PROVISIONS**

19 **A. Interim Stay of Litigation.**

20 Plaintiffs and Defendants agree to the stay of all proceedings in the Litigation, including
21 with respect to California Code of Civil Procedure section 583.310, except such proceedings
22 necessary to implement and complete the Settlement, pending Final Approval of the Settlement by
23 the Court.

24 **B. Interpretation of the Agreement.**

25 This Agreement constitutes the entire agreement between Plaintiffs and Defendants. Except
26 as expressly provided herein, this Agreement has not been executed in reliance upon any other
27 written or oral representations or terms, and no such extrinsic oral or written representations or
28 terms shall modify, vary or contradict its terms. In entering into this Agreement, the Parties agree

1 that this Agreement is to be construed according to its terms and may not be varied or contradicted
2 by extrinsic evidence. The Agreement will be interpreted and enforced under the laws of the State
3 of California, both in its procedural and substantive aspects, without regard to its conflict of laws
4 provisions. Any claim arising out of or relating to the Agreement, or the subject matter hereof, will
5 be resolved solely and exclusively in the Superior Court of the State of California for the County
6 of Sacramento, and Plaintiffs and Defendants hereby consent to the personal jurisdiction of the
7 Court over them solely in connection therewith. Plaintiffs, on their own behalf and on behalf of
8 the Class, and Defendants participated in the negotiation and drafting of this Agreement and had
9 available to them the advice and assistance of independent counsel. As such, neither Plaintiffs nor
10 Defendants may claim that any ambiguity in this Agreement should be construed against the other.

11 The terms and conditions of this Agreement constitute the exclusive and final understanding
12 and expression of all agreements between Plaintiffs and Defendants with respect to the Settlement.

13 **C. Further Cooperation.**

14 Plaintiffs and Defendants and their respective attorneys shall proceed diligently to prepare
15 and execute all documents, to seek the necessary approvals from the Court, and to do all things
16 reasonably necessary or convenient to consummate the Agreement as expeditiously as possible.

17 **D. Confidentiality of Documents.**

18 After the expiration of any appeals period, Plaintiffs, the Settlement Administrator, and
19 Class Counsel shall maintain the confidentiality of all documents, deposition transcripts,
20 declarations and other information obtained in the Litigation, unless necessary for appeal or such
21 documents are ordered to be disclosed by the Court or by a subpoena.

22 **E. Neutral Employment Reference.**

23 Defendants agree that it will adopt a neutral reporting policy regarding any future
24 employment references related to Plaintiffs. In the event that any potential or future employers of
25 Plaintiffs request a reference regarding Defendants' employment of Plaintiff Lopez or Ford,
26 Defendants shall only provide the requested Plaintiffs' dates of employment and job titles during
27 employment. Defendants shall not refer to the Action or this Settlement.

28 **F. Counterparts.**

1 The Agreement may be executed in one or more actual or non-original counterparts, all of
2 which will be considered one and the same instrument and all of which will be considered duplicate
3 originals.

4 **G. Authority.**

5 Each individual signing below warrants that he or she has the authority to execute this
6 Agreement on behalf of the party for whom or which that individual signs.

7 **H. No Third-Party Beneficiaries.**

8 Plaintiffs, Settlement Class Members, and Defendants are direct beneficiaries of this
9 Agreement, but there are no third-party beneficiaries.

10 **I. Modification.**

11 This Agreement may not be changed, altered, or modified, except in a writing signed by the
12 counsel for the Parties, and approved by the Court. Notwithstanding the forgoing, the Parties agree
13 that any dates contained in this Agreement may be modified by agreement of counsel for the Parties
14 in writing without approval by the Court if the Parties agree and cause exists for such modification.
15 This Agreement may not be discharged except by performance in accordance with its terms or by
16 a writing signed by the Parties.

17 **J. Deadlines Falling on Weekends or Holidays.**

18 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or
19 legal holiday, that deadline shall be continued until the following business day.

20 **K. California Law Governs**

21 All terms of this Settlement Agreement and Exhibits hereto will be governed and interpreted
22 according to the laws of the State of California.

23 **L. Severability.**

24 In the event that any one or more of the provisions contained in this Agreement shall for
25 any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
26 unenforceability shall in no way effect any other provision if Defendants' Counsel and Class
27 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as
28 if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

1 **M. Consolidation of Claims.**

2 Plaintiffs agree to file a consolidated Complaint in the Ford Action. Plaintiffs will dismiss
3 the claims in the Lopez Action without prejudice. Plaintiffs will file an amended complaint prior
4 to filing a motion for preliminary approval of the Settlement in the Ford Action that will add the
5 PAGA claims asserted in the Lopez Action. As part of the amended complaint in the Ford Action,
6 Plaintiffs will add Rene Lopez as a class representative in the Ford Action.

7 **N. Binding on Successors and Assigns.**

8 This Settlement Agreement will be binding upon, and inure to the benefit of, the successors
9 or assigns of the Parties hereto, as previously defined.

10 **O. Waiver.**

11 No waiver of any condition or covenant contained in this Settlement Agreement or failure
12 to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute
13 a further waiver by such party of the same or any other condition, covenant, right or remedy.

14 **P. Enforcement Action.**

15 In the event that one or more of the Parties institutes any legal action or other proceeding
16 against any other Party or Parties to enforce the provisions of this Settlement or to declare rights
17 and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover
18 from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness
19 fees incurred in connection with any enforcement actions.

20 **Q. Mutual Preparation.**

21 The Parties have had a full opportunity to negotiate the terms and conditions of this
22 Agreement. Accordingly, this Agreement will not be construed more strictly against one Party than
23 another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties,
24 it being recognized that, because of the arms-length negotiations between the Parties, all Parties
25 have contributed to the preparation of this Settlement Agreement.

26 **R. Representation by Counsel.**

27 The Parties acknowledge that they have been represented by counsel throughout all
28 negotiations that preceded the execution of this Agreement, and that this Agreement has been

executed with the consent and advice of counsel and reviewed in full. Further, Plaintiffs and Class Counsel warrant and represent that there are no liens on the Agreement.

S. Binding Agreement.

The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any settlement confidentiality provisions that otherwise might apply under federal or state law.

Date: April 30, 2022

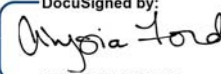
RENE LOPEZ, on behalf of himself and all others similarly situated



RENE LOPEZ, Plaintiff

Date: 5/2/2022, 2022

ALYSIA FORD, on behalf of herself and all others similarly situated

DocuSigned by:


ALYSIA FORD, Plaintiff

Date: April 19, 2022

BOAVIDA COMMUNITIES, LLC and THE BOAVIDA GROUP, LP, Defendants



Name: ELIAS WEINER

Position: Manager of BoaVida Communities LLC
Manager of The BoaVida Group GP LLC,
General Partner of The BoaVida Group LP

1 APPROVED AS TO FORM:

2 Date: 05 / 03 / 2022, 2022

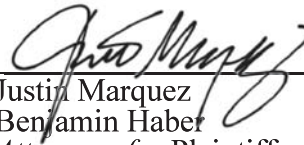
THE SPIVAK LAW FIRM

3 

4 David Spivak
5 Caroline Tahmassian
6 *Attorneys for* Plaintiffs and Proposed Class
7 Counsel

8 Date: May 2, 2022

WILSHIRE LAW FIRM

9 

10 Justin Marquez
11 Benjamin Haber
12 *Attorneys for* Plaintiffs and Proposed Class
13 Counsel

14 Date: April 19, 2022

MEDINA McKELVEY LLP

15 

16 Alexander Medina
17 Timothy Nelson
18 *Attorneys for* BoaVida Communities, LLP and
19 The BoaVida Group, LP
20
21
22
23
24
25
26
27
28

EXHIBIT 2



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

December 11, 2020

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

RE: *Rene Lopez/BoaVida*

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Rene Lopez (hereafter “Lopez”) provides notice on behalf of himself and of all individuals currently and formerly employed in California as non-exempt, hourly employees, including but not limited to resident or community managers and persons in similar positions (hereafter referred to as “Aggrieved Employees”), by BoaVida Communities LLC (referred to as “BoaVida”), for violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 1194, 1197, 1198, and 2802.

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

Statement of Facts

On or about October 19, 2019, BoaVida first employed Lopez to work in California as a resident manager at one of its mobile home properties located in Gardena, California. BoaVida continued to employ Lopez until September 21, 2020 when his employment ended.

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

BoaVida failed to compensate Lopez and the Aggrieved Employees for all hours worked at the correct rates of pay, including overtime wages. At all relevant times, Lopez and the other Aggrieved Employees often worked seven (7) days in a workweek, and between six (6) and 10 hours per workday. BoaVida's written employment agreements with Lopez and Aggrieved Employees permitted pay for only 20 hours of work per week (5 days in workweek, four(4) hours per workday) though BoaVida knowingly required or permitted Lopez and the Aggrieved Employees to work in excess of this time and often in excess of eight hours per day and 40 hours per week. In fact, BoaVida informed the residents that they could contact Lopez for "Afterhours Emergencies" and include his personal cellphone number as the contact information. As such, BoaVida was well aware of the fact that Lopez and the Aggrieved Employees worked more than five (5) days in a workweek and more than four (4) hours in a workday.

Further, at the time of hire, BoaVida informed Lopez and the Aggrieved Employees that it would compensate them at an hourly rate of pay for time worked. BoaVida, however, did not pay Lopez or the other Aggrieved Employees for rest and recovery time. The written employment agreements BoaVida required Lopez and the Aggrieved Employees to sign state,

Because Employee lives on-site. Employee knows and understands that his/her work is mostly unsupervised. Employee acknowledges that he/she is not "working" all the time Employee is on the premises and that it is difficult for Employer to determine the exact hours Employee actually works because Employee may engage in normal private pursuits such as

eating, sleeping, entertaining, etc., during those periods when Employee is free of duties. Accordingly, Employee and Employer agree that twenty (20) hours per week is a reasonable estimate of the total hours Employee will work each week, taking into consideration normal work weeks, emergency situations, and unusually busy work weeks.

Thus, BoaVida did not pay Lopez and the Aggrieved Employees for rest and recovery time every four hours worked (or major portion thereof), nor did it provide them with rest periods.

At all relevant times, BoaVida failed to provide Lopez and the Aggrieved Employees with all timely, duty-free rest and meal periods as provided under California law. BoaVida instructed Lopez and the Aggrieved Employees that they were not required to take meal or rest periods because they were only scheduled to work four (4) hours per day. BoaVida was well aware that Lopez and the other Aggrieved Employees often worked more than five (5) hours in a workday and intentionally failed to provide them with meal and rest periods. Additionally, BoaVida required Lopez and the other Aggrieved Employees to monitor their personal cellphones and respond to residents' inquiries at all times. BoaVida failed to pay premium wages for days on which it failed to provide Lopez and the Aggrieved Employees with rest and/or meal periods as provided by California Law.

BoaVida also required Lopez and the Aggrieved Employees to incur certain business expenses in the course of performing their duties, including providing stamps to mail the rent checks and other paperwork to BoaVida management and use of a personal mobile telephone to communicate with management for BoaVida and the residents. BoaVida did not provide reimbursement for these expenses. BoaVida also failed to provide Lopez and the Aggrieved Employees with the tools they needed to complete their tasks such as saws, hammers, drills, drill bits, and shovels. Instead, BoaVida expected Lopez and the Aggrieved Employees to supply their own tools without reimbursement and without payment of two times minimum wage to perform their job duties. BoaVida also required Lopez and the Aggrieved Employees to use their personal vehicles to travel to Home Depot and similar stores to buy supplies or to the post office to

mail rent checks or other paperwork to BoaVida management. BoaVida, however, failed to reimburse them for mileage expenses.

At all relevant times, BoaVida knowingly and intentionally failed to provide Lopez and the Aggrieved Employees with accurate wage statements itemizing each Aggrieved Employee's gross wages earned, net wages earned, total hours worked, corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of California Labor Code Section 226.

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

- a) BoaVida failed to provide Lopez and the Aggrieved Employees with all rest breaks and meal periods;
- b) BoaVida failed to pay Lopez and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more rest breaks;
- c) BoaVida failed to pay Lopez and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more meal periods;
- d) BoaVida failed to pay Lopez and the Aggrieved Employees for all hours worked at the correct rates of pay;
- e) BoaVida failed to indemnify Lopez and the Aggrieved Employees for all business expenses;
- f) BoaVida failed to provide Lopez and the Aggrieved Employees with accurate wage statements;

- g) BoaVida failed to timely pay Lopez and the Aggrieved Employees all earned and unpaid wages during their employment with BoaVida; and
- h) BoaVida failed to timely pay Lopez and the Aggrieved Employees all earned and unpaid wages at the termination of their employment with BoaVida.

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

Wage Order 5

The Wage Order applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis." § 1. The term "Public Housekeeping Industry" means "any industry, business, or establishment which provides meals, housing, or maintenance services" and includes, but is not limited to, the following occupations:

- (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either solid or liquid form is prepared and served to be consumed on the premises;
- (2) Catering, banquet, box lunch service, and similar establishments which prepare food for consumption on or off the premises;
- (3) Hotels, motels, apartment houses, rooming houses, camps, clubs, trailer parks, office or loft buildings, and similar establishments offering rental of living, business, or commercial quarters;
- (4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;
- (5) Private schools, colleges, or universities, and similar establishments which provide board or lodging in addition to educational facilities;

- (6) Establishments contracting for development, maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units; and
- (7) Establishments providing veterinary or other animal care services.

§ 2(P) (emphasis added). At all relevant times during the applicable limitations period, BoaVida employed Lopez and the other Aggrieved Employees as resident managers for its properties and mobile homes. Accordingly, Lopez and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

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

In relevant part, California Labor Code § 1198 states:

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

In relevant part, California Labor Code § 512 states:

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

An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal

period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

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

Meal Periods:

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

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

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time

shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

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

California Labor Code § 226.7 states in relevant part:

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

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

BoaVida intentionally and improperly failed to provide all timely and duty-free rest breaks and/or meal periods to Lopez and other Aggrieved Employees as

required by law. In failing to do so, BoaVida violated the provisions of California Labor Code §§ 226.7, 512, and 1198.

Accordingly, Lopez seeks civil penalties on behalf of himself and Aggrieved Employees as follows:

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

**Failure To Pay All Wages Earned For All Hours Worked At The Correct
Rates of Pay**
(Lab. Code §§ 226.2, 510, 1194, 1197, and 1198)

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

Section 4 of Wage Order states,

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

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

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

In relevant part, California Labor Code § 1194 states,

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

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

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

(A) Daily Overtime - General Provisions

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

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

In relevant part, California Labor Code § 510 states,

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

Labor Code § 226.2 states,

- (a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:
 - (1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.

At all relevant times during the applicable limitations period, BoaVida failed to compensate Lopez and other Aggrieved Employees for all hours worked, including, but not limited to overtime wages for all overtime hours they worked at the correct rates of pay, including overtime wages for the hours worked on the seventh consuetude day.

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

1. \$50 for each Aggrieved Employee for each initial violation of Labor Code §510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code §558);
2. \$100 for each Aggrieved Employee for each initial violation of Labor Code §1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699, subdivision (f)(2));
3. \$100 for each underpaid employee for each initial violation of California Labor Code § 1197, and \$250 for each underpaid employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed) (penalties set by Labor Code § 1197.1);
4. \$100 for each Aggrieved Employee for each initial violation of Labor Code §1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)); and
5. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.2, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

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

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

As discussed above, BoaVida required Lopez and the other Aggrieved Employees to incur certain business expenses. BoaVida failed to indemnify

Lopez and the other Aggrieved Employees for such expenses both during and after their employment ended.

Accordingly, Lopez seeks civil penalties on behalf of himself and the Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 2802, 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 Accurate Wage Statements
(Lab. Code § 226)

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

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

At all relevant times during the applicable limitations period, BoaVida violated California Labor Code § 226 in that it failed to properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of California Labor Code § 226.

Labor Code § 226.2 states,

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

The itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable:

The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period.

Except for employers paying compensation for other nonproductive time in accordance with paragraph (7), the total hours of other nonproductive time, as determined under paragraph (5), the rate of compensation, and the gross wages paid for that time during the pay period.

Lab.Code § 226.2(a)(2).

BoaVida failed to issue Lopez and the Aggrieved Employees itemized wage statements that state the hours and rates of compensation for rest and recovery periods.

Accordingly, Lopez seeks civil penalties on behalf of himself and Aggrieved Employees as follows:

1. \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each aggrieved

employee for each subsequent violation (penalties set by California Labor Code § 226.3); and

2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.2, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

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

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

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

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

Under Labor Code § 201, if an employer discharges an employee, the wages

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

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

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

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

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

Conclusion

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

Sincerely,



David Spivak, Esq.
david@spivaklaw.com

cc: Rene Lopez

BoaVida Communities LLC
c/o Dan Trescott
Agent for Service of Process
3511 Del Paso Rd., STE 160/147
Sacramento, CA 95835

EXHIBIT 3

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Robert Draper

1 DAVID G. SPIVAK (SBN 179684)
2 david@spivaklaw.com
3 CAROLINE TAHMASSIAN (SBN 285680)
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10 Attorneys for Plaintiff,
11 RENE LOPEZ, and all other similarly situated

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
(UNLIMITED JURISDICTION)

RENE LOPEZ, as an “aggrieved employee” on
behalf of other similarly situated “aggrieved
employees” under the Labor Code Private
Attorney General Act of 2004,

Plaintiff(s),

vs.

BOAVIDA COMMUNITIES, LLC, a
California limited liability company; and
DOES 1 through 50, inclusive,

Defendant(s).

Case No.: **21STCV06244**

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

JURY TRIAL DEMANDED



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

3 **I. INTRODUCTION**

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

8 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
9 him, the State of California, and other similarly situated aggrieved current and former employees
10 who worked in California as hourly, non-exempt employees, including, but not limited to, resident
11 and community managers and persons in similar positions, at any time during the period of
12 September 21, 2019 to the present, for civil penalties and other related relief. These claims are
13 based on Defendants’ (1) failure to provide all rest and meal periods; (2) failure to separately
14 compensate for rest and recovery periods and nonproductive time; (3) failure to indemnify for
15 necessary work-related expenditures; (4) failure to pay all wages earned for all hours worked at
16 the correct rates of pay; (5) failure to provide accurate and complete written wage statements; and
17 (6) failure to timely pay wages during and upon termination of employment. Accordingly,
18 Plaintiff now seeks to recover civil penalties and related relief through this representative action.

19 **II. JURISDICTION AND VENUE**

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

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

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

26 6. Venue is proper in 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 some
28 of the transactions that are the subject matter of this Complaint occurred therein and/or because
each defendant is found, maintains offices, transacts business, and/or has an agent therein.

III. THE PARTIES

7. Plaintiff, an individual and resident of California, began working for Defendants



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1 as an hourly, nonexempt resident manager on or about October 19, 2019. Plaintiff continuously
2 worked for Defendants from that date until approximately September 21, 2020, when his
3 employment ended. At all relevant times, Plaintiff was an “employee” within the meaning of Title
4 8 California Code of Regulations Section 11050 and an “aggrieved employee” within the meaning
5 of Labor Code Section 2699(c).

6 8. Defendant BOAVIDA COMMUNITIES, LLC is a limited liability company
7 organized and existing under the laws of California based on Plaintiff’s information and belief.

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

14 **A. THE AGGRIEVED EMPLOYEES**

15 10. The “Aggrieved Employees” are all individuals Defendants employed in
16 California as hourly, non-exempt employees, including, but not limited to community and
17 resident managers and persons in comparable positions, at any time during the period of
18 December 11, 2019 and entry of judgment (“the PAGA Period”).

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

24 12. At all relevant times, in perpetrating the acts and omissions alleged herein,
25 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
26 of a practice which resulted in Defendants not paying Plaintiff and the other Aggrieved
27 Employees in accordance with applicable California labor laws as alleged herein.

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



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employment, and/or direction and control.

IV. FACTUAL ALLEGATIONS

14. On approximately October 19, 2019, Defendants first employed Plaintiff to work as a resident manager at one of their mobile home properties located in Gardena, California. Defendants continued to employ Lopez until September 21, 2020 when his employment ended.

15. Defendants compensated Plaintiff and the Aggrieved Employees with an hourly rate of pay and issued him wages on a semi-monthly basis.

16. Defendants failed to compensate Plaintiff and the Aggrieved Employees for all hours worked at the correct rates of pay, including overtime wages. At all relevant times, Plaintiff and the Aggrieved Employees often worked 7 days in a workweek, and between six (6) and 10 hours per workday. Defendants' written employment agreements with Plaintiff and the Aggrieved Employees permitted pay for only 20 hours of work per week (five (5) days in workweek, four (4) hours per workday) though Defendants knowingly required or permitted Plaintiff and the Aggrieved Employees to work in excess of this time and often in excess of eight (8) hours per day and 40 hours per week. In fact, Defendants informed the residents that they could contact Plaintiff for "Afterhours Emergencies" and included Plaintiff's personal cellphone number as the contact information. As such, Defendants were well aware of the fact that Plaintiff and the Aggrieved Employees worked more than five (5) days in a workweek and more than four (4) hours in a workday.

17. Defendants informed Plaintiff and the Aggrieved Employees, at the time of hire, that they would compensate them at an hourly rate of pay for time worked. Defendants, however, did not pay Plaintiff and the Aggrieved Employees for rest and recovery time. The written employment agreements Defendants required Plaintiff and the Aggrieved Employees to sign state,

Because Employee lives on-site. Employee knows and understands that his/her work is mostly unsupervised. Employee acknowledges that he/she is not "working" all the time Employee is on the premises and that it is difficult for Employer to determine the exact hours Employee actually works because Employee may engage in normal private pursuits such as eating, sleeping, entertaining, etc., during those periods when Employee is free of duties. Accordingly, Employee and Employer agree that twenty (20) hours per week is a reasonable estimate of the total hours Employee will work each week, taking into consideration normal work weeks, emergency situations, and unusually busy work weeks.

Thus, Defendants did not pay Plaintiff and the Aggrieved Employees for rest and recovery time



every four hours worked (or major portion thereof), nor did they provide them with rest periods as required by law.

18. At all relevant times, Defendants failed to provide Plaintiff and the Aggrieved Employees with all timely, duty-free rest and meal periods as provided under California law. Defendants instructed Plaintiff and the Aggrieved Employees that they were not required to take meal or rest periods because they were only scheduled to work four (4) hours per day. Defendants were well aware that Plaintiff and the Aggrieved Employees often worked more than five (5) hours in a workday and intentionally failed to provide them with meal and rest periods. Additionally, Defendants required Plaintiff and the Aggrieved Employees to monitor their personal cellphones and respond to residents' inquiries at all times. Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the Aggrieved Employees with rest and/or meal periods as provided by California law.

19. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees to incur certain business expenses in the course of performing their duties, including providing stamps to mail the rent checks and other paperwork to Defendants' management and use of a personal mobile telephone to communicate with management for Defendants and the residents. Defendants did not provide reimbursement for these expenses. Defendants also failed to provide Plaintiff and the Aggrieved Employees with the tools they needed to complete their tasks such as saws, hammers, drills, drill bits, and shovels. Instead, Defendants expected Plaintiff and the Aggrieved Employees to supply their own tools without reimbursement and without payment of two times minimum wage per hour to perform their job duties. Defendants also required Plaintiff and the Aggrieved Employees to use their personal vehicles to travel to Home Depot and similar stores to buy supplies or to the post office to mail rent checks or other paperwork to Defendants' management. Defendants, however, failed to reimburse them for mileage expenses.

20. At all relevant times, Defendants knowingly and intentionally failed to provide Plaintiff and the Aggrieved Employees with accurate wage statements itemizing each Aggrieved Employee's gross wages earned, net wages earned, total hours worked, corresponding number of hours worked at each rate by the Aggrieved Employees and the other requirements of California Labor Code Section 226.

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



- 1 A. Not provided with all off duty meal periods;
- 2 B. Not provided with all rest break periods as required by law;
- 3 C. Not paid one hour's pay for each workday in which Defendants failed to
- 4 provide them with one or more timely rest periods;
- 5 D. Not paid one hour's pay for each workday in which Defendants failed to
- 6 provide them with one or more timely meal periods;
- 7 E. Not separately compensated for rest and recovery periods and
- 8 nonproductive time;
- 9 F. Not paid all wages earned, including, but not limited to, regular and
- 10 overtime wages for work performed while clocked out;
- 11 G. Not indemnified for all necessary business expenditures incurred during
- 12 the discharge of their duties;
- 13 H. Not provided with accurate and complete wage statements; and
- 14 I. Not timely paid all earned and unpaid wages during their employment with
- 15 Defendants and at the time such employment ended.

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

17 **CIVIL PENALTIES**

18 **(Lab. Code §§ 2698, *et seq.*)**

19 **(By Plaintiff, on behalf of himself and the other Aggrieved Employees, against all**

20 **Defendants)**

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

22 23. At all relevant times, Plaintiff and the Aggrieved Employees have been non-

23 exempt employees entitled to the protections of both the Labor Code and the Wage Order.

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

25 24. In relevant part, California Labor Code § 1198 states:

26 The maximum hours of work and the standard conditions of labor

27 fixed by the commission shall be the maximum hours of work and

28 the standard conditions of labor for employees. The employment

of any employee for longer hours than those fixed by the order or

under conditions of labor prohibited by the order is unlawful.

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



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1 An employer shall not employ an employee for a work period of
2 more than five hours per day without providing the employee with
3 a meal period of not less than 30 minutes, except that if the total
4 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.

5 An employer shall not employ an employee for a work period of
6 more than 10 hours per day without providing the employee with
7 a second meal period of not less than 30 minutes, except that if the
8 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.

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

10
11 **Rest Periods**

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

18 (B) If an employer fails to provide an employee a rest period in
19 accordance with the applicable provisions of this Order, the
20 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.”

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

22
23 **Meal Periods**

24 (A) “No employer shall employ any person for a work period
25 of more than five (5) hours without a meal period of not less than
26 30 minutes, except that when a work period of not more than six
27 (6) hours will complete the day’s work the meal period may be
28 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



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1 be permitted only when the nature of the work prevents an
2 employee from being relieved of all duty and when by written
3 agreement between the parties an on-the-job paid meal period is
4 agreed to. The written agreement shall state that the employee
5 may, in writing, revoke the agreement at any time.”

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

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

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

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

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

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

31. Defendants intentionally failed to provide Plaintiff and the Aggrieved Employees
with all required 30-minute duty free meal periods and 10-minute rest periods in accordance with
the Wage Order. Plaintiff is informed and believes and thereon alleges that, at all relevant times



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1 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
2 which resulted in Defendants not providing the Aggrieved Employees with all off-duty meal
3 periods and rest breaks required by California law.

4 **B. FAILURE TO INDEMNIFY**

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

8 33. In relevant part Section 9 of the Wage Order states,

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

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

16 35. On information and belief, Plaintiff alleges on behalf of himself and the Aggrieved
17 Employees that Defendants required them to incur business expenses, including, but not limited
18 to, the use of personal mobile telephones to communicate with Defendants, the use of personal
19 vehicles to buy supplies, without being reimbursed for mileage expenses, and the use of tools to
20 complete tasks as a necessary condition of employment. Defendants failed to indemnify Plaintiff
21 and the Aggrieved Employees for these expenses both during and after their employment ended.

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

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

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

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

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



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

40. Section 3 of the applicable Wage Order states:

(A) Daily Overtime - General Provisions

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

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

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

(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.

41. California Labor Code § 510(a) and the Wage Order require employers to compensate employees at one and one-half times their regular rates of pay for:



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- 1 a) All hours worked in excess of eight hours in one workday;
2 b) All hours worked in excess of forty hours in one workweek; and,
3 c) The first eight hours worked on a seventh consecutive workday during a
4 workweek.

5 42. Labor Code § 1194 invalidates any agreement between an employer and an
6 employee to work for less than the minimum or overtime wage required under the applicable
7 Wage Order.

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

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

13 45. Labor Code § 226.2 states,

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

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

18 ...

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

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

- 26 (ii) The applicable minimum wage.

27 46. At all relevant times during the applicable limitations period, Defendants failed to
28 compensate Plaintiff 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 consecutive day. At the time of hire,



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1 Defendants informed Plaintiff and the Aggrieved Employees that they would compensate them
2 at an hourly rate of pay for time worked. Defendants, however, failed to separately compensate
3 Plaintiff and the Aggrieved Employees for rest and recovery periods and nonproductive time as
4 required by Lab. Code § 226.2. As such, Defendants failed to compensate Plaintiff and the
5 Aggrieved Employees for all hours worked at the correct rates of pay.

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

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

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

14 49. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved
15 Employees were entitled to receive, semi-monthly or at the time of each payment of wages, an
16 accurate 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 at
18 each hourly rate by the employee.

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

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

27 B. Which deductions the employer made from gross wages to determine the
28 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 Section 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;



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

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

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

7 52. As alleged herein, Defendants failed to provide Plaintiff and the Aggrieved
8 Employees all wages owed, including, but not limited to, all regular and overtime wages owed at
9 the correct rates for work performed off-the-clock. As a result, Defendants have failed to properly
10 and accurately itemize each employee's gross wages earned, net wages earned, the total hour
11 worked, the corresponding number of hours worked by employees, and other requirements of
12 California Labor Code § 226. As a result, Defendants have violated California Labor Code § 226.

13 53. Labor code § 226.2 states,

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

16 The itemized statement required by subdivision (a) of Section 226 shall, in
17 addition to the other items specified in that subdivision, separately state the
18 following, to which the provisions of Section 226 shall also be applicable:

19 The total hours of compensable rest and recovery periods, the rate
20 of compensation, and the gross wages paid for those periods during the pay
21 period.

22 Except for employers paying compensation for other
23 nonproductive time in accordance with paragraph (7), the total hours of other
24 nonproductive time, as determined under paragraph (5), the rate of
25 compensation, and the gross wages paid for that time during the pay period.

26 54. Defendants failed to issue Plaintiff and the Aggrieved Employees itemized wage
27 statements that state the hours and rates of compensation for rest and recovery periods.

28 55. Defendants' failure to provide Plaintiff and the Aggrieved Employees with
accurate wage statements was knowing and intentional. Defendants had the ability to provide
Plaintiff and the Aggrieved Employees with accurate wage statements but intentionally provided



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1 wage statements that Defendants knew were not accurate.

2 56. As a result of being provided with inaccurate wage statements by Defendants,
3 Plaintiff and the Aggrieved Employees have suffered an injury. Their legal rights to receive
4 accurate wage statements were violated and they were misled about the amount of wages they
5 had actually earned and were owed. In addition, the absence of accurate information on their wage
6 statements prevented immediate challenges to Defendants' unlawful pay practices, has required
7 discovery and mathematical computations to determine the amounts of wages owed, has caused
8 difficulty and expense in attempting to reconstruct time and pay records and/or has led to the
9 submission of inaccurate information about wages to state and federal government agencies.
10 Further, Plaintiff and the Aggrieved Employees were not able to ascertain from the wage
11 statements whether Defendants complied with their obligations under California Labor Code §
12 226(a) and 226.2.

13 **E. UNTIMELY WAGES DURING EMPLOYMENT**

14 57. Labor Code § 204 states

15 (a) All wages, other than those mentioned in Section 201, 201.3, 202,
16 204.1, or 204.2, earned by any person in any employment are due
17 and payable twice during each calendar month, on days designated
18 in advance by the employer as the regular paydays. Labor
19 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. ...

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

23 (2) An employer is in compliance with the requirements of
24 subdivision (a) of Section 226 relating to total hours worked by the
25 employee, if hours worked in excess of the normal work period
26 during the current pay period are itemized as corrections on the
27 paystub for the next regular pay period. Any corrections set out in
28 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



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1 agreement that provides different pay arrangements, those
2 arrangements shall apply to the covered employees.

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

7 58. Defendants paid wages to employees on regular intervals. Defendants, however,
8 failed to pay Plaintiff on such intervals for all wages earned and all hours worked including, but
9 not limited to, all premium wages for all rest breaks and/or off-duty meal periods that were not
10 provided, and all regular and overtime wages for work performed off-the-clock. On information
11 and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such
12 intervals for all wages earned and all hours worked.

13 **F. UNTIMELY FINAL WAGES**

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

16 60. Labor Code § 202 provides that all earned and unpaid wages of an employee who
17 quits after providing at least 72-hours notice before quitting are due and payable at the time of
18 quitting and that all earned and unpaid wages of an employee who quits without providing at least
19 72-hours notice before quitting are due and payable within 72 hours.

20 61. By failing to pay Plaintiff and the Aggrieved Employees 1) all earned regular and
21 overtime wages at the correct rates and 2) premium wages for all late or missed rest breaks and/or
22 meal periods, Defendants failed to timely pay them all earned and unpaid wages in violation of
23 Labor Code § 201 or § 202.

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

G. CIVIL PENALTIES SOUGHT

63. 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



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regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

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

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

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

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

64. 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.

65. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

66. 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.

67. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved Employees are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 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



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1 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
2 (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation
3 (penalty amounts established by California Labor Code § 210).

4 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
5 (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee
6 for each subsequent violation (penalty amounts established by 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 each initial violation for pay period for which the
9 employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for
10 each pay period for which the employee was underpaid (penalty amounts established by
11 California Labor Code § 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) (penalty amounts
16 established by California Labor Code § 1197.1).

17 E. For violations of California Labor Code §§ 201, 202, 203, 226.2, 226.7,
18 1194, 1198, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period
19 for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay
20 period for each subsequent violation (penalty amounts established by California Labor Code §
21 2699(f)(2)).

22 **H. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS**

23 68. Plaintiff has complied with the procedures for bringing suit specified in California
24 Labor Code § 2699.3. By letter dated December 11, 2020, Plaintiff gave written notice by certified
25 mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific
26 provisions of the California Labor Code alleged to have been violated, including the facts and
27 theories to support the alleged violations. A true and correct copy of Plaintiff’s letter to the LWDA
28 dated December 11, 2020 is attached hereto as Exhibit A. The LWDA has not responded to
Plaintiff’s letter.

69. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in



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connection with their claims for civil penalties.

VI. PRAYER FOR RELIEF

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

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

VII. DEMAND FOR JURY TRIAL

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: February 16, 2021

By: /s/ David Spivak
DAVID SPIVAK
CAROLINE TAHMASSIAN
Attorneys for Plaintiff, RENE LOPEZ, the
State of California, and the Aggrieved
Employees



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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

December 11, 2020

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

RE: *Rene Lopez/BoaVida*

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Rene Lopez (hereafter “Lopez”) provides notice on behalf of himself and of all individuals currently and formerly employed in California as non-exempt, hourly employees, including but not limited to resident or community managers and persons in similar positions (hereafter referred to as “Aggrieved Employees”), by BoaVida Communities LLC (referred to as “BoaVida”), for violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 1194, 1197, 1198, and 2802.

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

Statement of Facts

On or about October 19, 2019, BoaVida first employed Lopez to work in California as a resident manager at one of its mobile home properties located in Gardena, California. BoaVida continued to employ Lopez until September 21, 2020 when his employment ended.

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

BoaVida failed to compensate Lopez and the Aggrieved Employees for all hours worked at the correct rates of pay, including overtime wages. At all relevant times, Lopez and the other Aggrieved Employees often worked seven (7) days in a workweek, and between six (6) and 10 hours per workday. BoaVida's written employment agreements with Lopez and Aggrieved Employees permitted pay for only 20 hours of work per week (5 days in workweek, four(4) hours per workday) though BoaVida knowingly required or permitted Lopez and the Aggrieved Employees to work in excess of this time and often in excess of eight hours per day and 40 hours per week. In fact, BoaVida informed the residents that they could contact Lopez for "Afterhours Emergencies" and include his personal cellphone number as the contact information. As such, BoaVida was well aware of the fact that Lopez and the Aggrieved Employees worked more than five (5) days in a workweek and more than four (4) hours in a workday.

Further, at the time of hire, BoaVida informed Lopez and the Aggrieved Employees that it would compensate them at an hourly rate of pay for time worked. BoaVida, however, did not pay Lopez or the other Aggrieved Employees for rest and recovery time. The written employment agreements BoaVida required Lopez and the Aggrieved Employees to sign state,

Because Employee lives on-site. Employee knows and understands that his/her work is mostly unsupervised. Employee acknowledges that he/she is not "working" all the time Employee is on the premises and that it is difficult for Employer to determine the exact hours Employee actually works because Employee may engage in normal private pursuits such as

eating, sleeping, entertaining, etc., during those periods when Employee is free of duties. Accordingly, Employee and Employer agree that twenty (20) hours per week is a reasonable estimate of the total hours Employee will work each week, taking into consideration normal work weeks, emergency situations, and unusually busy work weeks.

Thus, BoaVida did not pay Lopez and the Aggrieved Employees for rest and recovery time every four hours worked (or major portion thereof), nor did it provide them with rest periods.

At all relevant times, BoaVida failed to provide Lopez and the Aggrieved Employees with all timely, duty-free rest and meal periods as provided under California law. BoaVida instructed Lopez and the Aggrieved Employees that they were not required to take meal or rest periods because they were only scheduled to work four (4) hours per day. BoaVida was well aware that Lopez and the other Aggrieved Employees often worked more than five (5) hours in a workday and intentionally failed to provide them with meal and rest periods. Additionally, BoaVida required Lopez and the other Aggrieved Employees to monitor their personal cellphones and respond to residents' inquiries at all times. BoaVida failed to pay premium wages for days on which it failed to provide Lopez and the Aggrieved Employees with rest and/or meal periods as provided by California Law.

BoaVida also required Lopez and the Aggrieved Employees to incur certain business expenses in the course of performing their duties, including providing stamps to mail the rent checks and other paperwork to BoaVida management and use of a personal mobile telephone to communicate with management for BoaVida and the residents. BoaVida did not provide reimbursement for these expenses. BoaVida also failed to provide Lopez and the Aggrieved Employees with the tools they needed to complete their tasks such as saws, hammers, drills, drill bits, and shovels. Instead, BoaVida expected Lopez and the Aggrieved Employees to supply their own tools without reimbursement and without payment of two times minimum wage to perform their job duties. BoaVida also required Lopez and the Aggrieved Employees to use their personal vehicles to travel to Home Depot and similar stores to buy supplies or to the post office to

mail rent checks or other paperwork to BoaVida management. BoaVida, however, failed to reimburse them for mileage expenses.

At all relevant times, BoaVida knowingly and intentionally failed to provide Lopez and the Aggrieved Employees with accurate wage statements itemizing each Aggrieved Employee's gross wages earned, net wages earned, total hours worked, corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of California Labor Code Section 226.

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

- a) BoaVida failed to provide Lopez and the Aggrieved Employees with all rest breaks and meal periods;
- b) BoaVida failed to pay Lopez and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more rest breaks;
- c) BoaVida failed to pay Lopez and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more meal periods;
- d) BoaVida failed to pay Lopez and the Aggrieved Employees for all hours worked at the correct rates of pay;
- e) BoaVida failed to indemnify Lopez and the Aggrieved Employees for all business expenses;
- f) BoaVida failed to provide Lopez and the Aggrieved Employees with accurate wage statements;

- g) BoaVida failed to timely pay Lopez and the Aggrieved Employees all earned and unpaid wages during their employment with BoaVida; and
- h) BoaVida failed to timely pay Lopez and the Aggrieved Employees all earned and unpaid wages at the termination of their employment with BoaVida.

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

Wage Order 5

The Wage Order applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis." § 1. The term "Public Housekeeping Industry" means "any industry, business, or establishment which provides meals, housing, or maintenance services" and includes, but is not limited to, the following occupations:

- (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either solid or liquid form is prepared and served to be consumed on the premises;
- (2) Catering, banquet, box lunch service, and similar establishments which prepare food for consumption on or off the premises;
- (3) Hotels, motels, apartment houses, rooming houses, camps, clubs, trailer parks, office or loft buildings, and similar establishments offering rental of living, business, or commercial quarters;
- (4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;
- (5) Private schools, colleges, or universities, and similar establishments which provide board or lodging in addition to educational facilities;

- (6) Establishments contracting for development, maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units; and
- (7) Establishments providing veterinary or other animal care services.

§ 2(P) (emphasis added). At all relevant times during the applicable limitations period, BoaVida employed Lopez and the other Aggrieved Employees as resident managers for its properties and mobile homes. Accordingly, Lopez and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

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

In relevant part, California Labor Code § 1198 states:

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

In relevant part, California Labor Code § 512 states:

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

An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal

period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

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

Meal Periods:

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

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

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time

shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

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

California Labor Code § 226.7 states in relevant part:

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

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

BoaVida intentionally and improperly failed to provide all timely and duty-free rest breaks and/or meal periods to Lopez and other Aggrieved Employees as

required by law. In failing to do so, BoaVida violated the provisions of California Labor Code §§ 226.7, 512, and 1198.

Accordingly, Lopez seeks civil penalties on behalf of himself and Aggrieved Employees as follows:

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

**Failure To Pay All Wages Earned For All Hours Worked At The Correct
Rates of Pay**
(Lab. Code §§ 226.2, 510, 1194, 1197, and 1198)

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

Section 4 of Wage Order states,

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

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

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

In relevant part, California Labor Code § 1194 states,

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

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

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

(A) Daily Overtime - General Provisions

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

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

In relevant part, California Labor Code § 510 states,

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

Labor Code § 226.2 states,

- (a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:
 - (1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.

At all relevant times during the applicable limitations period, BoaVida failed to compensate Lopez and other Aggrieved Employees for all hours worked, including, but not limited to overtime wages for all overtime hours they worked at the correct rates of pay, including overtime wages for the hours worked on the seventh consuetude day.

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

1. \$50 for each Aggrieved Employee for each initial violation of Labor Code §510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code §558);
2. \$100 for each Aggrieved Employee for each initial violation of Labor Code §1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699, subdivision (f)(2));
3. \$100 for each underpaid employee for each initial violation of California Labor Code § 1197, and \$250 for each underpaid employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed) (penalties set by Labor Code § 1197.1);
4. \$100 for each Aggrieved Employee for each initial violation of Labor Code §1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)); and
5. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.2, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

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

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

As discussed above, BoaVida required Lopez and the other Aggrieved Employees to incur certain business expenses. BoaVida failed to indemnify

Lopez and the other Aggrieved Employees for such expenses both during and after their employment ended.

Accordingly, Lopez seeks civil penalties on behalf of himself and the Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 2802, 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 Accurate Wage Statements
(Lab. Code § 226)

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

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

At all relevant times during the applicable limitations period, BoaVida violated California Labor Code § 226 in that it failed to properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of California Labor Code § 226.

Labor Code § 226.2 states,

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

The itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable:

The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period.

Except for employers paying compensation for other nonproductive time in accordance with paragraph (7), the total hours of other nonproductive time, as determined under paragraph (5), the rate of compensation, and the gross wages paid for that time during the pay period.

Lab.Code § 226.2(a)(2).

BoaVida failed to issue Lopez and the Aggrieved Employees itemized wage statements that state the hours and rates of compensation for rest and recovery periods.

Accordingly, Lopez seeks civil penalties on behalf of himself and Aggrieved Employees as follows:

1. \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each aggrieved

employee for each subsequent violation (penalties set by California Labor Code § 226.3); and

2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.2, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

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

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

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

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

Under Labor Code § 201, if an employer discharges an employee, the wages

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

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

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

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

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

Conclusion

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

Sincerely,



David Spivak, Esq.
david@spivaklaw.com

cc: Rene Lopez

BoaVida Communities LLC
c/o Dan Trescott
Agent for Service of Process
3511 Del Paso Rd., STE 160/147
Sacramento, CA 95835

EXHIBIT 4

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3 Ronald J. Thommarson, Esq., Bar No. 173849
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10 Facsimile: (714) 546-7457

11 Attorneys for Defendant,
12 BOAVIDA COMMUNITIES, LLC

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF LOS ANGELES

15 RENE LOPEZ, as an "aggrieved
16 employee" on behalf of other similarly
17 situated "aggrieved employees" under the
18 Labor Code Private Attorney General Act
19 of 2004,

20 Plaintiff(s),

21 v.

22 BOAVIDA COMMUNITIES, LLC, a
23 California limited liability company; and
24 DOES 1 through 50, inclusive,

25 Defendant(s).

Case No. 21STCV06244

Assigned for all purposes to:
Judge: Robert S. Draper
Dept: 78

**DEFENDANT BOAVIDA
COMMUNITIES, LLC'S ANSWER TO
COMPLAINT**

Complaint Filed: 02/16/2021

26 Defendant BOAVIDA COMMUNITIES, LLC, ("Defendant"), hereby answers the
27 Complaint on file herein as follows:

28 **GENERAL DENIAL**

By virtue of the California Code of Civil Procedure section 431.30(d), Answering
Defendant denies generally and specifically each and every allegation contained in the
unverified Complaint on file herein, and every cause of action contained therein.

///

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

1. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Defendant is informed and believes, and thereon alleges, that the Complaint, including each and every claim and purported cause of action therein, fails to state facts sufficient to constitute any cause of action against Answering Defendant on grounds upon which relief might legally be granted.

SECOND AFFIRMATIVE DEFENSE

(Waiver)

2. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Defendant is informed and believes, and thereon alleges, that Plaintiff has waived the relief sought in the Complaint by virtue of Plaintiff's own acts, conduct, representations and/or omissions.

THIRD AFFIRMATIVE DEFENSE

(All Monies Owed Have been Properly Paid)

3. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Defendant is informed and believes, and thereon alleges that the complaint, and each purported cause of action alleged therein, is barred because Plaintiff and those he seeks to represent have been paid all wages due and owed.

FOURTH AFFIRMATIVE DEFENSE

(Good Faith Dispute)

4. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Defendant is informed and believes, and thereon alleges that the Complaint, and each purported cause of action alleged therein, is barred in whole or in part, because a good faith dispute exists as to whether any wages are due.

FIFTH AFFIRMATIVE DEFENSE

(No Willful Failure to Pay)

5. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Defendant is informed

1 and believes, and thereon alleges that to the extent Plaintiff and the purported aggrieved
2 employees were employees, Plaintiffs and the purported aggrieved employees' claims are
3 barred, in whole or in part, because Plaintiff and the purported aggrieved employees did not
4 suffer injury as a result of a knowing and intentional failure by their claimed and alleged
5 employer to comply with Labor Code section 226(a).

6 **SIXTH AFFIRMATIVE DEFENSE**

7 **(Penalties Beyond Initial Violation)**

8 6. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Defendant is informed
9 and believes, and thereon alleges that the purported PAGA cause of action is barred to the
10 extent Plaintiff and the purported aggrieved employees seek penalties beyond the "initial"
11 violation described in California Labor Code section 2699 and/or any other applicable
12 California Labor Code provision.

13 **SEVENTH AFFIRMATIVE DEFENSE**

14 **(Plaintiff Is Not An Aggrieved Employee)**

15 7. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Defendant is informed
16 and believes, and thereon alleges that Plaintiff's PAGA claim is barred because he is not an
17 "aggrieved employee" as that term is defined in Labor Code section 2699(c).

18 **EIGHTH AFFIRMATIVE DEFENSE**

19 **(Reimbursement of Business Expenses)**

20 8. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Defendant is informed
21 and believes, and thereon alleges that to the alleged claims of Plaintiff and the purported
22 aggrieved employees under Labor Code section 221 are barred, in whole or in part,
23 because, at all relevant times, Defendant reimbursed its employees for the costs of expenses
24 incurred in the discharge of their duties and/or did not otherwise require them to bear such
25 costs.
26
27
28

NINTH AFFIRMATIVE DEFENSE

(Failure to Provide Notice of Expenses)

9. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Defendant is informed and believes, and thereon alleges that any recovery on Plaintiff's Complaint with respect to allegations of failure to reimburse employee expenses or unlawful deduction of employee expenses is barred because, assuming arguendo that such expenses were reasonably incurred by Plaintiff and/or the purported aggrieved employees in the course and scope of employment with Defendant (which Defendant denies), none ever gave Defendant notice that any such expenses were incurred, they did not request reimbursement for such expenses from Defendant, and Defendant was, at all relevant times, unaware that such expenses had been incurred.

TENTH AFFIRMATIVE DEFENSE

(Plaintiff Seeks Excessive Compensation)

10. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Defendant is informed and believes, and thereon alleges that the hours for which Plaintiff and the purported aggrieved employees claim they are entitled to were not "hours worked" within the meaning of the applicable state and federal laws, and that Plaintiff and the purported aggrieved employees are not entitled to any penalties, income or overtime compensation for these hours.

ELEVENTH AFFIRMATIVE DEFENSE

(Offset, Recoupment)

11. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Defendant is informed and believes, and thereon alleges that some or all of the purported causes of action in the Complaint are subject to offset and/or recoupment.

TWELFTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

12. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Defendant is informed and believes, and thereon alleges that the Complaint, and each cause of action therein, is

1 barred by the applicable statute of limitations.

2 **THIRTEENTH AFFIRMATIVE DEFENSE**

3 **(Due Process)**

4 13. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Defendant is informed
5 and believes, and thereon alleges that its due process rights would be violated if Plaintiff
6 were allowed to adjudicate the claims of other alleged “aggrieved employees” pursuant to
7 PAGA without first establishing that the claims or defenses of Plaintiff are typical of the
8 claims or defenses of the other allegedly “aggrieved employees” Plaintiff purports to
9 represent, or without first establishing that there are common questions of law and fact to
10 all of the alleged “aggrieved employees” whom Plaintiff purports to represent.

11 **FOURTEENTH AFFIRMATIVE DEFENSE**

12 **(Double Penalties / Double Recovery in Violation of Due Process)**

13 14. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Defendant is informed
14 and believes, and thereon alleges that Plaintiff’s PAGA claim is barred pursuant to the
15 United States Constitution and the California Constitution to the extent Labor Code section
16 2698 et seq. imposes double penalties or double recovery and thereby violates the due
17 process rights of Defendant.

18 **FIFTEENTH AFFIRMATIVE DEFENSE**

19 **(Reasonableness and Good Faith)**

20 15. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Defendant is informed
21 and believes, and thereon alleges, that Plaintiff’s Complaint, and each purported cause of
22 action alleged therein, is barred because any conduct complained of against Defendant and
23 its agents, if any, was just and proper exercise of management discretion undertaken for a
24 fair and honest reason regulated by good faith under the circumstances then existing.

25 **SIXTEENTH AFFIRMATIVE DEFENSE**

26 **(Performance of Duty)**

27 16. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Defendant alleges that
28 it has fully performed any and all contractual, statutory, and other duties owed and Plaintiff

1 is therefore barred or estopped to assert any claims for relief against Defendant.

2 **SEVENTEENTH AFFIRMATIVE DEFENSE**

3 **(Lack of Standing)**

4 17. AS A SEPARATE AND AFFIRMATIVE DEFENSE, the Complaint as a
5 whole, and each purported cause of action alleged therein, is barred in whole or in part
6 because Plaintiff lacks standing to bring and maintain the instant action on behalf of the
7 purported aggrieved employees.

8 **EIGHTEENTH AFFIRMATIVE DEFENSE**

9 **(Compliance with Legal Obligations)**

10 18. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Defendant is informed
11 and believes, and thereon alleges that Defendant complied with the Labor Code and
12 applicable law in all of Defendant's dealings with Plaintiff.

13 **NINETEENTH AFFIRMATIVE DEFENSE**

14 **(Arbitration Agreement)**

15 19. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Defendant alleges that
16 Plaintiff entered into a specific contract which requires Plaintiff to arbitrate all of his
17 individual claims and disputes with Defendant arising out of Plaintiff's employment,
18 including claim for unpaid wages. Therefore, this judicial forum is inappropriate to resolve
19 this dispute.

20 **TWENTIETH AFFIRMATIVE DEFENSE**

21 **(Failure to Exhaust Administrative Remedies)**

22 20. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Defendant alleges that
23 Plaintiff's claims are barred, in whole or in part, because Plaintiff failed to exhaust all
24 administrative remedies and/or otherwise failed to comply with the statutory prerequisites
25 to bringing this action.

26 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

27 **(PAGA Claims Not Suitable)**

28 21. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Defendant alleges that

1 Plaintiff's claims for penalties under the Private Attorneys General Act, Labor Code section
2 2698 et seq. ("PAGA") cannot be determined on a community wide basis.

3 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

4 **(Failure to Identify Other "Aggrieved Employees")**

5 22. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Defendant alleges that
6 Plaintiff has failed to identify any other allegedly "aggrieved employees" as required by
7 PAGA.

8 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

9 **(Excessive Fines)**

10 23. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Defendant alleges that
11 the Complaint and each and every cause of action alleged therein are barred because PAGA
12 violates the prohibition against excessive fines in violation of the Eighth Amendment to the
13 United States Constitution and Article I, Section 7 of the California Constitution.

14 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

15 **(Vagueness)**

16 24. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Defendant is informed
17 and believes, and thereon alleges that Plaintiff's cause of action for PAGA penalties is
18 barred pursuant to the United States Constitution and the California Constitution because
19 PAGA is impermissibly vague.

20 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

21 **(Unconstitutional Delegation of Executive Authority)**

22 25. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Defendant is informed
23 and believes, and thereon alleges that Plaintiff's Complaint, and each cause of action
24 therein, is barred on the ground that PAGA represents an unconstitutional and
25 impermissible delegation of executive authority.

26 **TWENTY-SIXTH DEFENSE**

27 **(Unclean Hands)**

28 26. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Defendant is informed

1 and believes, and thereon alleges that Plaintiff and the purported aggrieved employees
2 come to this Court with unclean hands, and are therefore barred from recover under this
3 Complaint, or any cause of action therein.

4 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

5 **(Estoppel)**

6 27. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Defendant is informed
7 and believes, and thereon alleges that Plaintiffs Complaint, and each purported cause of
8 action alleged therein, is barred because Plaintiff and the purported aggrieved employees
9 are estopped by their own conduct to claim any right to damages or any relief against
10 Defendant.

11 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

12 **(Laches)**

13 28. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Defendant is informed
14 and believes, and thereon alleges that Plaintiffs Complaint, and each purported cause of
15 action therein, is barred by the doctrine of laches, because Plaintiff and the purported
16 aggrieved employees delayed inexcusably and unreasonably in pursuing any alleged
17 claims, causing substantial prejudice to Defendant.

18 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

19 **(Acts or Omissions of Plaintiff and Others)**

20 29. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Defendant is informed
21 and believes, and thereon alleges that Plaintiff's Complaint, and each purported cause of
22 action therein, is barred to the extent that damages, if any, resulted from the acts and/or
23 omissions of Plaintiff and/or other purported "aggrieved employees."

24 **THIRTIETH AFFIRMATIVE DEFENSE**

25 **(Unjust Enrichment)**

26 30. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Defendant is informed
27 and believes, and thereon alleges that Plaintiff's claims for penalties are barred to the extent
28 that such penalties are sought in addition to other penalties for the same claims and such

1 duplicative recovery would result in unjust enrichment.

2 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

3 **(In Pari Delicto)**

4 31. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Defendant is informed
5 and believes, and thereon alleges that Plaintiff's and the purported aggrieved employees'
6 claims are barred, in whole or in part, by the doctrine of in pari delicto due to the conduct
7 of Plaintiff and the purported aggrieved employees, including but not limited to their
8 voluntary waiver of the meal periods and rest breaks that they were provided the
9 opportunity to take, and their voluntary decision not to request reimbursement for any
10 expenses they incurred.

11 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

12 **(Failure to State A Valid Claim for Attorneys' Fees or Penalties)**

13 32. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Defendant is informed
14 and believes, and thereon alleges that Plaintiffs Complaint, and each purported cause of
15 action alleged therein, fails to state a valid claim for attorneys' fees or penalties against
16 Defendant.

17 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

18 **(No Right to Jury Trial in PAGA Action)**

19 33. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Plaintiff has no right
20 to a jury trial based on the claims in the Complaint under the Private Attorney General Act
21 of 2004.

22 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

23 **(Reservation of Right to Amend Answer)**

24 34. AS A SEPARATE AND AFFIRMATIVE DEFENSE, Defendant contends
25 that because Plaintiff's Complaint is couched in conclusory terms, Defendant cannot fully
26 anticipate all defense that may be applicable to this action. Accordingly, Defendant reserves
27 the right to assert additional defenses, if and to the extent such defenses are later found
28 applicable.

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff takes nothing due to the Complaint on file herein;
2. That Defendant be dismissed with prejudice from this Complaint;
3. That Defendant be awarded its costs and expenses incurred herein; and
4. That Defendant be awarded such other and further relief as the Court deems proper.

Dated: March 29, 2021

HART | KING

Bv:


John H. Pentecost
Ronald J. Thommarson
Attorneys for Defendant
BOAVIDA COMMUNITIES. LLC

PROOF OF SERVICE

Rene Lopez v. Boavida Communities, LLC
Court Case No. 21STCV06244

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action. My business address is 4 Hutton Centre, Suite 900, Santa Ana, California 92707-0507. On March 29, 2021, I caused the foregoing document(s) described as **DEFENDANT BOAVIDA COMMUNITIES, LLC'S ANSWER TO COMPLAINT** to be served on the interested parties in this action as follows:

☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as stated below or ☐ by sending a copy as stated and addressed below:

SEE ATTACHED SERVICE LIST

☒ **BY MAIL:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid Santa Ana, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in the affidavit.

☐ **BY OVERNIGHT DELIVERY:** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons identified herein. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☐ **BY ELECTRONIC SERVICE.** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed herein on this date at _____ [time]. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

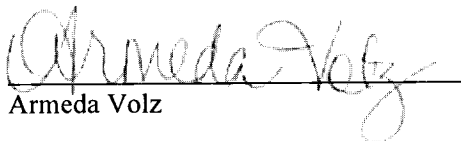
☐ **BY FACSIMILE:** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents from a fax machine, at Santa Ana, California, with the telephone number, (714) 546-7457 to the parties and/or attorney for the parties at the facsimile transmission number(s) shown herein. The facsimile transmission was reported as complete without error by a transmission report, issued by the facsimile transmission machine upon which the transmission was made, a copy of which is attached hereto.

☐ **BY PERSONAL SERVICE:** I personally delivered the documents to the persons at the addresses listed herein. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

☐ **BY MESSENGER SERVICE:** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed herein and providing them to a professional messenger service for service. A declaration by the messenger will be filed separately.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 29, 2021, at Santa Ana, California.


Armeda Volz

SERVICE LIST

Rene Lopez v. Boavida Communities, LLC
Court Case No. 21STCV06244

David G. Spivak
Caroline Tahmassian
The Spivak Law Firm
16530 Ventura Blvd., Suite 203
Encino, CA 91436
Tel.: 213.725.9094
Fax: 213.634.2485
david@spivaklaw.com
caroline@spivaklaw.com

*Attorneys for Plaintiff, RENE LOPEZ, and all
other similarly situated*

EXHIBIT 5

Boavida Communities Mediation Analysis

File Date: 4/28/2021 | Mediation Date: 2/4/2022 | Data Date Range: 7/2/2019 - 12/15/2021 | Extrapolated to 2/4/2022

Data Source: CONFIDENTIAL - MEDIATION PRIVILEGE - BOAVIDA000945 - CONFIDENTIAL - MEDIATION PRIVILEGE - BOAVIDA000950 (6 files)

	2019	2020	2021	Total		Extrapolated To Class
Number of Employees Analyzed	10	133	149	194		n/a
Number of Shifts Analyzed	747	17,509	19,892	38,148	98.8%	40,359
Average Number of Hours per Shift	5.8	6.7	6.8	6.7		6.7
Number of Pay Periods Analyzed	82	2,020	2,222	4,324		4,575
Number of Workweeks Analyzed	155	3,855	4,327	8,337		8,820
Multiplier to Extrapolate to Class (Calendar Days in Class / Calendar Days Analyzed)				1.058		n/a
Average Rate of Pay	\$15.00	\$15.74	\$16.49	\$16.21		n/a
Number of Shifts Greater than 3.5 Hours	701	15,871	18,099	34,671	90.9%	36,681
Number of Shifts Greater than 5 Hours	438	13,031	16,009	29,478	77.3%	31,187
Number of Shifts Greater than 6 Hours	266	11,905	14,316	26,487	69.4%	28,022
Number of Shifts Greater than 8 Hours	7	1,261	4,027	5,295	13.9%	5,602
Number of Shifts Greater than 10 Hours	-	47	105	152	0.40%	161
Number of Shifts Greater than 12 Hours	-	5	13	18	0.05%	19
Off-the-Clock (OTC) Analysis						
Sum of OTC Hours (Assuming 10 per Workweek)	1,550	38,550	43,270	83,370		88,203
Rest Break Analysis						
Number of Rest Break Violations (Assuming 100% Violation Rate for Shifts Greater than 3.5 Hours)	701	15,871	18,099	34,671		36,681
Meal Break Analysis¹						
Number of Recorded 1st Meal Breaks for Shifts Greater than 5 Hours	357	12,524	15,152	28,033	95.1%	29,658
Number of 1st Meal Breaks Recorded After the End of the 5th Hour (Shifts Greater than 5 Hours)	9	878	662	1,549		1,639
Percentage of Shifts When 1st Meal Break was Recorded After the End of the 5th Hour (Shifts Greater than 5 Hours)	2.5%	7.0%	4.4%	5.5%		5.5%
Number of Shifts Worked Between 5 and 6 Hours Without a Recorded 1st Meal Break	77	365	685	1,127		1,192
Percentage of Shifts Worked Between 5 and 6 Hours Without a Recorded 1st Meal Break	44.8%	32.4%	40.5%	37.7%		37.7%
Number of Shifts Worked More than 6 Hours Without a Recorded 1st Meal Break	3	135	169	307		325
Percentage of Shifts Worked More than 6 Hours Without a Recorded 1st Meal Break	1.1%	1.1%	1.2%	1.2%		1.2%
Number of 1st Meal Breaks Shorter than 30 minutes (for Shifts Greater than 5 Hours)	3	221	171	395		418
Percentage of Shifts When 1st Meal Break was Shorter than 30 Minutes (for Shifts Greater than 5 Hours)	0.84%	1.8%	1.1%	1.4%		1.4%
Number of Shifts with an Automatically-Deducted Meal Break (for Shifts Greater than 5 Hours)	347	11,190	10,790	22,327		23,621
Percentage of Shifts with an Automatically-Deducted Meal Break (for Shifts Greater than 5 Hours)	79.2%	85.9%	67.4%	75.7%		75.7%
Number of Recorded 2nd Meal Breaks for Shifts Greater than 10 hours	-	10	49	59	38.8%	62
Number of Shifts Between 10 and 12 Hours without a Recorded 2nd Meal Break	-	35	49	84	62.7%	89
Number of Shifts Greater than 12 Hours without a Recorded 2nd Meal Break	-	2	7	9	50.0%	10
Number of Unique Meal Break Violations	434	12,208	12,022	24,664		26,094
Percentage of Unique Meal Break Violations (Over all Shifts Analyzed)	58.1%	69.7%	60.4%	64.7%		64.7%

1. Unique meal break violations are defined as shifts with at least one of the following: 1) recorded 1st meal break after the end of the 5th hour for shifts greater than 5 hours, 2) 1st meal break less than 30 minutes for shifts greater than 5 hours, 3) no 1st meal break for shifts greater than 5 hours, 4) inferred automatically-deducted meal breaks for shifts greater than 5 hours, or 5) no 2nd meal break for shifts greater than 10 hours.

Boavida Communities Mediation Analysis					
Higher Exposure					Extrapolated
	2019	2020	2021	Total	To Class
Unpaid Off-the-Clock (OTC)					
Unpaid Wages due to OTC (Assuming 10 Hours per Workweek 25% Overtime)	\$ 26,156	\$ 682,821	\$ 802,483	\$ 1,511,461	\$ 1,599,082
Interest due to OTC	\$ 6,145	\$ 108,971	\$ 47,709	\$ 162,825	\$ 172,264
Total Amount for OTC	\$ 32,301	\$ 791,792	\$ 850,193	\$ 1,674,286	\$ 1,771,346
Unpaid Overtime					
Unpaid Overtime Wages (Regular Rate of Pay)	\$ 1,232	\$ 1,661	\$ 2,445	\$ 5,338	\$ 5,906
Interest due for Unpaid Overtime and Double Time	\$ 289	\$ 265	\$ 145	\$ 700	\$ 774
Total Amount for Unpaid Overtime and Double Time	\$ 1,521	\$ 1,927	\$ 2,590	\$ 6,038	\$ 6,680
Rest Break Premiums					
Premiums due to Rest Break Violations (Assuming 100% Violation Rate)	\$ 10,515	\$ 249,882	\$ 298,367	\$ 558,764	\$ 591,156
Interest due to Rest Break Violations	\$ 1,729	\$ 27,915	\$ 12,417	\$ 42,061	\$ 44,499
Total Amount for Rest Break Violations	\$ 12,244	\$ 277,796	\$ 310,784	\$ 600,825	\$ 635,655
Meal Break Premiums					
Premiums due to Late First Meal Break Violations (after 5th hour)	\$ 135	\$ 13,824	\$ 10,913	\$ 24,872	\$ 26,314
Premiums due to Missed First Meal Break Violations (shifts over 5 hours)	\$ 1,200	\$ 7,872	\$ 14,078	\$ 23,151	\$ 24,493
Premiums due to Missed First Meal Break Violations (shifts over 6 hours)	\$ 45	\$ 2,126	\$ 2,786	\$ 4,957	\$ 5,244
Premiums due to Short First Meal Break Violations (less than 30 minutes)	\$ 45	\$ 3,480	\$ 2,819	\$ 6,344	\$ 6,711
Premiums due to Inferred Automatically-Deducted Meal Break Violations (shifts over 5 hours)	\$ 5,205	\$ 176,181	\$ 177,876	\$ 359,263	\$ 380,090
Premiums due to Missed Second Meal Break Violations (shifts over 10 hours)	\$ -	\$ 583	\$ 923	\$ 1,506	\$ 1,593
Premiums due to Unique Meal Break Violations	\$ 6,510	\$ 192,209	\$ 198,186	\$ 396,906	\$ 419,915
Interest due to Unique Meal Break Violations	\$ 1,071	\$ 21,472	\$ 8,094	\$ 30,637	\$ 32,413
Total Amount for Unique Meal Break Violations	\$ 7,581	\$ 213,681	\$ 202,596	\$ 423,858	\$ 448,430
Unreimbursed Business Expenses					
Unreimbursed Business Expenses (Assuming \$50 per Month)	\$ 1,650	\$ 46,200	\$ 54,900	\$ 102,750	\$ 108,700
Interest due to Unreimbursed Business Expenses	\$ 388	\$ 7,373	\$ 3,264	\$ 11,025	\$ 11,664
Total Amount for Unreimbursed Business Expenses	\$ 2,038	\$ 53,573	\$ 58,164	\$ 113,775	\$ 120,364
Penalties ²					
Waiting Time Penalty					
Waiting Time Penalty (based on 116 terminated employees from 7/1/19 to 2/4/22)	\$379,265				
Wage Statement Penalty					
Number of Pay Periods in Wage Statement Date Range	3,119				
Wage Statement Penalty (based on 158 employees from 4/28/20 to 2/4/22)	\$304,000				
PAGA Penalties					
Number of Pay Periods in PAGA Date Range	4,278				
PAGA Penalty (based on 192 employees from 12/13/19 to 2/4/22)	\$427,800				\$100/PP
TOTAL DAMAGES					
Total Damages and Interest	\$2,566,458				
Waiting Time, Wage Statement, and PAGA Penalties	\$1,111,065				
Total Damages Including Penalties and Interest	\$3,677,524				

2. Waiting Time Penalty assumes 30 days per employee in 203 period at 6.7 hours per day, and 226 penalty is \$50/\$100 with a \$4,000 employee maximum.

Boavida Communities Mediation Analysis					
Lower Exposure					Extrapolated
	2019	2020	2021	Total	To Class
Unpaid Off-the-Clock (OTC)					
Unpaid Wages due to OTC (Assuming 2 Hours per Workweek 15% Overtime)	\$ 4,999	\$ 130,495	\$ 153,363	\$ 288,857	\$ 305,602
Interest due to OTC	\$ 1,174	\$ 20,826	\$ 9,118	\$ 31,118	\$ 32,922
Total Amount for OTC	\$ 6,173	\$ 151,320	\$ 162,481	\$ 319,975	\$ 338,524
Unpaid Overtime					
Unpaid Overtime Wages (Regular Rate of Pay)	\$ 1,232	\$ 1,661	\$ 2,445	\$ 5,338	\$ 5,906
Interest due for Unpaid Overtime and Double Time	\$ 289	\$ 265	\$ 145	\$ 700	\$ 774
Total Amount for Unpaid Overtime and Double Time	\$ 1,521	\$ 1,927	\$ 2,590	\$ 6,038	\$ 6,680
Rest Break Premiums					
Premiums due to Rest Break Violations (Assuming 100% Violation Rate)	\$ 10,515	\$ 249,882	\$ 298,367	\$ 558,764	\$ 591,156
Interest due to Rest Break Violations	\$ 1,729	\$ 27,915	\$ 12,417	\$ 42,061	\$ 44,499
Total Amount for Rest Break Violations	\$ 12,244	\$ 277,796	\$ 310,784	\$ 600,825	\$ 635,655
Meal Break Premiums					
Premiums due to Late First Meal Break Violations (after 5th hour)	\$ 135	\$ 13,824	\$ 10,913	\$ 24,872	\$ 26,314
Premiums due to Missed First Meal Break Violations (shifts over 5 hours)	\$ 1,200	\$ 7,872	\$ 14,078	\$ 23,151	\$ 24,493
Premiums due to Missed First Meal Break Violations (shifts over 6 hours)	\$ 45	\$ 2,126	\$ 2,786	\$ 4,957	\$ 5,244
Premiums due to Short First Meal Break Violations (less than 30 minutes)	\$ 45	\$ 3,480	\$ 2,819	\$ 6,344	\$ 6,711
Premiums due to Inferred Automatically-Deducted Meal Break Violations (shifts over 5 hours)	\$ 5,205	\$ 176,181	\$ 177,876	\$ 359,263	\$ 380,090
Premiums due to Missed Second Meal Break Violations (shifts over 10 hours)	\$ -	\$ 583	\$ 923	\$ 1,506	\$ 1,593
Premiums due to Unique Meal Break Violations	\$ 6,510	\$ 192,209	\$ 198,186	\$ 396,906	\$ 419,915
Interest due to Unique Meal Break Violations	\$ 1,071	\$ 21,472	\$ 8,094	\$ 30,637	\$ 32,413
Total Amount for Unique Meal Break Violations	\$ 7,581	\$ 213,681	\$ 202,596	\$ 423,858	\$ 448,430
Unreimbursed Business Expenses					
Unreimbursed Business Expenses (Assuming \$20 per Month)	\$ 660	\$ 18,480	\$ 21,960	\$ 41,100	\$ 43,480
Interest due to Unreimbursed Business Expenses	\$ 155	\$ 2,949	\$ 1,306	\$ 4,410	\$ 4,665
Total Amount for Unreimbursed Business Expenses	\$ 815	\$ 21,429	\$ 23,266	\$ 45,510	\$ 48,145
Penalties ²					
Waiting Time Penalty					
Waiting Time Penalty (based on 116 terminated employees from 7/1/19 to 2/4/22)	\$379,265				
Wage Statement Penalty					
Number of Pay Periods in Wage Statement Date Range	3,119				
Wage Statement Penalty (based on 158 employees from 4/28/20 to 2/4/22)	\$304,000				
PAGA Penalties					
Number of Pay Periods in PAGA Date Range	4,278				
PAGA Penalty (based on 192 employees from 12/13/19 to 2/4/22)	\$427,800				\$100/PP
TOTAL DAMAGES					
Total Damages and Interest	\$1,061,418				
Waiting Time, Wage Statement, and PAGA Penalties	\$1,111,065				
Total Damages Including Penalties and Interest	\$2,172,484				

2. Waiting Time Penalty assumes 30 days per employee in 203 period at 6.7 hours per day, and 226 penalty is \$50/\$100 with a \$4,000 employee maximum.

Boavida Communities Mediation Analysis - Detailed Meal

Number of First Meal Breaks Less than 30 Minutes in Length	395	1.4%
Number of First Meal Breaks Exactly 30 Minutes in Length	14,944	53.3%
Number of First Meal Breaks Exactly 60 Minutes in Length	7,455	26.6%
Number of First Meal Breaks Greater than 30 Minutes in Length	12,694	45.3%

Short 1st Meals	
Meal Length	Number of Instances
29 Minutes	136
27-28 Minutes	78
25-26 Minutes	37
20-24 Minutes	45
10-19 Minutes	93
Under 10 Minutes	6
TOTAL	395

34.4%
19.7%
9.4%
11.4%
23.5%
1.5%

Late 1st Meals	
Number of Minutes after 5 Hours	Number of Instances
1-5 Minutes	197
6-10 Minutes	107
11-15 Minutes	223
16-30 Minutes	401
31-60 Minutes	374
61+ Minutes	247
TOTAL	1,549

12.7%
6.9%
14.4%
25.9%
24.1%
15.9%

Shifts with No Meals	
Number of Minutes after 5 Hours	Number of Instances
1-5 Minutes	85
6-10 Minutes	42
11-15 Minutes	45
16-30 Minutes	159
31-60 Minutes	796
61+ Minutes	307
TOTAL	1,434

5.9%
2.9%
3.1%
11.1%
55.5%
21.4%

Shifts with No 2nd Meal	
Number of Minutes after 10 Hours	Number of Instances
1-5 Minutes	4
6-10 Minutes	4
11-15 Minutes	4
16-30 Minutes	31
31-60 Minutes	20
61+ Minutes	30
TOTAL	93

4.3%
4.3%
4.3%
33.3%
21.5%
32.3%

Boavida Communities Mediation Analysis - Regular Rate

Date Range: 7/5/2019 - 12/3/2021

Data Source: CONFIDENTIAL - MEDIATION PRIVILEGE - BOAVIDA000945 - CONFIDENTIAL - MEDIATION PRIVILEGE - BOAVIDA000950 (6 files)

	2019	2020	2021	Total
Number of Employees Analyzed	13	127	230	272
Number of Pay Periods Analyzed	118	1,898	2,119	4,135
Number of Pay Periods with Overtime and Bonus Compensation	13	24	28	65
Number of Regular Hours Analyzed	7,251.3	50,283.9	85,667.1	143,202.2
Number of Overtime Hours Analyzed	3,590.3	29,560.0	1,708.4	34,858.8
Number of Double Time Hours Analyzed	-	-	14.7	14.7
Weighted Average Reported Base Rate		\$ 15.74	\$ 16.49	\$ 16.21
Total Amount of Bonus Compensation	\$ 13,642	\$ 39,396	\$ 43,982	\$ 97,019
Overtime Calculated at 1.5x Regular Rate of Pay				
Total Estimated Underpayment	\$ 1,232	\$ 1,661	\$ 2,445	\$ 5,338
Overtime Calculated at 1x Base Rate + 0.5x Regular Rate of Pay				
Total Estimated Underpayment	\$ 411	\$ 554	\$ 815	\$ 1,780

1.6%

EXHIBIT 6



February 7, 2022

CASE ASSUMPTIONS

Class Members	198
Opt Out Rate	1%
Opt Outs Received	2
Total Class Claimants	196
Subtotal Admin Only	\$9,573.92

Not-to-Exceed Total \$7,000.00
For 198 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Includes Spanish Translation & Mailing

Case: Lopez v. Boa Vida Communities, Opt-Out Administration

Phoenix Contact: Michael E. Moore
 Contact Number: 949.331.0131
 Email: mike@phoenixclassaction.com

Requesting Attorney: David Spivak
 Firm: Spivak Law Firm
 Contact Number: (818) 582-3039
 Email: david@spivaklaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly. Estimate is based on **198** Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	2		\$200.00
Programming Database & Setup	\$100.00	2		\$200.00
Toll Free Setup*	\$150.00	1		\$150.00
Call Center & Long Distance	\$2.00	21		\$42.00
NCOA (USPS)	\$60.00	1		\$60.00
Total				\$652.00

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Spanish Translation / Reporting

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	2		\$200.00
Spanish Translation	\$800.00	1		\$800.00
Data Merge & Duplication Scrub	\$0.10	198		\$19.80
Notice Packet & Opt-Out Form	\$1.35	198		\$267.30
Estimated Postage (up to 2 oz.)*	\$0.73	198		\$144.54
Static Website	\$100.00	1		Included
Check Cashing Reminder Postcard	\$0.60	41		TBD
Postage Included				
Total				\$1,431.64

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



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CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	4		\$220.00
Skip Tracing Undeliverables	\$0.85	50		\$42.08
Remail Notice Packets	\$0.75	47		\$34.88
Estimated Postage	\$0.53	47		\$24.65
Programming Undeliverables	\$50.00	1		\$50.00
Total				\$371.60

Database Programming / Processing Opt-Outs, Deficiencies or Disputes				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Claims Database	\$150.00	2		\$300.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	6		\$330.00
Opt-Outs/Deficiency/Dispute Letters	\$10.00	8		\$80.00
Case Manager	\$85.00	3		\$255.00
Total				\$1,165.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	2		\$270.00
Disbursement Review	\$135.00	1		\$135.00
Programming Manager	\$95.00	2		\$190.00
QSF Bank Account & EIN	\$135.00	2		\$270.00
Check Run Setup & Printing	\$135.00	6		\$810.00
Mail Class Checks *	\$1.00	196		\$196.00
Estimated Postage	\$0.53	196		\$103.88
Total				\$1,974.88

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	4		\$460.00
Remail Undeliverable Checks (Postage Included)	\$1.50	39		\$58.80
Case Associate	\$55.00	4		\$220.00
Reconcile Uncashed Checks	\$85.00	8		\$680.00
Conclusion Reports	\$115.00	4		\$460.00
Case Manager Conclusion	\$85.00	4		\$340.00
Final Reporting & Declarations	\$115.00	4		\$460.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting Included)	\$1,000.00	1		\$1,000.00
Check to Cy-Pres	\$150.00	1		Included
Uncashed Checks to the State of California Controllers Office Estimated <u>26</u> Total Class Members	\$300.00	1		\$300.00
Total				\$3,978.80

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$9,573.92



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT 7

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Lopez v. Boa Vida Communities

Monday, February 7, 2022

Contact:

David Spivak

E-Mail:

david@spivaklaw.com

ILYM Contact:

Sean Hartranft

E-Mail:

Sean@ilymgroupclassaction.com

Assumptions: PAGA Settlement

ASSUMPTIONS	
Total Number of Aggrieved Employees	198
Certified Spanish Translation	Yes
Case Duration (Years)	1

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	2	\$300.00
Project Manager (Case notification and maintenance)	Hourly	\$120.00	5	\$600.00
NCOA	Flat Rate	\$49.50	1	\$49.50
Toll-Free Telephone Support	Flat Rate	\$95.00	1	\$95.00
Certified Spanish Translation	Flat Rate	\$500.00	1	\$500.00
ILYM Group Static Website, Includes Hosting	Flat Rate	\$750.00	1	\$750.00

*ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.

Subtotal \$2,294.50

DISTRIBUTION (Includes EIN, Bank Acct /QSF Setup)*				
Distribution Setup & Management	Hourly	\$150.00	2	\$300.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	2	\$250.00
Fulfillment of Notice & Check - (including 1099)	Per Check	\$1.50	198	\$297.00
USPS First Class Postage	Per Piece	\$0.55	198	\$108.90
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.00	20	\$39.60
Preparation of Taxes	Hourly	\$125.00	10	\$1,250.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

*Additional Bank fees may apply

Subtotal \$3,745.50

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	2	\$200.00
Processing Unclaimed Funds to State Controller's Office	Flat Fee	\$500.00	1	\$500.00
Declaration	Hourly	\$125.00	2	\$250.00

Subtotal \$950.00

Will Not Exceed: \$6,990.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT 8



Class Action Administrators

www.cptgroup.com

Contact Name: Timothy N. Phillips, Jr.

Randi Martz

Corporate Headquarters

50 Corporate Park, Irvine CA 92606

Tim@cptgroup.com

Main Number: (800) 542-0900

Direct Number: (818) 415-2703

Fax Number: (949) 428-1074

Case Name: Lopez v. Boa Vida Communities

Date: February 7, 2022

All-In Settlement

Requesting Attorney: David Spivak

* Class Members: 198

Plaintiff or Defense: Plaintiff

** Opt-Out Rate: 1.5%

Firm Name: The Spivak Law Firm

Opt-Outs Received: 3

Telephone: (818) 582-3086

Postage Total: \$309.70

Email: david@spivaklaw.com

Grand Total: \$13,015.10

*** **DISCOUNTED FLAT FEE: \$10,000.00**

* This number is an estimate provided by counsel. If the actual number is different, our cost estimate will change accordingly.

** For ease of comparison, in the event competing estimates use an alternate filing rate to calculate estimated cost, please advise us so that we may modify the estimate accordingly.

*** This price is valid for administration of a maximum of 3 opt-out's filed. Any additional opt-out's filed above 3 will be billed at the rate of \$8.00 per member.

Case Setup

Case Setup / Data Management / Create a Unified Mailing List / TFN Establish & Setup / Spanish Translation

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Project Manager	\$95.00	1	\$95.00
System Programming/Data Base Setup	\$150.00	1	\$150.00
Toll-Free Number Establish/Setup*	\$150.00	2	\$300.00
Spanish Translation	\$1,200.00	1	\$1,200.00
Total			\$1,745.00

* Up to 120 days after disbursement

Notification Procedures

National Change of Address (NCOA) / Notice & Opt-Out Form / Postage (up to 2 oz.)

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
NCOA	\$150.00	1	\$150.00
Project Manager-Opt-Out/Notice Format	\$95.00	2	\$190.00
Merged Data	\$0.50	198	\$99.00
Mailing of Notice Pack	\$1.50	198	\$297.00
Estimated Postage (up to 2 oz.)*	\$0.78	198	\$154.44
Total			\$890.44

*Additional charges will apply if the postage exceeds 2 oz. The final rate will be determined at the time of mailing.

Returned Mail

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

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Update Undeliverable	\$0.50	20	\$10.00
Skip Traces	\$1.25	17	\$21.25
Remail Packs	\$2.00	15	\$30.00
Estimated Postage (up to 2 oz.)	\$0.78	15	\$11.70
Clerical Staff	\$60.00	1	\$60.00
Total			\$132.95

Opt-Out Processing

Process Opt-Outs, Deficiencies & Other Requests from Class Members / Call Center Support

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming of Opt-Out Data Base	\$150.00	4	\$600.00
Opt-Out Processing	\$10.00	3	\$30.00
Clerical Staff	\$60.00	1	\$60.00
Deficiency/Dispute Letters	\$20.00	1	\$20.00
Estimated Postage (up to 1 oz.)	\$0.58	1	\$0.58
Project Manager	\$95.00	1	\$95.00
Call Center Support	\$3.00	40	\$120.00
Total			\$925.58

SSN Verification

Verify SSN for Validity with IRS / IRS Backup Withholdings

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming for SSN Selection	\$150.00	1	\$150.00
Project Manager	\$95.00	3	\$285.00
SSN Verification	\$0.20	195	\$39.00
Total			\$474.00

Disbursement

Calculations / Data Management / Create & Manage QSF / Print & Mail Checks, 1099/W-2

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming Database-Calculate Totals	\$150.00	3	\$450.00
Project Supervisor Review of Distribution	\$150.00	3	\$450.00
Project Manager-Correspond w/ Attorney	\$95.00	2	\$190.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Programming/Setup & Printing of Checks	\$150.00	3	\$450.00
Print Mail Checks, W-2/1099 (8x10 sheet)	\$2.50	195	\$487.50
Estimated Postage (up to 1 oz.)	\$0.58	195	\$113.10
Total			\$2,590.60

Post-Disbursement & Tax Reporting

Account Recons / Skip Trace / Reissue Checks / Annual Tax Reporting / Final Reporting & Declaration

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Re-Issue Checks as Required	\$5.00	2	\$10.00
Project Supervisor -Account Recons	\$150.00	6	\$900.00
Skip Trace	\$1.25	16	\$20.00
Remail Undeliverable Checks	\$2.50	16	\$40.00
Estimated Postage (up to 1 oz.)	\$0.58	18	\$10.44
Project Supervisor-Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming- Final Reports	\$150.00	2	\$300.00
Project Manager - Acnt Files Sent to Atty	\$150.00	2	\$300.00
Project Supervisor - Final Declaration	\$150.00	2	\$300.00
CA Tax Preparation*	\$600.00	1	\$600.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
Total			\$4,130.44

*CPT will file Federal and California taxes in accordance to current state and federal regulations. Additional charges will apply if the Settlement / Order / parties require(s) multiple state tax filings.

Escheat Processing

Escheatment Processing to the State Controller Unclaimed Property Division / Uncashed Check Rate 21%			
Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
UPEnterprise Reporting Services	\$0.15	41	\$6.15
Project Manager - Fall Reporting	\$95.00	2	\$190.00
Project Supervisor-Fall Reporting	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Check Reissues - Winter/Spring QTR	\$5.00	4	\$20.50
Estimated Postage (up to 1 oz.) for Reissue	\$0.58	4	\$2.38
Project Manager - June Remittance	\$95.00	2	\$190.00
Project Supervisor- June Remittance	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Add'l Account Recons	\$150.00	6	\$900.00
Add'l QSF Annual Tax Reporting	\$500.00	1	\$500.00
Total			\$2,126.09
Grand Total:			\$13,015.10

TERMS AND CONDITIONS

These Terms and Conditions are made a part of and incorporated by reference into the CPT Group, Inc. Terms and Conditions Agreement by and between Client and CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606 (“CPT”).

1. Definitions.

- a) **“Affiliate”** means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with, another party.
- b) **“Approved Bank”** means a financial institution insured by the Federal Deposit Insurance Corporation with capital exceeding \$1 billion.
- c) **“Case”** means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.
- d) **“Claims Administrator”** means CPT Group, Inc. a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
- e) **“Client”** means collectively Plaintiff Counsel and Defense Counsel.
- f) **“Client Content”** means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, objections, and the like which contain Client Data.
- g) **“Client Data”** means proprietary or personal data regarding Client or any of its Class Members under this Agreement, as provided by Client.
- h) **“Class Member”** means an individual who is eligible under the Settlement Agreement to receive a designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons so designated or addressed therein.
- i) **“Confidential Information”** means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked “confidential” or “proprietary” or some similar designation by the disclosing party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient’s prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
- j) **“Court Order”** means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more parties to the Case to carry out a legal obligation pursuant to the Case.
- k) **“Defendant”** means the named party and/or parties in the Case against whom action is brought.
- l) **“Defense Counsel”** means the attorney of record for the defendant(s) in the Case.
- m) **“Intellectual Property Right”** means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
- n) **“Order”** means a Product purchase in a schedule, statement of work, addendum, exhibit, or amendment signed by Client and CPT.
- o) **“Parties”** shall mean collectively Defendants, Defense and Plaintiff as defined in the Settlement Agreement or Court Order.
- p) **“Plaintiff”** means the named party and/or parties in the Case who are bringing the action.
- q) **“Plaintiff Counsel”** means the attorney of record for plaintiff Class Members in the Case.
- r) **“Products”** means any and all CPT Services, and work product resulting from Services.
- s) **“Qualified Settlement Fund”** means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds

are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.

- t) **“Service”** means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
- u) **“Software”** means any and all of CPT’s proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
- v) **“Settlement”** means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.
- w) **“Settlement Agreement”** means the contract between parties to the Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Class Members.
- x) **“Term”** means the term of the Agreement, as set forth in the Order.
- y) **“Transmission Methods”** means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.
- z) **“Wire Information”** means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.

- 2. **Client Obligations.** Client will ensure that it has obtained all necessary consents and approvals for CPT to access Client Data for the purposes permitted under this Agreement, and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect the Client Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.

- 3. **Security.** The Parties and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any personally identifiable information provided by Class Members and/or Client under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such personally identifiable information; (c) protect against unauthorized access to or use of such personally identifiable information that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such personally identifiable information in connection with its disposal. Each Party will respond promptly to remedy any known security breach involving the personally identifiable information provided by you and/or Client under this Agreement, and shall promptly inform the other Parties of such breaches.

- 4. **CPT Obligations.** Provided that Client complies with all provisions of Section “Client Obligations”, CPT will (i) maintain appropriate safeguards for the protection of Client Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Client Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Client.

5. **Mutual Obligations.**

- a) **Resources.** Each party agrees to: (i) provide the resources reasonably necessary to enable the performance of the Services; (ii) manage its project staffing, milestones, and attendance at status meetings; and (iii) ensure completion of its project deliverables and active participation during all phases of a Service project. The parties acknowledge that failure to cooperate during a Service project may delay delivery of the Service. If there

is a delay, the party experiencing the delay will notify the other party as soon as reasonably practicable, and representatives of each party will meet to discuss the reason for the delay and applicable consequences. Changes beyond the scope of an Order and/or a party's delay in performing its obligations may require an amended Order.

- b. Incident Notification. Each party will promptly inform the other parties in the event of a breach of Client Data in their possession and shall utilize best efforts to assist the other parties to mitigate the effects of such incident.
 6. Qualified Settlement Fund Account. At Client's request, CPT shall be authorized to establish one or more bank accounts at an Approved Bank. The amounts held at the Approved Bank under this Agreement are at the sole risk of Client. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.
 7. Fees and Payment. Pricing stated within the proposal is good for 90 Days. All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the Client data and/or notice documents. Client will be invoiced for any remaining fees according to the applicable Order. Pricing stated within any proposal from CPT to Client is for illustrative purposes only, and is only binding upon an Order executed by CPT and Client. Payment of fees will be due within 30 days after the date of the invoice, except where this Agreement expressly prescribes other payment dates. All fees set forth in an Order are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% (or the highest rate allowable by law, whichever is lower) per month on the outstanding balance from the date due until the date of actual payment. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation.
 8. Term and Termination.
 - a. Term. The Term is set forth in the Order. The Agreement may be renewed by mutual written agreement of the parties.
 - b. Termination for Cause. Either party may immediately terminate this Agreement if the other party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching party's receipt of written notice describing the breach in reasonable detail.
 - c. Bankruptcy Events. A party may immediately terminate this Agreement if the other party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
 - d. Effect of Termination. Immediately following termination of this Agreement, upon Client's written request, Client may retrieve Client Data via Client's secure FTP site in the same format in which the Client Data was originally inputted into the Software, at no additional charge. Alternatively, Client Data can be returned in a mutually agreed format at a scope and price to be agreed. CPT will maintain a copy of Client Data and Client Content for no more than four (4) years following the date of the final check cashing deadline for Class Members under the Settlement Agreement, after which time any Client Data and Client Content not retrieved will be destroyed.
 - e. Final Payment. If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination," Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.
- Confidentiality. Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; provided, however, that such party shall use at least reasonable care. These obligations shall survive termination of this Agreement.
- a. Compelled Disclosure. If receiving party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such party shall (i) promptly notify the

other party, (ii) reasonably cooperate with the other party in such party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each party is advised by its counsel in writing is legally required to be disclosed.

- b. Remedies. If either party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.
10. Intellectual Property. As between the parties, CPT will and does retain all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. Client retains all ownership rights to Client Data.
11. Indemnification. Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, Covered CPT Parties") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "Damages") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Client Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.
12. Warranties. Each party represents and warrants to the other party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such party; (iii) the Agreement is a legally valid and binding obligation of such party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.
13. Liability.
 - a. Liability Cap. EXCEPT FOR A PARTY'S WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL CLAIMS ADMINISTRATOR FEES PAID OR PAYABLE BY CLIENT TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.
 - b. Exclusion of Consequential Damages. NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
14. Communications. CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.
15. Miscellaneous Provisions.
 - a. Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and

the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.

- b. Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party's reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
- c. Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
- d. Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
- e. Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.
- f. Assignment. Neither party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other party's prior written consent; provided, however, either party, without the consent of the other party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of the other party are not increased by such assignment and the rights and remedies available to the other party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
- g. No Third Party Beneficiaries. The representations, warranties and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns, and shall not be construed as conferring any rights on any other persons.
- h. Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("Statistical Data") derived from the operation of the Software, and nothing herein shall be construed as prohibiting CPT

from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.

- i. Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such applicable laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce, and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j. Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k. Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other party first written above or at such other address as may hereafter be furnished in writing by either party hereto to the other party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l. Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither party may make any statement that would contradict anything in this section.
- m. Subcontractors. CPT shall notify Client of its use of any subcontractors to perform Client-specific Services. CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n. Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret or construe its meaning, scope or intent.
- o. Waiver. No failure or delay on the part of either party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power or remedy.
- p. Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.

EXHIBIT 9

EXHIBIT 10