

1 DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com
2 MAYA CHEAITANI (SBN 335777)
maya@spivaklaw.com
3 THE SPIVAK LAW FIRM
4 8605 Santa Monica Bl
PMB 42554
5 West Hollywood, CA 90069
Telephone: (213) 725-9094
6 Facsimile: (213) 634-2485

7 Attorneys for Plaintiff(s),
8 AKANKSHA MASSEY, and all others similarly situated
(Additional attorneys for parties on following page)

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

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

16 *Plaintiff,*

17 vs.

18 CHILDREN OF THE NIGHT, a California
19 corporation; and DOES 1–50, inclusive,

20 *Defendants.*

Case No. 21STCV30464

**DECLARATION OF DAVID SPIVAK
IN SUPPORT OF PLAINTIFF
AKANKSHA MASSEY’S MOTION
FOR APPROVAL OF PAGA
SETTLEMENT**

Hearing Date: December 5, 2022
Hearing Time: 8:30 a.m.
Hearing Dept.: 20, The Honorable Kevin
C. Brazile
Reservation ID: 123818046945

Action filed: August 17, 2021
Trial Date:

**Submitted Herewith Under Separate
Cover:**

1. Memorandum of Points and Authorities;
2. Declaration(s) of David Spivak and Akanksha Massey; and
3. [Proposed] Order and Judgment Approving PAGA Settlement



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1
2
3 **DECLARATION OF DAVID G. SPIVAK IN SUPPORT OF MOTION FOR**
4 **APPROVAL OF PAGA SETTLEMENT**

5 I, DAVID SPIVAK, declare as follows:

6 1. I am an attorney duly licensed to practice law in the State of California and am
7 an attorney of record for Plaintiff Akanksha Massey (“Plaintiff” or “Massey”) in this action
8 against Defendant Children Of The Night (“Children Of The Night” or “Defendant”). I am a
9 member in good standing of the State Bar of California. Except as otherwise indicated, I have
10 personal knowledge of all matters set forth herein and, if called as a witness, could and would
11 competently testify thereto under oath.

12 2. A true and correct copy of the PAGA Settlement Agreement (the “Agreement”
13 or “PAGA Settlement” or “Settlement”) is attached hereto as **Exhibit 1**. A true and correct copy
14 of the parties’ agreed upon notice to the Aggrieved Employees (the “PAGA Notice”) is attached
15 hereto as **Exhibit 2**.

16 ***Factual and Procedural Background***

17 3. Defendant is a non-profit organization that provides intervention in the lives of
18 children who are sexually exploited and vulnerable to or involved in prostitution and
19 pornography, which offers tutoring services for certain students. Defendant employed Plaintiff
20 as a tutor from about October 20, 2020 until November 17, 2020.

21 4. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit
22 under PAGA. By letters dated June 11, 2021, Plaintiff, on behalf of herself and other aggrieved
23 hourly employees gave written notice by certified mail to the Labor and Workforce
24 Development Agency (“LWDA”) and Defendant of the specific provisions of the California
25 Labor Code alleged to have been violated, including the facts and theories to support the alleged
26 violations. True and correct copies of Plaintiff’s letters to the LWDA are collectively attached
27 as **Exhibit 3**.

28 5. Plaintiff and the PAGA Members are potentially subject to arbitration
agreements with Defendant. Plaintiff filed her lawsuit in Los Angeles County Superior Court
on August 17, 2021. A true and correct copy of Plaintiff’s Complaint is attached as **Exhibit 4**.
Plaintiff’s complaint presents one cause of action for civil penalties under PAGA. Shortly after



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 Plaintiff served her first set of discovery requests, the Parties agreed to stay formal discovery
2 and participate in mediation. On December 03, 2021, Defendant filed an answer to Plaintiff's
3 First Complaint. A true and correct copy of Defendant's Answer to Plaintiff's First Complaint
4 is attached as **Exhibit 5**. Defendant denies all of Plaintiff's allegations and strongly contends
5 that its wage and hour policies, practices and procedures are fully compliant with all applicable
6 laws.

6 6. On June 02, 2022, the Parties participated in mediation with mediator Kimberly
7 S. Deck in an attempt to resolve the PAGA claim. The Parties engaged in arm's-length
8 negotiations and ultimately reached a resolution of the PAGA claims asserted in the Action. The
9 PAGA Settlement was reached after exchanges of data, information and documents, and is a
10 result of extensive arms-length negotiations. The Parties conducted informal discovery for
11 purposes of potential resolution through which they ascertained the size of the aggrieved
12 employee group and the number of pay periods worked by them during the PAGA Period to
13 ascertain the total value of Plaintiff's PAGA claim. Now that the parties have finalized the
14 PAGA Settlement, Plaintiff submits it to this Court for approval.

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

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

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



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 and the Aggrieved Employees. As this is a PAGA-only claim, there is no issue of
2 ascertainability. However, Plaintiff maintains that the number of Aggrieved Employees is
3 ascertainable because they may be identified by reference to Defendant's records and Defendant
4 has agreed to share the relevant information from its records to facilitate the process. Therefore,
5 the number of Aggrieved Employees and their whereabouts are ascertainable.

6 ***Background of Counsel***

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

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

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

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



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

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

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

15 E. *Rick Pierce v. Department of Treasury*, Merit Systems Protection Board
16 (1999). Administrative Judge awarded compensatory damages to wrongfully terminated
17 Customs Agent, followed by an award of Attorneys' fees and costs.

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

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



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 12. I have been involved in the prosecution of numerous wage and hour class and
2 representative actions at various stages of litigation. A small sampling of the representative wage
3 and hour cases in which I have been counsel of record is as follows:

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

7 B. *Cuellar v. Lovin Oven*, Orange County Superior Court, Case No. 30-
8 2010-000382146 (appointed Class Counsel and granted final approval of class action settlement
9 by the court on behalf of nonexempt employees).

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

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

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

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

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

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

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



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

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

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

7 L. *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-
8 1500-CV-282679 (appointed Class Counsel and granted final approval of class action settlement
9 on behalf of dairy and agricultural laborers).

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

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

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

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

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

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

S. *Stucker v. L'Oreal*, Los Angeles Sup.Ct. Case No. BC456080 (appointed
Class Counsel and granted final approval by this Court of class action settlement involving



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 alleged misclassification of sales employees and unpaid vacation pay).

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

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

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

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

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

19 ***Exposure & Risk Analysis***

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

- 23 • Defendant produced and Plaintiff reviewed her personnel file.
- 24 • Defendant produced and Plaintiff reviewed and analyzed time and payroll
25 records for over 7 PAGA Members.
- 26 • Plaintiff requested that Defendant produce any and all relevant policies
27 regarding Plaintiff's claims and Defendant produced those policies in effect during the relevant
28 time period.
- Plaintiff interviewed other employees about the claims at issue.
- Plaintiff analyzed the state of caselaw on PAGA claims, claims for failure
to pay employees all earned wages, failure to provide meal periods, failure to authorize and



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 permit rest periods, failure to indemnify for business expenses, failure to issue proper wage
2 statements, failure to timely pay wages, and related claims.

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

5 14. As set forth above, Defendant has posed valid defenses to the Labor Code claims
6 underlying Plaintiff's PAGA allegations. Thus, the PAGA claims likewise face significant
7 uncertainty. There is a risk that the Court would consider the maximum civil penalty available
8 to be confiscatory. This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and
9 required a significant discount for settlement purposes. For mediation purposes, Plaintiff's
10 counsel estimated a maximum exposure of approximately \$956,900.00 in civil penalties. This
11 estimate did not take into account any of the risks discussed above and assumed a violation for
12 every single pay period. Plaintiff's counsel also assessed multiple penalties for the same pay
13 period for the same alleged violations of different Labor Code provisions and derivative
14 violations. Although two federal district court decisions held that "stacking" PAGA penalties in
15 this fashion may be appropriate to determine the amount in controversy for purposes of removal
16 jurisdiction, Plaintiff's counsel is not aware of any California state courts awarding plaintiffs
17 multiple PAGA penalties for the same violation for the same pay period under different Labor
18 Code provisions. This may be because the PAGA does not provide for what many employers
19 characterize as claim splitting and not merely stacking.

20 15. In preparation for mediation and during the settlement negotiations that followed,
21 Defendant disclosed that there were approximately 49 potentially aggrieved employees and
22 1,367 pay periods. The maximum possible civil penalties under the PAGA is the total number
23 of pay periods with one or more violations multiplied by the maximum possible civil penalty
24 amount per pay period. Unfortunately for the employees concerned, the potential for recovery
25 of the maximum possible civil penalties depends on circumstances that are extremely unlikely
26 independently and in combination. It would depend on the Court stacking the maximum
27 recoverable civil penalties for failure to pay employees all earned wages, failure to provide meal
28 periods, failure to authorize and permit rest periods, failure to indemnify for business expenses,
failure to issue proper wage statements, and failure to timely pay wages per pay period for all
1,367 pay periods for all 49 potentially aggrieved employees during the PAGA Period.
Plaintiff's counsel is not aware of any California State court decision awarding a plaintiff and



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 the other aggrieved employees she represents multiple civil penalties for the same pay period
2 under different Labor Code provisions. Plaintiff's counsel had to substantially discount the value
3 of these claims in the settlement negotiations for this and a variety of other reasons (outlined
4 below).

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

15 17. The difficulty inherent in proving that off-the-clock work occurred poses a
16 significant hurdle to Plaintiff. Plaintiff will rely on declarations and witness statements to prove
17 this claim. Plaintiff may rely heavily on anecdotal evidence to prove the off-the-clock work
18 claim, especially given the lack of records indicating when such off-the-clock work may have
19 taken place. Individualized inquiries would need to be conducted person-by-person, day-by-day,
20 to 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 methodology for all aggrieved employees.

23 18. **Risks Associated with Plaintiff's Claim That Defendant Failed To Provide All**
24 **Meal Periods.** There are risks to Plaintiff's claims that Defendant failed to provide all meal
25 periods. Defendant contends that, to establish a violation of the meal period law, a plaintiff must
26 do more than show that a meal break was not taken. Defendant contends it did not impede or
27 discourage Plaintiff, or any other employees, from taking their meal periods. Defendant's policies
28 mandate that employees take at least a 30-minute, uninterrupted meal periods and record the
beginning and ending time of their meal breaks each day on their time records. The time records
that comprise the random sample Defendant produced to Plaintiff for purposes of mediation show
that meal periods were taken the vast majority of the time. Of the time records that show a late,



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 short or no lunch, individualized evidence may be necessary to determine whether they occurred
2 due to conduct of the Defendant or each of the employees concerned.

3 19. **Risks Associated with Plaintiff's Claim That Defendant Failed To Authorize**
4 **or Permit Rest Breaks**. There are risks to Plaintiff's claims that Defendant failed to authorize or
5 permit rest breaks. Defendant contends it provided non-exempt employees the opportunity to
6 take rest periods in accordance with California law. Further, Defendant's written policies on meal
7 and rest periods are consistent with the Wage Order. Thus, unlike meal periods, where there are
8 often records showing whether an employee clocked out or not, there is no such evidence to prove
9 a missed rest period or that the employer refused to authorize and permit one. Managing such
10 claims at trial has become exceedingly difficult. Plaintiff will depend on sample witness testimony
11 and surveys to prove the claims.

12 20. **Risks Associated with Plaintiff's Claim That Defendant Failed To Indemnify**
13 **for Expenses**. There is a risk that the Court may consider Plaintiff's claim that Defendant failed
14 to indemnify for business expenses to be individual in nature and thus decline to allow a trial on
15 behalf of all aggrieved employees and the State. Plaintiff alleges that Defendant required Plaintiff
16 and the Aggrieved Employees to use their personal items for work, including cellular phones,
17 computers and other electronic devices, vehicles, and tools, and failed to indemnify them for these
18 business expenses. Defendant presented evidence that they have supplied their employees with
19 tools, equipment, and other supplies and had an expense reimbursement policy. As such, there is
20 a risk that the Court may consider Plaintiff's claims to be individual in nature and unfit for class
21 wide resolution, or otherwise reduce or limit the recoverable amount of civil penalties for this
22 claim.

23 21. **Risks Associated with Plaintiff's Claim That Defendant Failed To Issue**
24 **Accurate and Complete Wage Statements**.

25 Plaintiff also asserts claims for wage statement violations. Under Labor Code section 226,
26 wage statements must include various information, including the applicable rates of pay,
27 corresponding hours worked, and gross pay. Here, Plaintiff's wage statement claim has the same
28 underlying risks as the above claims, as it is derivative of them. *Id.* On their face, the wage
statements issued by Defendant comply with the requirements of Labor Code § 226.

29 22. **Risks Associated with Plaintiff's Claim That Defendant Failed To Timely Pay**
30 **All Wages**. Plaintiff's claim for untimely wages is predicated on Labor Code sections 201 to 203.



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 Like the claim under Labor Code sec. 226, Plaintiff must establish that the late payments were
2 willful. The evidence of good faith Defendant put forth will defeat this claim.

3 23. **The Absence of Large Civil Penalty Awards under PAGA.** The sole source
4 of money recoverable for the PAGA Members and the State is civil penalties available under
5 PAGA. PAGA allows employees to seek civil penalties for certain violations of the Labor Code
6 so long as the penalties are not unjust, arbitrary, oppressive, or confiscatory. As discussed above,
7 Plaintiff's maximum estimated liability exposure is based on the theories that: (1) Every
8 paycheck that Defendant issued to employees during the PAGA Period represents a pay period
9 in which every PAGA Member suffered a minimum wage violation; (2) Every paycheck that
10 Defendant issued to employees during the PAGA Period represents a pay period in which every
11 PAGA Member suffered an overtime wage violation; (3) Every paycheck that Defendant issued
12 to employees during the PAGA Period represents a pay period in which every PAGA Member
13 suffered a meal period violation; (4) Every paycheck that Defendant issued to employees during
14 the PAGA Period represents a pay period in which every PAGA Member suffered a rest period
15 violation; and (5) Every paycheck that Defendant issued to employees during the PAGA Period
16 represents a pay period in which every PAGA Member suffered an unreimbursed expense
17 violation. There are no California state court decisions under the PAGA to date with substantial
18 awards of civil penalties. Plaintiff's counsel is aware of only two significant awards under the
19 PAGA in a contested proceeding, both issued by federal district courts, one of which was
20 overturned on May 28, 2021.⁶

21 ⁶ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2019) U.S. Dist. LEXIS 13253, the court awarded
22 civil penalties under the PAGA of approximately \$25 million, representing a 25% reduction from
23 the plaintiff's claim for approximately \$33 million. *Bernstein* represents a unique set of
24 circumstances that is distinguishable from the case at hand. Notably, the plaintiffs in *Bernstein*
25 suffered a particularly sizeable injury – the court found that the defendant's policies caused
26 damages to the plaintiffs in excess of \$45 million. *Id.* at 20. Additionally, the defendants in
27 *Bernstein*, who the court noted had received "millions of dollars from the state of California" to
28 train their flight attendants, engaged in glaring violations of the labor code, such as failing to
compensate its flight attendants for work performed outside of "block time" (time during which
the aircraft is moving), including time spent participating in pre-flight briefings, boarding
passengers, and deplaning. *Bernstein v. Virgin Am., Inc.* (N.D. Cal 2017) 227 F. Supp. 3d 1049,
1055-1058. Indeed, defendant's liability was so clear in *Bernstein* that the case was resolved on
the plaintiffs' motion for summary judgment. *Id.*

In *Robert Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d. 1058, the court
awarded approximately \$102 million in damages, primarily based on the Defendant's failures to



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

24. Additionally, PAGA states a court has discretion to award a lesser amount than the maximum penalty. Labor Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that the Court could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff's evidence of willful and intentional conduct. *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504 ("*Carrington*") illustrates this. In that case, the Court of Appeal affirmed a trial court's heavily discounted award of only \$5 per violation because it was within the Court's discretion to significantly reduce PAGA penalties even when there is a finding that a violation of the California Labor Code occurred. Under *Carrington*, assuming 1 violation for each pay period for all 49 PAGA Members, there would be a recovery of \$6,835.00 (1,367 x 1 x \$5 = \$6,835.00).

25. Moreover, judges have awarded extremely small sums to PAGA claimants in the past. In *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court, case number BC430633 in which I represented the Plaintiffs, the employer underpaid commission overtime wages. The plaintiffs 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 amended judgment in *Ghrdilyan* is attached as **Exhibit 7**. A true and correct copy of the first amended complaint in *Ghrdilyan* is attached as **Exhibit 8**. A true and correct copy of the judgment transcript in *Ghrdilyan* is attached as **Exhibit 9**, 19:8-20:19. In a similar PAGA case before the Los Angeles Superior Court, *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828, on October 24, 2017, the court awarded the prevailing PAGA plaintiff civil penalties totaling only \$50.00. A similar result could occur here. A true and correct copy of the judgment in *Shields* is attached as **Exhibit 10**.

26. Defendant could also convince the Court to dismiss the claims due to unmanageability because determining whether each Aggrieved Employee worked off the clock

comply with the requirements of California Labor Code section 226. On May 28, 2021, the United States Court of appeals for the Ninth Circuit overturned the decision finding that there is no technical wage statement violation for a failure to list the rates and hours of pay associated with adjustments to overtime pay. *Magadia v. Wal-Mart Assocs.*, No. 19-16184, 2021 U.S. App. LEXIS 16070 (9th Cir. May 28, 2021).



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 or why each employee missed a meal or rest period would require separate mini-trials. *Id. See,*
2 *Mendiola v. CPS Sec. Solutions, Inc.* (2015) 60 Cal.4th 833. In *Ortiz v. CVS Caremark Corp.*,
3 the court dismissed a PAGA claim because it was unmanageable. 2014 WL 1117614, at *3–4
4 (N.D. Cal. 2014). The *Ortiz* court cited the “multitude of individualized assessments” that case
5 would have required in ordering dismissal. *Id.* at *4. Several other courts have adopted *Ortiz*,
6 and dismissed PAGA claims where, there are a large number of allegedly aggrieved individuals
7 whose claims require individual assessments. *See, e.g., Litty v. Merrill Lynch & Co.*, 2014 WL
8 5904904, at *3 (C.D. Cal. 2014); *Bowers v. First Student, Inc.*, 2015 WL 1862914, at *4 (C.D.
9 Cal. 2015); *see also Stafford v. Dollar Tree Stores, Inc.*, 2014 WL 6633396, at *2–4 (E.D. Cal.
10 2014) (bifurcating trial of plaintiff’s claim from representative claims: “in light of the number
11 of potential aggrieved employees, judicial economy favors deferring the representative portion
12 of the PAGA claim”); *Amey v. Cinemark USA Inc.*, 2015 WL 2251504, at *16 (N.D. Cal. May
13 13, 2015). Further, on September 9, 2021, the California Court of Appeal issued a decision
14 in *Wesson v. Staples The Office Superstore, LLC*, 68 Cal.App.5th 746 (2021), reh’g
15 denied (Sept. 27, 2021) holding that trial courts have authority to ensure that claims under
16 PAGA are manageable, and that courts may limit or strike unmanageable PAGA claims.

17 27. The arbitration agreements entered into between Defendant on the one hand, and
18 the Plaintiff and comparable workers, on the other, present a significant risk to the success of
19 Plaintiff’s representative litigation. According to Defendant, the majority of the workers entered
20 into arbitration agreements with Defendant. *Id.* As the arbitration agreements in question restrict
21 potential litigants from bringing PAGA actions against Defendant, Plaintiff would be effectively
22 barred from pursuing claims on behalf of the Class in Court. *Id.* As such, by continuing to trial
23 on representative claims, Plaintiff would run the high risk of suffering defeat due to the existence
24 of the arbitration agreements. Also, because different defenses would apply to some workers
25 and not others – i.e., the existence of signed arbitration agreements – there is a risk that the Court
26 could determine that Plaintiff’s claims present too many individualized inquiries to allow for a
27 manageable PAGA trial.

28 28. While the evidence gathered through Plaintiff’s discovery supports the merits of
the claims asserted in this lawsuit, the settlement is fair, reasonable, and adequate in light of the
risks associated with the merits of Plaintiff’s claims, the uncertainties of complex litigation, the
cost of pretrial and trial proceedings, the Court’s discretion to lower the amount of penalties



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 ultimately awarded, and the secured benefit to the PAGA Members and the LWDA promoting
2 compliance with the Labor Code.

3 29. Each PAGA Member will receive a portion of the civil penalties on a pro-rata
4 basis depending on the number of pay periods Defendant employed them for during the PAGA
5 Period. Agreement, ¶ 5. With a total of approximately 49 PAGA Members, the average
6 estimated individual Settlement Payment for each PAGA Member is approximately \$73.13
7 (\$3,583.33/49) PAGA Members). Although an average payment of \$73.13 per Aggrieved
8 Employee is not an enormous sum of money, it is an excellent result given the uncertainties this
9 lawsuit entails. It is also reasonable given the structure and purpose of the PAGA. The PAGA
10 is not a restitution statute with a traditional damages provision designed to restore victims to the
11 position they would have been in had the Labor Code violations not taken place. Rather, it is at
12 best a punishment statute designed to reduce future Labor Code violations. It provides for civil
13 penalties only.

14 30. Further, PAGA obligates the prevailing plaintiff to disburse 75% of the civil
15 penalties collected to the State. Within the framework she is bound by, Plaintiff, considering the
16 evidence she faced, achieved a phenomenal result for the employees concerned. What's more,
17 the Settlement Plaintiff achieved permits the employees concerned who are dissatisfied with the
18 amount they received in civil penalties to pursue any unpaid restitution, wages, interest, statutory
19 penalties, and attorney fees and costs they believe they are owed in arbitration pursuant to their
20 agreements with the Defendant. The Settlement does not require them to opt out to do so. As
21 such, there is no basis for objection even if the PAGA permitted it.

22 *Attorneys' Fees and Costs*

23 31. My co-counsel and I intend to request attorneys' fees of \$16,666.67 (1/3 of the
24 Gross Settlement Amount) and up to \$11,000.00 in litigation expenses. The written retainer
25 agreement I entered into with Plaintiff provides that I may elect to recover either (a) statutorily
26 awarded attorney fees or (b) up to 40% of any recovery.

27 32. Should the Court elect to use Plaintiff's Counsel's lodestar as the method for
28 awarding fees, notwithstanding courts' clear preference for the percentage method, Plaintiff's
Counsel's fee request of \$16,666.67 (one-third of the Gross Settlement Amount) is fair and
reasonable based on their lodestar as cross-checked against the percentage of the recovery. In
this case, Plaintiff's Counsel have a total lodestar of approximately \$41,877.00 without the use



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 of any multiplier, which results in a negative multiplier of 0.398 when compared against the
2 \$16,666.67 fee request. A true and correct summary of the time records of my firm is attached
3 as **Exhibit 11** to this declaration. I will make the detailed copies of such records available to the
4 Court for in camera inspection upon its request. I will have waited for a lengthy period to be
5 awarded attorneys' fees for work performed since Plaintiff first contacted my office, compared
6 to Defendant's counsel who have been paid as they performed work during this case. Moreover,
7 my co-counsel and I have expended time, effort, and money that we could have expended on
less risky cases instead.

8 33. My firm's current litigation costs total approximately \$7,264.18. A true and
9 correct summary of my firm's costs and expense is attached as **Exhibit 12** to this declaration. I
10 will make detailed copies of such records available to the Court for in camera inspection upon
11 its request. I anticipate that I will incur an additional \$225.68 in costs, which consist of filing
12 fees and attorney service fees for filing this motion and notice of entry of order. Thus, I anticipate
13 my firm's litigations costs will total approximately \$7,489.86 through final accounting of the
Settlement. Plaintiff's Counsel request a total of \$7,489.86 in reasonable litigation costs.⁷

14 34. In addition, based on my experience in wage and hour class action and PAGA
15 matters, fee awards of approximately one-third of the settlement fund are routinely approved as
16 reasonable. I have been awarded attorneys' fees equaling approximately one-third of the fund
17 in several wage and hour class actions, including: *Alvarez v. Gary Grace Enterprises, LP*, Marin
18 County Superior Court, Case No. CIV1002553 (one-third of fund); *Calderon v. Greatcall, Inc.*,
19 San Diego Superior Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of fund);
20 *Butler v. Lexxiom, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1001579 (one-
21 third of fund); *Perez v. Southwest Dealer Services, Inc.*, Los Angeles County Superior Court,
22 Case No. BC439253 (one-third of fund); *O'Brien v. Optima Network Services, Inc.*, San
23 Bernardino County Superior Court, Case No. CIVRS1107056 (one-third of fund); *Noyd v. The*
24 *Cristcat Group, et al.*, Los Angeles County Superior Court, Case No. BC439558 (one-third of
25 fund); *Huynh v. Carefusion Resources, LLC, et al*, San Diego Sup.Ct., Case No. 37-2009-
00103277-CU-OE-CTL (one-third of fund); *Cunningham v. DPI Specialty Foods West, Inc.*,

26 ⁷ I do not seek reimbursement for the wages I paid to the attorneys, paralegals, and legal assistants
27 to aid in the representation of the Class. We bore these expenses over the time since this lawsuit
28 began without expectation of reimbursement.



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 Los Angeles Sup.Ct., Case No. BC465017 (one-third of fund); *Stucker v. L'Oreal USA S/D, Inc.*,
2 Los Angeles Sup. Ct., Case No. BC456080 (one-third of fund); *Valdez v. Healthcare Services*
3 *Group, Inc.*, Los Angeles Sup.Ct., Case No. BC462917 (one-third of fund); *Hernandez, et al v.*
4 *HSBC*, U.S. District Court, Central District of California, Case No. 10-CV-4753 (one-third of
5 fund); *Sandoval, et al. v. Thrifty Payless, Inc.*, et al. Los Angeles Sup.Ct., Case No. BC431249
6 (one-third of fund); *Alafa v. Custom Built Personal Training, Inc.*, Tulare County Superior
7 Court, Case No. VCU-245496 (one-third of fund); *Nardone v. Sequoia Beverage Company, LP*,
8 Tulare Sup.Ct., Case No. VCU-248370 (one-third of fund); *Rosen v. Image Transfer*, Los
9 Angeles Sup.Ct., Case No. BC511702 (one-third of fund); *Tucker v. Maly's West, Inc.*, Los
10 Angeles Sup.Ct., Case No. BC483920 (one-third of fund); *King v. Build.com*, Butte Sup.Ct.,
11 Case No. 159985 (one-third of fund); *Clifford v. Anderson Hay & Grain*, Los Angeles Sup.Ct.,
12 Case No. BC517625 (one-third of fund); *Nichols, et al. v. Vitamin Shoppe*, Contra Costa Sup.Ct.,
13 Case No. CIVMSC13-01136 (one-third of fund); *Clarke v. Insight Global*, U.S. District Court,
14 Southern District of California, Case No. 13-CV-0357 (one-third of fund); *Fischer, et al. v.*
15 *National Distribution Centers LP, et al.*, Riverside Sup.Ct., Case No. RIC1114952 (one-third of
16 fund); *Shaw, et al. v. Interthinx, Inc.*, United States District Court for the District of Colorado,
17 Case No. 13-CV-01229-REB-BNB (one-third of fund); *Ogbuehi v. Comcast of California/*
18 *Colorado/ Florida/ Oregon, Inc.*, United States District Court, Eastern District of California,
19 Case No. EDCV13-00672-KJM-KJN (one-third of fund); *Lynch, et al. v. American Guard*
20 *Services*, Los Angeles Superior Court, Case No. BC462681 (one-third of fund); *Volney-Parris*
21 *v. Southern California Edison Company*, Los Angeles Superior Court, Case No. BC493038
22 (one-third of fund); *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior Court, Case No. BC480808
23 (one-third of fund); *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-
24 1500-CV-282679 (one-third of fund); *Linder, et al. v. Warehouse Services, Inc.*, San Bernardino
25 Superior Court, Case No. CIVDS1500146 (one-third of fund).

26 35. My previous experience in litigating wage and hour class and representative
27 actions supports the reasonableness of the fee request, as does the caliber of opposing counsel.
28 My previous experience in similar matters was integral in evaluating the strengths and
weaknesses of the case against Defendant and the reasonableness of the Settlement. Practice in
the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly
evolving substantive law, state and federal, as well as the procedural law of class action

1 litigation. Because it is reasonable to compensate me commensurate with my skill, reputation,
2 and experience, attorneys' fees of approximately one-third of the Gross Settlement Amount is
3 reasonable. Likewise, the caliber and experience of opposing counsel in labor and employment
4 litigation support the fairness and reasonableness of the requested fee award.

Plaintiff's General Release Payment

5 36. Plaintiff's General Release Payment in the amount of \$5,000.00 is being paid to
6 Plaintiff as PAGA Representative for her general release and service to the State of California
7 and the PAGA Members in prosecuting the Action.

8 37. There is authority for the Service Award to Plaintiff. While the statutory
9 language of the PAGA is silent on the issue of incentive awards to named Plaintiff, it nonetheless
10 provides implicit support for incentive payments to named Plaintiff. Moreover, language from
11 the Ninth Circuit Court of Appeals and recent California district court caselaw indicates that
12 such awards are permitted.

13 38. The language of PAGA provides implicit support for the provision of incentive
14 awards to PAGA representatives. Labor Code § 2699(i) directs that civil penalties recovered
15 under PAGA are to be distributed "75 percent to the Labor and Workforce Development Agency
16 ... and 25 percent to the aggrieved employees." Nothing in Labor Code § 2699(i) indicates that
17 the distribution of the 25% payable to the aggrieved employees must be made on a strictly pro
18 rata basis – the statute simply directs the overall portion that must be paid out to "aggrieved
19 employees." To be clear, Plaintiff is not suggesting that she alone of the Aggrieved Employees
20 is entitled to recovery. However, a modest incentive award to Plaintiff over and above that
21 provided to the other Aggrieved Employees is merited given the additional time, effort, and
22 reputational risk undertaken by Plaintiff in this case and is permissible under the language of
23 PAGA above.

24 39. Further, Labor Code § 2699(g)(1), which sets forth permissible forms of recovery
25 by an aggrieved employee (such as filing fees, reasonable attorney's fees and costs), states that
26 "[n]othing in this part shall operate to limit an employee's right to pursue or recover other
27 remedies available under state or federal law, either separately or concurrently with the action
28 taken under this part." Insofar as the incentive award here at issue may be considered an "other
remedy" sought by Plaintiff concurrent with the action taken under PAGA, the award should be
upheld pursuant to Labor Code § 2699(g)(1).



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

40. Finally, under Labor Code § 2699.3(C)(4), “the superior court shall review and approve any proposed settlement of alleged violations ... to ensure that the settlement provisions are at least as effective as the protections or remedies provided by state and federal law or regulation for the alleged violation.” The incentive award sought is in part an effective means of ensuring that an employer adheres to the Labor Code. This section also states that “[t]his requirement shall be construed to authorize and permit the division to comment on those settlement provisions, and the court shall grant the division’s commentary the appropriate weight.” The Parties have notified the LWDA of the instant settlement and dismissal, and the LWDA has not opposed the inclusion of a Representative Service Award for Plaintiff. Given that the LWDA has not opposed the Service Award, there is no reason for the Court to do so, either. Indeed, to the extent that the LWDA’s silence may be construed as a tacit approval of the settlement agreement, that approval is entitled to the “appropriate weight” upon review by this Court.

41. California federal district court decisions recognize that incentive awards may be awarded in PAGA-only representative actions. In *Mancini v. W.&S. Life Ins. Co.*, the court noted that the plaintiff had “asserted no non-PAGA claims.” *Mancini v. W.&S. Life Ins. Co.* (S.D. Cal. 2018) U.S. Dist. LEXIS 160320 at *7. The settlement agreement under consideration provided for \$5,000 as “an incentive award to Plaintiff for his status as the PAGA representative.” *Id.* at *7. The district court took no issue with the fact that the case involved claims solely under PAGA, instead holding that the terms of the settlement agreement – including “the provision[] for incentive awards” – were “reasonable.” *Id.* at *5.

42. Further, in *Bruce v. Del Monte Foods, Inc.*, the district court granted an incentive award to the named plaintiff out of a settlement sum “treated exclusively as a civil penalty under PAGA.” *Bruce v. Del Monte Foods, Inc.* (N.D. Cal. 2018) U.S. Dist. LEXIS 53800 at *1. Although the court ultimately reduced the named plaintiff’s requested incentive award, cautioning that “enhancement or incentive awards are to be treated with skepticism[,]” the court nonetheless granted an additional award to the named plaintiff, noting that the named plaintiff had made representations about “possible injury and expense above and beyond” that sustained by other Plaintiff. *Id.* at *7.

43. Plaintiff’s General Release Payment of \$5,000.00 is entirely reasonable given Plaintiff’s efforts in the Lawsuit and the risks she undertook on behalf of the PAGA Members.

1 *See generally* Massey Decl. Plaintiff devoted many hours advancing the interests of the PAGA
2 Members. *Id.* Plaintiff has done this, by, among other things, retaining experienced counsel,
3 providing them with information about her work history with Defendant, assisting in contacting
4 absent PAGA Members to gather information, participating in mediation, and being actively
5 involved in the settlement process to ensure a fair result for the PAGA Members as a whole. In
6 doing this, Plaintiff has been exposed to significant risks, including the risk of an order to pay
7 Defendant's attorneys' fees and costs if this action had been unsuccessful and in bad faith (*See*
8 Labor Code §§ 218.5-218.6). The efforts and risks that Plaintiff undertook on behalf of the
9 PAGA Members show that the proposed General Release Payment to Plaintiff is fair, adequate,
and reasonable, and thus warrants approval. *See generally* Massey Decl.

10 ***Settlement Administration Duties***

11 44. The duties of the Settlement Administrator are spelled out in the in the bid by
12 Phoenix Class Action Settlement Administrators ("Phoenix Class Action Settlement
Administrators"), a true and correct copy of which is attached as **Exhibit 13**.

13 45. With regard to the Third-Party Settlement Administration Fees provision, it is
14 reasonable. Before agreeing to Phoenix Class Action Settlement Administrators, the Parties
15 sought and reviewed bids from other reputable third-party administrators which provided higher
16 bids:

17 A. ILYM Group, Inc. = \$4,994.06; and

18 B. Simpluris, Inc. = \$5,000.

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

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

23 Executed on Monday, November 07, 2022 at Los Angeles, California.

24 

25 **DAVID SPIVAK,**
26 **Declarant**



27 **SPIVAK LAW**
EMPLOYEE RIGHTS

28 Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

EXHIBIT 1

1 DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com
2 MAYA CHEAITANI (SBN 335777)
maya@spivaklaw.com
3 THE SPIVAK LAW FIRM
4 8605 Santa Monica Bl
PMB 42554
5 West Hollywood, CA 90069
Telephone: (213) 725-9094
6 Facsimile: (213) 634-2485

7 Attorneys for Plaintiff(s),
8 AKANKSHA MASSEY, and all others similarly situated
(Additional attorneys for parties on following page)

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

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

16 *Plaintiff(s),*

17 vs.

18 CHILDREN OF THE NIGHT, a California
19 corporation; and DOES 1–50, inclusive,

20 *Defendant(s).*

Case No. 21STCV30464

PAGA SETTLEMENT AGREEMENT

Action 8/17/2021
filed:
Dept: 20 The Honorable Kevin C.
Brazile

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTORNEYS FOR DEFENDANT(S)

STEVEN C. AMUNDSON (SBN 218507)
sca@manningllp.com
MANNING & KASS, ELLROD, RAMIREZ, TRESTER LLP
801 S. Figueroa Street
15th Floor
Los Angeles, CA 90017
Telephone: (213) 624-6900
Facsimile: (213) 624-6999

Attorneys for Defendant(s),
CHILDREN OF THE NIGHT

1 Subject to Court approval by the Superior Court for the State of California, County of
2 Los Angeles (“Court”), Plaintiff Akanksha Massey (“Plaintiff”) and Defendant Children Of The
3 Night (“Defendant”) (collectively, Plaintiff and Defendant are the “Parties”) hereby agree to the
4 following binding settlement (“Settlement” or “Settlement Agreement”) of the PAGA claims in
5 the Action entitled Akanksha Massey v. Children Of The Night, Los Angeles County Superior
6 Court case no. 21STCV30464 (the “Action”).

7
8 **PAGA MEMBERS BY THE SETTLEMENT**

9 1. **PAGA Members**: This Settlement covers all current and former hourly non-
10 exempt employee California employees Defendant employed any time during the PAGA Period
(the “PAGA Members”).

11 2. **PAGA Period**: The Settlement covers the period from June 11, 2020 through the
12 date the Court approves the Settlement (the “PAGA Period”).

13 3. **Effective Date**: The effective date (“Effective Date”) of this Agreement shall be
14 the last to occur of the following that apply: (a) if no objections to the Settlement are filed, the
15 date the Court approves the Settlement; (b) if there are objections filed, but no appeal is taken on
16 the Court’s order approving the Settlement, sixty-five (65) calendar days after the date of entry
17 of an order and judgment approving this Settlement; (c) if there are intervenors to the Action,
18 and if an appeal, review or writ is not sought from the order granting approval of the settlement,
19 then upon the expiration date of the time for the filing or noticing of any appeal from, or other
20 challenge to, the judgment; or (d) if an appeal, review or writ is sought from the judgment, thirty
21 (30) calendar days after the judgment is affirmed or the appeal, review or writ is dismissed or
22 denied, and the judgment is no longer subject to further judicial review. Prior to the Effective
23 Date of the Settlement, Defendant will not be required to fund the Settlement, in whole or in part,
24 through the Settlement Administrator or any third party. If PAGA Counsel were to appeal a ruling
25 with respect to fees or costs, such appeal shall not affect the Effective Date and the Settlement
26 Administrator shall reserve such funds sufficient to cover the dispute. Any subsequent
27 distribution shall be at PAGA Counsel’s expense. If the Effective Date falls on a holiday or
28 weekend, the Effective Date shall be the next calendar day.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

4. **Gross Settlement Amount:** Defendant will pay \$50,000.00 to settle the PAGA

- a. Third-Party Settlement Administration Fees of up to Five Thousand

1 5. **Escalator Clause.** Defendant estimated for purposes of mediation that there are
2 1,367 pay periods by 49 PAGA Members for the period of June 11, 2020 through May 27, 2022.
3 Before the Parties seek or a Party seeks court approval of the Settlement, the Settlement
4 Administrator will advise Plaintiff's counsel of Defendant's report of the total number of pay
5 periods worked and PAGA Members. If the pay periods worked and/or PAGA Members as of
6 June 8, 2022 exceeds the referenced 1,367 pay periods worked and/or 49 PAGA Members by
7 more than 10.00%, the Gross Settlement Amount will increase proportionally according to the
8 number of additional pay periods worked or PAGA Members.

9 6. **Distribution of the Net Settlement Amount.** The Net Settlement Amount shall
10 be designated as PAGA penalties in full satisfaction of all claims for PAGA civil penalties under
11 the California Labor Code, Wage Orders, regulations, and/or other provisions of law alleged to
12 have been violated in or reasonably related to the operative Complaint with respect to PAGA
13 Members, allocated between the LWDA and the PAGA Members pursuant to Labor Code
14 Section 2699(i) with 75.0% paid to the LWDA and 25.0% paid to the PAGA Members on a pro-
15 rata basis ("PAGA Penalties Fund"). The 25.0% of the Net Settlement Amount will be paid to
16 all PAGA Members according to the following formula: Settlement Payment to each PAGA
17 Member = $[\$[25.0\% \text{ of Net Settlement Amount}] \times [\text{Pay Periods Worked by Individual PAGA}$
 $\text{Member During PAGA Period} \div \text{Total Pay Periods Worked by All PAGA Members during}$
 $\text{PAGA Period}]]$.

18 7. **Settlement Administration.** Settlement Administrator Phoenix Class Action
19 Settlement Administrators, or as otherwise agreed to by the Parties and approved by the Court,
20 will administer this Settlement and will be responsible for issuing payments and appropriate tax
21 forms to PAGA Members, the LWDA, Plaintiff, and PAGA Counsel. The estimate of costs of
22 administration for the disbursement of the PAGA Penalties Fund is no more than \$3,000.00. If
23 less than \$3,000.00 is spent on the Settlement Administrator, the unused funds will be re-
24 allocated to the Net Settlement Amount.

25 8. **Court Approval of the Settlement and Distribution of Settlement Payments.**
26 The Parties will present this Settlement Agreement to the Court and will request that the Court
27 issue a Court Approval Order and Judgment approving and incorporating by reference the terms
28

1 and conditions of the Settlement Agreement (the “Court Approval Order and Judgment”),
2 dismissing the Action with prejudice, and entering judgment. The Parties shall submit this
3 Settlement Agreement for the Court’s approval by stipulation and order, unless the Court requires
4 a motion, in which event, Plaintiff will undertake that responsibility.

5 9. **Notice to LWDA.** Pursuant to California Labor Code § 2699(1)(1), Plaintiff shall
6 submit to the LWDA a copy of this Settlement Agreement and all supporting approval documents
7 at the same time that Plaintiff submits it to the Court for approval.

8 10. **Funding of the Settlement.** Within forty-five (45) calendar days after the
9 Effective Date and notice by the Court or Plaintiff that the Action has been dismissed with
10 prejudice, Defendant shall deposit the Gross Settlement Amount with the Settlement
11 Administrator, who shall issue payment to PAGA Counsel and Plaintiff within twenty (20)
12 calendar days of receipt of the Gross Settlement Amount. Within twenty (20) calendar days after
13 the Effective Date, Defendant shall provide the Settlement Administrator with a list of all PAGA
14 Members with each listed employee’s full name, hiring, and, if applicable, termination dates in
15 connection with the employee’s employment with Defendant during the PAGA Period, last
16 known mailing address, and social security number. Within twenty (20) calendar days of receipt
17 of the list of all PAGA Members, the Settlement Administrator shall run all the addresses of
18 PAGA Members through the United States Postal Service NCOA database to obtain current
19 address information, and issue payments to (a) PAGA Members; (b) the LWDA; and (c) itself.
20 The Settlement Administrator will skip-trace return mail and re-mail within five (5) calendar
21 days. The Settlement Administrator will issue the appropriate tax forms for all payments issued
22 under this Settlement. If the Effective Date falls on a holiday or weekend, the Effective Date
23 shall be the next calendar day.

24 11. **Settlement Payments to PAGA Members:** The Settlement Administrator will
25 issue each PAGA Member a check for his or her share of the Net Settlement Amount along with
26 an explanatory letter in the form attached as Exhibit A. Checks will remain negotiable for one
27 hundred eighty (180) days. Any checks returned as non-deliverable on or before the check
28 cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address
affixed thereto. Funds represented by settlement checks returned as undeliverable and those

1 settlement checks remaining un-cashed for more than 180 days after issuance shall be paid to the
2 California State Controller's Office Unclaimed Property Fund with an identification of the
3 amount of unclaimed funds attributable to each PAGA Member. The Parties do not bear any
4 liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of
5 checks. Unless responsible by its own acts of omission or commission, the same is true for the
6 Settlement Administrator. All settlement payments to PAGA Members will be treated as
7 miscellaneous income for which an IRS Form 1099 will be issued by the Settlement
Administrator if required by law.

8 12. **Release of Plaintiff's Individual Claims:** Plaintiff releases the Released Parties
9 from of all claims, demands, rights, liabilities and causes of action of every nature and description
10 whatsoever, known or unknown, asserted or that might have been asserted, whether in tort,
11 contract, or for violation of any state or federal statute, rule, law or regulation (including without
12 limitation the California Fair Employment and Housing Act and the California Labor Code)
13 arising out of, relating to, or in connection with any act or omission of the Released Parties
14 through the date of full execution of this Agreement in connection with her employment or the
15 termination thereof. With respect to the General Release, Plaintiff stipulates and agrees that,
16 through the Final Approval Date, Plaintiff shall be deemed to have, and by operation of the Final
17 Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law,
18 the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other
similar provision under federal or state law, which provides:

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

23 Plaintiff acknowledges that she may hereafter discover facts different from or in addition to those
24 which each she or her attorneys now know or believe to be true with respect to the matters
25 released in this settlement, and agrees that the release so given in Paragraph 12, shall be and
26 remain in effect as a full and complete release of all claims, notwithstanding any such different
or additional facts.

1 13. **Settled and Released PAGA Claims.** As of and subject to the occurrence of the
2 Effective Date, and in consideration for the Gross Settlement Amount, the claims settled, fully
3 released and forever discharged by the LWDA and the PAGA Members, including Plaintiff,
4 constitute any and all claims for civil penalties Plaintiff, the PAGA Members, and the State of
5 California may have against the Released Parties under the California Labor Code, Wage Orders,
6 regulations, and/or any other provisions of state and federal law arising from allegations that the
7 PAGA Members suffered Labor Code violations based on failure to pay employees all earned
8 wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to
9 indemnify for business expenses, failure to issue proper wage statements, failure to timely pay
10 wages, and any other Labor Code violations that were alleged in the Action, or that could have
11 been alleged in the Action based on the facts alleged in the Action, which includes, but is not
12 limited to, alleged violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.7, 510,
13 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 2802, and 2698 *et seq.* (“PAGA Released
14 Claims”). The “Released Parties” are Children Of The Night and its present and former parent
15 companies, subsidiaries, divisions, concepts, related or affiliated companies, and its shareholders,
16 officers, directors, employees, agents, attorneys, insurers, successors and assigns, and all persons
17 acting by or through or in concert with any of them, and each of them (hereinafter “Released
18 Parties”).

19 14. **No Credit Toward Benefit Plans.** Payments to PAGA Members as referenced
20 herein will not be utilized to calculate any additional benefits under any benefit plans to which
21 any PAGA Member may be eligible, including, but not limited to profit-sharing plans, bonus
22 plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any
23 other benefit plan. Rather, it is the Parties’ intention that this Settlement Agreement will not
24 affect any rights, contributions, or amounts to which any PAGA Member may be entitled under
25 any benefit plans.

26 15. **No Prior Assignments.** The Parties and their counsel represent, covenant, and
27 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
28 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
demand, action, cause of action or right herein released and discharged.

1 16. **Nullification of Settlement Agreement.** In the event that: (i) the Court does not
2 approve the Settlement as provided herein; or (ii) the Settlement does not become final for any
3 other reason, then this Settlement Agreement, and any documents generated to bring it into effect,
4 will be null and void, and the Parties will be returned to their original respective positions.

5 17. **Continued Jurisdiction.** After entry of the Court Approval Order and Judgment,
6 the Court will have continuing jurisdiction under California Code of Civil Procedure § 664.6
7 solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the
8 Settlement, (ii) settlement administration matters, and (iii) such post-Court Approval matters as
9 may be appropriate under court rules or as set forth in this Settlement.

10 18. **Entire Agreement.** This Settlement Agreement constitutes the entirety of the
11 Parties' settlement terms regarding the Action. No other prior or contemporaneous written or
12 oral agreements may be deemed binding on the Parties.

13 19. **Amendment or Modification.** This Settlement Agreement may be amended or
14 modified only by a written instrument, signed by either all the Parties or their successors-in-
15 interest or counsel for all Parties.

16 20. **Authorization to Enter Into Settlement Agreement.** Counsel for all Parties
17 warrant and represent they are expressly authorized by the Parties whom they represent to
18 negotiate this Settlement Agreement and to take all appropriate action required or permitted to
19 be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to
20 execute any other documents required to effectuate the terms of this Settlement Agreement. The
21 Parties and their counsel will cooperate with each other and use their best efforts to effect the
22 implementation of the Settlement. If the Parties are unable to reach agreement on the form or
23 content of any document needed to implement the Settlement, or on any supplemental provisions
24 that may become necessary to effectuate the terms of this Settlement, the Parties may seek the
25 assistance of the Court to resolve such disagreement.

26 21. **Binding on Successors and Assigns.** This Settlement Agreement will be binding
27 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
28 defined.

1 22. **California Law Governs.** All terms of this Settlement Agreement and Exhibit(s)
2 hereto will be governed by and interpreted according to the laws of the State of California.

3 23. **Execution and Counterparts.** This Settlement Agreement is subject only to the
4 execution of all Parties. However, the Settlement Agreement may be executed in one or more
5 counterparts. All executed counterparts and each of them, including facsimile and scanned
6 copies of the signature page, will be deemed to be one and the same instrument.

7 24. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties
8 believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action
9 and have arrived at this Settlement after arm's-length negotiations by experienced counsel before
10 Kimberly S. Deck, an experienced and well-respected mediator who focuses on mediation of
11 employment matters involving alleged wage and hour violations. The Parties further
12 acknowledge that they are each represented by competent counsel and that they have had an
13 opportunity to consult with their counsel regarding the fairness and reasonableness of this
14 Settlement.

15 25. **Denial of Liability.** The Parties expressly recognize that the making of this
16 Settlement Agreement does not in any way constitute an admission or concession of wrongdoing
17 on the part of Defendant, the Released Parties, or Plaintiff. Nothing in this Settlement, nor any
18 action taken in implementation thereof, nor any statements, discussions or communications, nor
19 any materials prepared, exchanged, issued or used during the course of this Action, is intended
20 by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible
21 in any way in any other judicial, arbitral, administrative, investigative or other forum or
22 proceeding, as evidence of any violation of any federal, state, or local law, statute, ordinance,
23 regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding
24 the foregoing, this Settlement Agreement may be used in any proceeding in the Court that has as
25 its purpose the interpretation, implementation, or enforcement of the Settlement or any orders or
26 judgments of the Court entered into in connection therewith.

27 26. **Invalidity of Any Provision.** Before declaring any provision of this Settlement
28 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
extent possible consistent with applicable precedents so as to define all provisions of this

1 Settlement Agreement valid and enforceable. If any provision of this Settlement Agreement or
2 the application thereof is held invalid, the invalidity shall not affect other provisions or
3 applications of this Settlement Agreement which can be given effect without the invalid
4 provisions or application and, to this end, the provisions of this Settlement Agreement are
5 declared to be severable. Notwithstanding the foregoing, no portion of any release contained
6 herein may be deemed severed or deleted from this Agreement, except upon waiver in writing
7 by the applicable party.

8 27. **Captions.** The captions and section numbers in this Settlement Agreement are
9 inserted for the reader's convenience, and in no way define, limit, construe or describe the scope
10 or intent of the provisions of this Settlement Agreement.

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

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

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

27 31. **Representation By Counsel.** The Parties acknowledge that they have been
28 represented by counsel throughout all negotiations that preceded the execution of this Settlement

1 Agreement, and that this Settlement Agreement has been executed with the consent and advice
2 of counsel, and reviewed in full.

3 32. **Cooperation and Execution of Necessary Documents.** All Parties will
4 cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate
5 the terms of this Settlement Agreement.

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

11 34. **Confidentiality.** The Parties and their counsel agree that they will not issue any
12 press releases, initiate any contact with the press, respond to any press inquiry or have any
13 communication with the press about the fact, amount or terms of the Settlement. PAGA Counsel
14 may respond to press inquiries by stating the matter has been resolved and refer the press to court
15 filings. In addition, PAGA Counsel agree that they will not engage in any advertising or
16 distribute any marketing materials specifying any material terms specifically relating to the
17 Settlement of this case, including but not limited to any postings on any websites maintained by
18 PAGA Counsel. Any communication about the Settlement to PAGA Members will be limited
19 to a statement that a settlement has been reached and the details will be communicated in a
20 forthcoming notice letter in the form attached hereto as Exhibit A. Plaintiff is prohibited from
21 discussing the terms or the fact of this PAGA Settlement with third parties other than (1) her
22 immediate family members, and (2) her respective accountants or lawyers as necessary for tax
23 purposes. Nothing herein shall restrict PAGA Counsel from including publicly available
information regarding this Settlement in future judicial submissions regarding PAGA Counsel's
qualifications and experience.

24 07 / 19 / 2022

25 DATE


26 Akanksha Massey, Plaintiff
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATE July 20, 2022

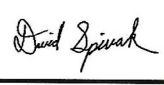
Dr. Lois Lee
President
Defendant Children Of The Night



APPROVED AS TO FORM

THE SPIVAK LAW FIRM

07 / 19 / 2022



DATE

David Spivak for Plaintiff(s) Akanksha
Massey

07 / 14 / 2022



DATE

for Plaintiff Akanksha Massey

MANNING LLP

07/14/2022



DATE

Steven Amundson for Defendant Children Of
The Night

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

1 **NOTICE OF PAGA SETTLEMENT**

2 *Akanksha Massey v. Children Of The Night*
3 *(Superior Court of California, Los Angeles County*
4 *Case No. 21STCV30464*

4 <<Phoenix Class Action Settlement Administrators>>

5 []

5 []

6 Telephone: []

7 «Barcode» «BarcodeString»

8 SIMID «SIMID»

8 «FirstName»

9 «LastName»

9 «Address1» «Address2»

10 «City» «State» «Zip»

11 You are receiving this notice as a result of lawsuit brought on a representative basis under
12 the Private Attorneys General Act, Labor Code § 2698 et seq. (“PAGA”) (“the Action”). The
13 plaintiff in the Action is Akanksha Massey (“Plaintiff”) and the defendant is Children Of The
14 Night (“Defendant”). The Action seeks civil penalties for purported violations of the California
15 Labor Code on behalf of all Defendant’s current and former California non-exempt employees
16 (“PAGA Members”) who Defendant employed during the PAGA Period of June 11, 2020
17 through the date the Court approves the settlement. Defendant denies all claims and allegations
18 in the Action, denies that it owes any penalties, and asserts that it has fully complied with all
19 applicable Labor Code provisions. Nevertheless, to avoid further costs and time in defending the
20 Action, Defendant has settled the case and the Court has approved the settlement and release of
21 claims. By settling the Action, Defendant is not admitting that it has done anything wrong. As of
22 and subject to the occurrence of the Effective Date of the Settlement, the Settlement resolves,
23 and in consideration for the Gross Settlement Amount, the claims settled, fully released and
24 forever discharged by the LWDA and the PAGA Members, including Plaintiff, constitute any
25 and all claims for civil penalties Plaintiff, the PAGA Members, and the State of California may
26 have against the Released Parties under the California Labor Code, Wage Orders, regulations,
27 and/or any other provisions of state and federal law arising from allegations that the PAGA
28 Members suffered Labor Code violations based on failure to pay employees all earned wages,
failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify
for business expenses, failure to issue proper wage statements, failure to timely pay wages, and
any other Labor Code violations that were alleged in the Action, or that could have been alleged
in the Action based on the facts alleged in the Action, which includes, but is not limited to, alleged
violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 558, 1174,
1174.5, 1194, 1194.2, 1197, 1197.1, 2802, and 2698 et seq. (“PAGA Released Claims”). The
“Released Parties” are Children Of The Night and its present and former parent companies,
subsidiaries, divisions, concepts, related or affiliated companies, and its shareholders, officers,
directors, employees, agents, attorneys, insurers, successors and assigns, and all persons acting
by or through or in concert with any of them, and each of them (hereinafter “Released Parties”).

1 By Order dated <<court approval order date>>, the Superior Court of the State of
2 California, Los Angeles County approved the Settlement of the PAGA claims.

3 According to the Defendant's records, you are an PAGA Member and therefore entitled
4 to a share of the settlement based upon the Court approved allocation. Enclosed with this Notice
5 is your check for your share. The settlement check shall remain valid for 180 days. Thereafter,
all uncashed checks shall be distributed to California State Controller's Office Unclaimed
Property Fund with an identification of the amount of unclaimed funds attributable to each PAGA
Member.

6 Please Note: One hundred percent (100%) of your individual PAGA payment under this
7 Settlement will be considered penalties and may be subject to local, state, or federal tax
8 withholdings and will be reported to the IRS and state tax authorities. You should rely on your
9 own tax advisors as to the tax consequences of your individual PAGA payment. Neither Plaintiff
10 nor Defendant have made any representations or warranties regarding the taxation of your
11 individual PAGA payment. Nothing within this notice or any other communication shall
constitute or be construed or relied upon as tax advice within the meaning of United States
Treasury Department Circular 230 (31 C.F.R. Part 10, as amended). Enclosed are the appropriate
tax forms pertaining to your payment.

12 Do not call or write the Court or Office of the Clerk to ask questions about the settlement
13 or to ask questions about the claims process. If you have any questions, you may call or write to
14 Phoenix Class Action Settlement Administrators (the Settlement Administrator) using the contact
15 information at the top of this correspondence.
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 2

1 **NOTICE OF PAGA SETTLEMENT**

2 *Akanksha Massey v. Children Of The Night*
3 *(Superior Court of California, Los Angeles County*
4 *Case No. 21STCV30464*

4 <<Phoenix Class Action Settlement Administrators>>

5 []

6 []

6 Telephone: []

7 «Barcode» «BarcodeString»

8 SIMID «SIMID»

8 «FirstName»

9 «LastName»

9 «Address1» «Address2»

10 «City» «State» «Zip»

11 You are receiving this notice as a result of lawsuit brought on a representative basis under
12 the Private Attorneys General Act, Labor Code § 2698 et seq. (“PAGA”) (“the Action”). The
13 plaintiff in the Action is Akanksha Massey (“Plaintiff”) and the defendant is Children Of The
14 Night (“Defendant”). The Action seeks civil penalties for purported violations of the California
15 Labor Code on behalf of all Defendant’s current and former California non-exempt employees
16 (“PAGA Members”) who Defendant employed during the PAGA Period of June 11, 2020
17 through the date the Court approves the settlement. Defendant denies all claims and allegations
18 in the Action, denies that it owes any penalties, and asserts that it has fully complied with all
19 applicable Labor Code provisions. Nevertheless, to avoid further costs and time in defending the
20 Action, Defendant has settled the case and the Court has approved the settlement and release of
21 claims. By settling the Action, Defendant is not admitting that it has done anything wrong. As of
22 and subject to the occurrence of the Effective Date of the Settlement, the Settlement resolves,
23 and in consideration for the Gross Settlement Amount, the claims settled, fully released and
24 forever discharged by the LWDA and the PAGA Members, including Plaintiff, constitute any
25 and all claims for civil penalties Plaintiff, the PAGA Members, and the State of California may
26 have against the Released Parties under the California Labor Code, Wage Orders, regulations,
27 and/or any other provisions of state and federal law arising from allegations that the PAGA
28 Members suffered Labor Code violations based on failure to pay employees all earned wages,
failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify
for business expenses, failure to issue proper wage statements, failure to timely pay wages, and
any other Labor Code violations that were alleged in the Action, or that could have been alleged
in the Action based on the facts alleged in the Action, which includes, but is not limited to, alleged
violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 558, 1174,
1174.5, 1194, 1194.2, 1197, 1197.1, 2802, and 2698 et seq. (“PAGA Released Claims”). The
“Released Parties” are Children Of The Night and its present and former parent companies,
subsidiaries, divisions, concepts, related or affiliated companies, and its shareholders, officers,
directors, employees, agents, attorneys, insurers, successors and assigns, and all persons acting
by or through or in concert with any of them, and each of them (hereinafter “Released Parties”).

1 By Order dated <<court approval order date>>, the Superior Court of the State of
2 California, Los Angeles County approved the Settlement of the PAGA claims.

3 According to the Defendant's records, you are an PAGA Member and therefore entitled
4 to a share of the settlement based upon the Court approved allocation. Enclosed with this Notice
5 is your check for your share. The settlement check shall remain valid for 180 days. Thereafter,
all uncashed checks shall be distributed to California State Controller's Office Unclaimed
Property Fund with an identification of the amount of unclaimed funds attributable to each PAGA
Member.

6 Please Note: One hundred percent (100%) of your individual PAGA payment under this
7 Settlement will be considered penalties and may be subject to local, state, or federal tax
8 withholdings and will be reported to the IRS and state tax authorities. You should rely on your
9 own tax advisors as to the tax consequences of your individual PAGA payment. Neither Plaintiff
10 nor Defendant have made any representations or warranties regarding the taxation of your
11 individual PAGA payment. Nothing within this notice or any other communication shall
constitute or be construed or relied upon as tax advice within the meaning of United States
Treasury Department Circular 230 (31 C.F.R. Part 10, as amended). Enclosed are the appropriate
tax forms pertaining to your payment.

12 Do not call or write the Court or Office of the Clerk to ask questions about the settlement
13 or to ask questions about the claims process. If you have any questions, you may call or write to
14 Phoenix Class Action Settlement Administrators (the Settlement Administrator) using the contact
15 information at the top of this correspondence.
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 3



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

June 11, 2021

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

Re: *Akanksha Massey / Children of the Night*

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Akanksha Massey (hereafter “Massey”) provides notice on behalf of herself and on behalf of all individuals currently and formerly employed in California as non-exempt, hourly employees, including but not limited to tutors, teachers, educators, and persons in similar positions (hereafter “Aggrieved Employees”), by Children of the Night, Inc. (hereafter “COTN”), of alleged violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198 and 2802.

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

///

///

Statement of Facts

On approximately October 5, 2020, COTN employed Massey at its headquarters located at 3450 Cahuenga Blvd W, Los Angeles, California as a global tutor. COTN continuously employed her in that capacity until on or about November 17, 2020.

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

COTN failed to compensate Massey and the Aggrieved Employees for all hours worked at the correct rates of pay, including overtime. Massey and the Aggrieved Employees often worked five (5) to six (6) days in a workweek, and between four (4) and nine (9) hours per workday. At all relevant times, Massey and the Aggrieved Employees worked over eight (8) hours in one workday and over forty (40) hours in one workweek. COTN, however, failed to pay Massey and the Aggrieved Employees overtime wages of at least one and a half 1½ times their hourly rates of pay for all hours in excess of forty (40) in a week, and all hours in excess of eight (8) in a day. COTN intentionally failed to pay Massey and the Aggrieved Employees for all overtime hours. COTN advised Massey that she had “not been approved for any of the above forementioned overtime.” However, COTN frequently forced Massey and the Aggrieved Employees to work overtime hours by assigning them more time-sensitive work than it could reasonably expect them to complete within their assigned shifts.

At all relevant times, COTN failed to provide Massey and the Aggrieved Employees with all timely meal periods. Due to the workload COTN denied Massey and the Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. COTN also denied meal periods to Massey and the Aggrieved Employees because COTN frequently required Massey and the Aggrieved Employees to teach back-to-back classes without periods of rest between them.

Moreover, COTN failed to authorize and permit Massey and the Aggrieved Employees with rest periods in violation of California law. Due to high workload and low staffing levels, COTN failed to authorize and permit Massey and the Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. COTN did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Furthermore, COTN failed to pay premium wages for days on which it failed to provide Massey and the other Aggrieved Employees with timely meal periods. COTN also failed to pay premium wages for days on which it failed to provide Massey and the other Aggrieved Employees with timely rest periods.

At all relevant times, COTN required Massey and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. COTN required Massey and the other Aggrieved Employees to use their personal mobile phones to communicate with students and co-workers and to coordinate their schedules with supervisors. COTN did not offer mobile phones to Massey and the other Aggrieved Employees for this purpose, nor did it reimburse them for use of their personal mobile phones.

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

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

- (a) COTN failed to pay Massey and the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay;

///

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

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

The Wage Order

The Wage Order applies to "all persons employed in professional, technical, clerical, mechanical, and similar occupations whether paid on a time, piece rates, commission, or other basis[.]" § 1. "Professional, Technical, Clerical, Mechanical, and Similar Occupations" includes "Professional, Technical, Clerical, Mechanical, and Similar Occupations" includes "professional, semiprofessional, managerial, supervisory, laboratory, research, technical, clerical, office work, and mechanical occupations". § 2(O). Said occupations include teachers. *Id.* At

all relevant times during the applicable limitations period, COTN employed Massey and the other Aggrieved Employees as teachers. Accordingly, Massey and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

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

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

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

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

In relevant part, Labor Code section 1194 states:

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

In relevant part, Labor Code section 510 states:

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

compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

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

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

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

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

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

///

At all relevant times during the applicable limitations period, COTN failed to compensate Massey 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.

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

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
3. \$100 for each underpaid hourly employee for each initial violation of California Labor Code § 1197, and \$250 for each underpaid employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1).
4. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));

///

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

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

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

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

In relevant part, Labor Code section 512 states:

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

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

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less

than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. . . .

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

In addition, Labor Code section 226.7 states:

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

At all relevant times, COTN failed to provide Massey and the Aggrieved Employees with all timely rest and meal periods. Due to the workload and failure

to hire sufficient staff members, COTN denied Massey and the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. . COTN also denied meal periods to Massey and the Aggrieved Employees because COTN frequently required Massey and the Aggrieved Employees to teach back to back classes without intervals. Furthermore, COTN failed to pay premium wages for days on which it failed to provide Massey and the other Aggrieved Employees with timely meal periods.

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

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2));
2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code section 512, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code section 558); and
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

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

Section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the

employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

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

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

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

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

Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

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

Due to high workload and low staffing levels, COTN failed to authorize and permit Massey and the Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. COTN did not seek an exemption from the rest period protections of the Wage Order from the California Divisions of Labor Standards Enforcement. Moreover, COTN failed to pay Massey and the Aggrieved Employees premium wages on workdays it failed to provide them with 10-minute rest periods every four hours worked or major fraction thereof.

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

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

///

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

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

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

As described above, COTN required Massey and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. During the applicable limitations period, COTN required Massey and the other Aggrieved Employees to use their personal mobile phones to communicate with students and co-workers and to coordinate their schedules with supervisors. COTN did not offer mobile phones to Massey and the other Aggrieved Employees for this purpose, nor did it reimburse them for use of their personal mobile phones. Accordingly, Massey seeks civil penalties for these Labor Code violations that COTN has committed against her and the Aggrieved Employees as follows:

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

///

///

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

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

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

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

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

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

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

COTN failed to compensate Massey and the Aggrieved Employees for all hours worked at the correct rates of pay, including overtime. COTN failed to provide Massey and the Aggrieved Employees with all meal and rest periods in compliance with California laws. COTN also failed to provide Massey and the Aggrieved Employees with all premium wages on workdays it failed to provide

them with one or more meal or rest periods in compliance with California laws. As a result, COTN failed to timely pay all earned minimum, overtime, and premium wages due during employment within the time periods set by California Labor Code section 204.

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

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

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

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

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

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

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

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

Every person employing labor in this state shall:

...

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

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

Labor Code section 1174.5 states:

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

Section 7 of Wage Order states,

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

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

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

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

COTN failed to compensate Massey and the Aggrieved Employees for all hours worked at the correct rates of pay, including overtime. COTN failed to provide Massey and the Aggrieved Employees with all meal and rest periods in compliance with California laws. COTN also failed to provide Massey and the Aggrieved Employees with premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California laws. As a result, COTN has failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Massey and the Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period.

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

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

///

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

Conclusion

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

Sincerely,



David Spivak, Esq.

Michelle Grimberg, Esq.

David@spivaklaw.com

Michelle@spivaklaw.com

cc: Akanksha Massey

///

///

///

///

///

///

Children of the Night
c/o Steven C. Amundson, Esq.
Manning & Kass, Ellrod, Ramirez, Trester LLP
801 S. Figueroa St, 15th Floor
Los Angeles, California 90017
sca@manningllp.com

Children of the Night
c/o Alina Sookasian, Esq.
Manning & Kass, Ellrod, Ramirez, Trester LLP
801 S. Figueroa St, 15th Floor, 801 Tower
Los Angeles, California 90017
aws@manningllp.com

EXHIBIT 4

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Kevin Brazile

1 DAVID G. SPIVAK (SBN 179684)

david@spivaklaw.com

2 GREGORY WILBUR (SBN 295945)

greg@spivaklaw.com

3 MAYA CHEAITANI (SBN 335777)

maya@spivaklaw.com

4 THE SPIVAK LAW FIRM

5 16530 Ventura Blvd., Suite 203

Encino, CA 91436

6 Telephone (213) 725-9094

7 Facsimile (213) 634-2485

8 Attorneys for Plaintiff,

9 AKANKSHA MASSEY, and all others similarly situated

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

11 **FOR THE COUNTY OF LOS ANGELES**

12 **(UNLIMITED JURISDICTION)**

13 AKANKSHA MASSEY, as an “aggrieved
14 employee” on behalf of other similarly situated
15 “aggrieved employees” under the Labor Code
16 Private Attorney General Act of 2004,

17 *Plaintiff,*

18 vs.

19 CHILDREN OF THE NIGHT, INC., a California
20 corporation; and DOES 1–50, inclusive,

21 *Defendants.*

Case No.: 21STCV30464

**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



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ADDITIONAL ATTORNEY FOR PLAINTIFF

WALTER HAINES (SBN 71075)
whaines@uelglaw.com
UNITED EMPLOYEES LAW GROUP
4276 Katella Ave., #301
Los Alamitos, CA 90720
Tel.: (562) 256-1047
Fax: (562) 256-1006



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 Plaintiff, AKANKSHA MASSEY (hereafter “Plaintiff”), on behalf of herself, 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 CHILDREN OF THE NIGHT, INC., a California corporation,
and DOES 1-50, inclusive (collectively “Defendants”).

7 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
8 her, the State of California, and other similarly situated and aggrieved current and former
9 employees who worked in California as hourly, non-exempt employees, for civil penalties and
10 other related relief. These claims are based on Defendants’ failures to: (1) Provide all rest and
11 meal periods; (2) Indemnify for necessary work-related expenditures; (3) Pay all wages earned
12 for all hours worked at the correct rates of pay; (4) Issue accurate and complete itemized wage
13 statements; (5) Timely pay wages during and upon termination of employment and; (6) Maintain
14 accurate employment records. Accordingly, Plaintiff now seeks to recover civil penalties and
related relief through this representative action.

15 **II. THE PARTIES**

16 3. Plaintiff, an individual and resident of California, on approximately October 5,
17 2020, began working for Defendants at their headquarters located at 3450 Cahuenga Blvd W, Los
18 Angeles, California as a global tutor, a non-exempt, hourly position. Defendants continuously
19 employed her in that capacity until on or about November 17, 2020.

20 4. Defendant CHILDREN OF THE NIGHT, INC. is a corporation organized and
21 existing under the laws of California and also a citizen of California based on Plaintiff’s
22 information and belief.

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



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 **A. THE AGGRIEVED EMPLOYEES**

2 6. The “Aggrieved Employees” are all individuals currently and formerly employed
3 by Defendants in California, as hourly, non-exempt employees, including, but not limited to
4 tutors, teachers, educators, and persons in comparable positions, at any time during the period of
5 June 11, 2020 and entry of judgment (“the PAGA Period”).

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

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

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

20 **III. FACTUAL ALLEGATIONS**

21 10. On approximately October 5, 2020, Defendants employed Plaintiff at their
22 headquarters located at 3450 Cahuenga Blvd W, Los Angeles, California as a global tutor, an
23 hourly, non-exempt position. Defendants continuously employed her in that capacity until on or
24 about November 17, 2020 when her employment ended.

25 11. At all relevant times, Defendants issued wages to Plaintiff and the other Aggrieved
26 Employees on a bi-weekly basis and paid them at an hourly rate of pay. At all relevant times,
27 Defendants classified Plaintiff and the other Aggrieved Employees as non-exempt employees
28 entitled to the protections of both the Labor Code and the Wage Order.

12. Defendants failed to compensate Plaintiff and the Aggrieved Employees for all
hours worked at the correct rates of pay, including overtime. Plaintiff and the Aggrieved
Employees often worked five (5) to six (6) days in a workweek, and between four (4) and nine



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

(9) hours per workday. At all relevant times, Plaintiff and the Aggrieved Employees worked over eight (8) hours in one workday and over forty (40) hours in one workweek. Defendants, however, failed to pay Plaintiff and the Aggrieved Employees overtime wages of at least one and a half 1½ times their hourly rates of pay for all hours in excess of forty (40) in a week, and all hours in excess of eight (8) in a day. Defendants intentionally failed to pay Plaintiff and the Aggrieved Employees for all overtime hours. Defendants advised Plaintiff that she had “not been approved for any of the above forementioned overtime.” However, Defendants frequently forced Plaintiff and the Aggrieved Employees to work overtime hours by assigning them more time-sensitive work than they could reasonably expect them to complete within their assigned shifts.

13. At all relevant times, Defendants failed to provide Plaintiff and the Aggrieved Employees with all timely meal periods. Due to the workload Defendants denied Plaintiff and the Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. Defendants also denied meal periods to Plaintiff and the Aggrieved Employees because Defendants frequently required Plaintiff and the Aggrieved Employees to teach back-to-back classes without periods of rest between them.

14. Moreover, Defendants failed to authorize and permit Plaintiff and the Aggrieved Employees with rest periods in violation of California law. Due to high workload and low staffing levels, Defendants failed to authorize and permit Plaintiff and the Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. Defendants did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the other Aggrieved Employees with timely meal periods. Defendants also failed to pay premium wages for days on which they failed to provide Plaintiff and the other Aggrieved Employees with timely rest periods.

15. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. Defendants required Plaintiff and the other Aggrieved Employees to use their personal mobile phones to communicate with students and co-workers and to coordinate their schedules with supervisors. Defendants did not offer mobile phones to Plaintiff and the other Aggrieved Employees for this purpose, nor did they reimburse them for use of their personal mobile phones.

16. Defendants failed to issue to Plaintiff and the Aggrieved Employees complete and



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

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

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

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

19 **IV. FIRST (AND ONLY) CAUSE OF ACTION**

20 **CIVIL PENALTIES**

21 **(Lab. Code §§ 2698, et seq.)**

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

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

25 19. At all relevant times, Plaintiff and the Aggrieved Employees have been non-
26 exempt employees entitled to the protections of both the Labor Code and the Wage Order.

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

28 20. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

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.

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

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

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

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

Rest Periods

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

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

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

Meal Periods

(A) “No employer shall employ any person for a work period



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employee and the employer. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked. An 'on duty' meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time."

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

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

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

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

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

26. 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



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

major fraction thereof.

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

28. At all relevant times, Defendants failed to provide Plaintiff and the Aggrieved Employees with all timely rest and meal periods. Due to the workload and failure to hire sufficient staff members, Defendants denied Plaintiff and the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work.. Defendants also denied meal periods to Plaintiff and the Aggrieved Employees because Defendants frequently required Plaintiff and the Aggrieved Employees to teach back to back classes without intervals. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the other Aggrieved Employees with timely meal periods.

29. At all relevant times, due to high workload and low staffing levels, Defendants failed to authorize and permit Plaintiff and the Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. Defendants did not seek an exemption from the rest period protections of the Wage Order from the California Divisions of Labor Standards Enforcement. Moreover, Defendants failed to pay Plaintiff and the Aggrieved Employees premium wages on workdays they failed to provide them with 10-minute rest periods every four hours worked or major fraction thereof.

30. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the and the Aggrieved Employees with all off-duty meal periods and rest breaks required by California law.

B. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT THE CORRECT RATES OF PAY

31. Section 2 of the Wage Order defines “hours worked” as “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.”

32. Section 3 of the Wage Order states:

(A) Daily Overtime - General Provisions

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



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

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

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

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

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

20 33. Section 4 of the Wage Order requires an employer to pay non-exempt employees
21 at least the minimum wage set forth therein for all hours worked, which consists of all hours that
22 an employer has actual or constructive knowledge that employees are working.

23 34. Labor Code section 510 states:

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

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

36. Labor Code section 1197 makes it unlawful for an employer to pay an employee
less than the minimum wage required under the applicable Wage Order for all hours worked



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 during a payroll period.

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

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

9 39. At all relevant times during the applicable limitations period, Defendants failed to
10 compensate Plaintiff and the Aggrieved Employees for all hours worked, including, but not
11 limited to overtime wages for all overtime hours they worked at the correct rates of pay.

12 40. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
13 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
14 failure to compensate Plaintiff and the other Aggrieved Employees for all hours worked as
15 required by California law.

16 **C. FAILURE TO INDEMNIFY**

17 41. In pertinent part, California Labor Code § 2802(a) states:

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

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

23 43. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees
24 to incur certain business expenses in the course of performing their duties. During the applicable
25 limitations period, Defendants required Plaintiff and the other Aggrieved Employees to use their
26 personal mobile phones to communicate with students and co-workers and to coordinate their
27 schedules with supervisors. Defendants did not offer mobile phones to Plaintiff and the other
28 Aggrieved Employees for this purpose, nor did they reimburse them for use of their personal
mobile phones.

44. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'



1 failure to indemnify Plaintiff and the Aggrieved Employees for the reasonable expenses they
2 incurred during the course of performing their duties.

3 **D. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE**
4 **STATEMENTS**

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

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

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

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

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

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

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

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

26 48. As alleged herein, at all relevant times during the applicable limitations period,
27 Defendants violated California Labor Code section 226 because they did not properly and
28 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 the corresponding number of hours worked at each rate by the employee and other requirements
2 of California Labor Code section 226. Defendants failed to state in the wage statements they
3 issued to Plaintiff and the other Aggrieved Employees all their hours worked and wages earned,
4 including, but not limited to, regular and overtime wages for work they performed off-the-clock
after clocking-out (as described above).

5 49. Defendants' failure to provide Plaintiff and the other Aggrieved Employees with
6 accurate wage statements was knowing and intentional. Defendants had the ability to provide
7 Plaintiff and the other Aggrieved Employees with accurate wage statements but intentionally
8 provided wage statements that Defendants knew were not accurate.

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

19 **E. UNTIMELY WAGES DURING EMPLOYMENT**

20 51. Labor Code § 204 states

21 (a) All wages, other than those mentioned in Section 201,
22 201.3, 202, 204.1, or 204.2, earned by any person in any
23 employment are due and payable twice during each
24 calendar month, on days designated in advance by the
25 employer as the regular paydays. Labor performed
26 between the 1st and 15th days, inclusive, of any calendar
27 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. ...

28 (b) (1) Notwithstanding any other provision of this



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 section, all wages earned for labor in excess of the normal
2 work period shall be paid no later than the payday for the
3 next regular payroll period.

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

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

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

22 52. Defendants failed to compensate Plaintiff and the Aggrieved Employees for all
23 hours worked at the correct rates of pay, including overtime. Defendants failed to provide Plaintiff
24 and the Aggrieved Employees with all meal and rest periods in compliance with California laws.
25 Defendants also failed to provide Plaintiff and the Aggrieved Employees with all premium wages
26 on workdays they failed to provide them with one or more meal or rest periods in compliance
27 with California laws. As a result, Defendants failed to timely pay all earned minimum, overtime,
28 and premium wages due during employment within the time periods set by California Labor Code
section 204.

29 **F. UNTIMELY FINAL WAGES**

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

32 54. Labor Code § 202 provides that all earned and unpaid wages of an employee who
33 quits after providing at least 72-hours notice before quitting are due and payable at the time of
34 quitting and that all earned and unpaid wages of an employee who quits without providing at
35 least 72-hours notice before quitting are due and payable within 72 hours.



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 55. By failing to pay earned minimum and premium wages to Plaintiff and the
2 Aggrieved Employees, Defendants failed to timely pay them all earned and unpaid wages in
3 violation of Labor Code § 201 or § 202.

4 56. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
5 and the Aggrieved Employees all of their earned and unpaid wages (described above) have been
6 willful in that, at all relevant times, Defendants have deliberately maintained policies and
7 practices that violate the requirements of the Labor Code and the Wage Order, even though at all
8 relevant times, they have had the ability to comply with those legal requirements.

8 **G. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS**

9 57. Labor Code § 1174 states:

10 Every person employing labor in this state shall:

11 ...

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

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

19 58. Labor Code § 1174.5 states:

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

23 59. Section 7 of the Wage Order states,

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

- 26 1. Full name, home address, occupation, and social security number.
- 27 2. Birth date, if under 18 years, and designation as a minor.
- 28 3. Time records showing when the employee begins and ends each
work period. Meal periods, split shift intervals and total daily
hours worked shall also be recorded. Meal periods during which
operations cease and authorized rest periods need not be recorded.



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

4. Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
5. Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
6. When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

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

61. On information and belief, Defendants have willfully failed to maintain the records required by § 1174 and Wage Order, including, but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Plaintiff and the Aggrieved Employees

H. CIVIL PENALTIES SOUGHT

62. Labor Code § 204 states

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

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

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

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



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 (d) The requirements of this section shall be deemed satisfied by the payment
2 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.

3 63. Defendants paid wages to employees on regular intervals. Defendants failed to pay
4 Plaintiff on such intervals for all wages earned and all hours worked. On information and belief,
5 Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for
6 all wages earned and all hours worked.

7 64. During the applicable time period, Defendants violated California Labor Code
8 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

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

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

15 A. For violations of California Labor Code § 204, one hundred dollars
16 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
17 (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation
18 (penalty amounts established by California Labor Code § 210).

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

22 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
23 (\$50.00) for each aggrieved employee for each initial violation for pay period for which the
24 employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for
25 each pay period for which the employee was underpaid (penalty amounts established by
California Labor Code § 558).

26 D. For violations of California Labor Code § 1174, five hundred dollars
27 (\$500.00) for each Aggrieved Employee for each initial violation (penalty amounts established
28 by Labor Code § 1174.5).



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 E. For violations of California Labor Code § 1197, one hundred dollars
2 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
3 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
4 (regardless of whether the initial violations were intentionally committed) (penalty amounts
5 established by California Labor Code § 1197.1).

6 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
7 1198, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period for
8 each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay
9 period for each subsequent violation (penalty amounts established by California Labor Code
§ 2699(f)(2)).

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

11 67. Plaintiff has complied with the procedures for bringing suit specified in California
12 Labor Code § 2699.3. By letter dated June 11, 2021, Plaintiff gave written notice by certified mail
13 to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific
14 provisions of the California Labor Code alleged to have been violated, including the facts and
15 theories to support the alleged violations. A true and correct copy of Plaintiff’s letter to the LWDA
16 dated June 11, 2021 is attached hereto as Exhibit A. The LWDA has not responded to Plaintiff’s
17 letter.

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

21 **VI. PRAYER FOR RELIEF**

22 69. WHEREFORE, Plaintiff, on behalf of herself and the Aggrieved Employees, prays
23 for relief and judgment against Defendants as follows:

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

28 ///

///

///



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

VII. DEMAND FOR JURY TRIAL

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: August 17, 2021

By



DAVID SPIVAK

MAYA CHEAITANI, Attorneys for Plaintiff,
AKANKSHA MASSEY, and all others
similarly situated



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

June 11, 2021

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

Re: *Akanksha Massey / Children of the Night*

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Akanksha Massey (hereafter “Massey”) provides notice on behalf of herself and on behalf of all individuals currently and formerly employed in California as non-exempt, hourly employees, including but not limited to tutors, teachers, educators, and persons in similar positions (hereafter “Aggrieved Employees”), by Children of the Night, Inc. (hereafter “COTN”), of alleged violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198 and 2802.

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

///

///

Statement of Facts

On approximately October 5, 2020, COTN employed Massey at its headquarters located at 3450 Cahuenga Blvd W, Los Angeles, California as a global tutor. COTN continuously employed her in that capacity until on or about November 17, 2020.

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

COTN failed to compensate Massey and the Aggrieved Employees for all hours worked at the correct rates of pay, including overtime. Massey and the Aggrieved Employees often worked five (5) to six (6) days in a workweek, and between four (4) and nine (9) hours per workday. At all relevant times, Massey and the Aggrieved Employees worked over eight (8) hours in one workday and over forty (40) hours in one workweek. COTN, however, failed to pay Massey and the Aggrieved Employees overtime wages of at least one and a half 1½ times their hourly rates of pay for all hours in excess of forty (40) in a week, and all hours in excess of eight (8) in a day. COTN intentionally failed to pay Massey and the Aggrieved Employees for all overtime hours. COTN advised Massey that she had “not been approved for any of the above forementioned overtime.” However, COTN frequently forced Massey and the Aggrieved Employees to work overtime hours by assigning them more time-sensitive work than it could reasonably expect them to complete within their assigned shifts.

At all relevant times, COTN failed to provide Massey and the Aggrieved Employees with all timely meal periods. Due to the workload COTN denied Massey and the Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. COTN also denied meal periods to Massey and the Aggrieved Employees because COTN frequently required Massey and the Aggrieved Employees to teach back-to-back classes without periods of rest between them.

Moreover, COTN failed to authorize and permit Massey and the Aggrieved Employees with rest periods in violation of California law. Due to high workload and low staffing levels, COTN failed to authorize and permit Massey and the Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. COTN did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Furthermore, COTN failed to pay premium wages for days on which it failed to provide Massey and the other Aggrieved Employees with timely meal periods. COTN also failed to pay premium wages for days on which it failed to provide Massey and the other Aggrieved Employees with timely rest periods.

At all relevant times, COTN required Massey and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. COTN required Massey and the other Aggrieved Employees to use their personal mobile phones to communicate with students and co-workers and to coordinate their schedules with supervisors. COTN did not offer mobile phones to Massey and the other Aggrieved Employees for this purpose, nor did it reimburse them for use of their personal mobile phones.

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

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

- (a) COTN failed to pay Massey and the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay;

///

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

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

The Wage Order

The Wage Order applies to "all persons employed in professional, technical, clerical, mechanical, and similar occupations whether paid on a time, piece rates, commission, or other basis[.]" § 1. "Professional, Technical, Clerical, Mechanical, and Similar Occupations" includes "Professional, Technical, Clerical, Mechanical, and Similar Occupations" includes "professional, semiprofessional, managerial, supervisory, laboratory, research, technical, clerical, office work, and mechanical occupations". § 2(O). Said occupations include teachers. *Id.* At

all relevant times during the applicable limitations period, COTN employed Massey and the other Aggrieved Employees as teachers. Accordingly, Massey and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

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

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

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

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

In relevant part, Labor Code section 1194 states:

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

In relevant part, Labor Code section 510 states:

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

compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

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

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

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

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

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

///

At all relevant times during the applicable limitations period, COTN failed to compensate Massey 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.

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

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
3. \$100 for each underpaid hourly employee for each initial violation of California Labor Code § 1197, and \$250 for each underpaid employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1).
4. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));

///

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

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

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

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

In relevant part, Labor Code section 512 states:

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

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

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less

than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. . . .

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

In addition, Labor Code section 226.7 states:

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

At all relevant times, COTN failed to provide Massey and the Aggrieved Employees with all timely rest and meal periods. Due to the workload and failure

to hire sufficient staff members, COTN denied Massey and the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. . COTN also denied meal periods to Massey and the Aggrieved Employees because COTN frequently required Massey and the Aggrieved Employees to teach back to back classes without intervals. Furthermore, COTN failed to pay premium wages for days on which it failed to provide Massey and the other Aggrieved Employees with timely meal periods.

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

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2));
2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code section 512, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code section 558); and
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

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

Section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the

employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

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

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

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

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

Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

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

Due to high workload and low staffing levels, COTN failed to authorize and permit Massey and the Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. COTN did not seek an exemption from the rest period protections of the Wage Order from the California Divisions of Labor Standards Enforcement. Moreover, COTN failed to pay Massey and the Aggrieved Employees premium wages on workdays it failed to provide them with 10-minute rest periods every four hours worked or major fraction thereof.

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

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

///

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

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

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

As described above, COTN required Massey and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. During the applicable limitations period, COTN required Massey and the other Aggrieved Employees to use their personal mobile phones to communicate with students and co-workers and to coordinate their schedules with supervisors. COTN did not offer mobile phones to Massey and the other Aggrieved Employees for this purpose, nor did it reimburse them for use of their personal mobile phones. Accordingly, Massey seeks civil penalties for these Labor Code violations that COTN has committed against her and the Aggrieved Employees as follows:

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

///

///

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

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

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

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

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

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

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

COTN failed to compensate Massey and the Aggrieved Employees for all hours worked at the correct rates of pay, including overtime. COTN failed to provide Massey and the Aggrieved Employees with all meal and rest periods in compliance with California laws. COTN also failed to provide Massey and the Aggrieved Employees with all premium wages on workdays it failed to provide

them with one or more meal or rest periods in compliance with California laws. As a result, COTN failed to timely pay all earned minimum, overtime, and premium wages due during employment within the time periods set by California Labor Code section 204.

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

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

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

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

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

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

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

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

Every person employing labor in this state shall:

...

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

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

Labor Code section 1174.5 states:

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

Section 7 of Wage Order states,

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

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

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

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

COTN failed to compensate Massey and the Aggrieved Employees for all hours worked at the correct rates of pay, including overtime. COTN failed to provide Massey and the Aggrieved Employees with all meal and rest periods in compliance with California laws. COTN also failed to provide Massey and the Aggrieved Employees with premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California laws. As a result, COTN has failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Massey and the Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period.

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

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

///

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

Conclusion

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

Sincerely,



David Spivak, Esq.

Michelle Grimberg, Esq.

David@spivaklaw.com

Michelle@spivaklaw.com

cc: Akanksha Massey

///

///

///

///

///

///

Children of the Night
c/o Steven C. Amundson, Esq.
Manning & Kass, Ellrod, Ramirez, Trester LLP
801 S. Figueroa St, 15th Floor
Los Angeles, California 90017
sca@manningllp.com

Children of the Night
c/o Alina Sookasian, Esq.
Manning & Kass, Ellrod, Ramirez, Trester LLP
801 S. Figueroa St, 15th Floor, 801 Tower
Los Angeles, California 90017
aws@manningllp.com

EXHIBIT 5

Steven C. Amundson (State Bar No. 218507)
sca@manningllp.com

Alina Sookasian (State Bar No. 311837)
aws@manningllp.com

**MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP**

801 S. Figueroa St, 15th Floor
Los Angeles, California 90017-3012
Telephone: (213) 624-6900
Facsimile: (213) 624-6999

Attorneys for Defendant, CHILDREN OF THE NIGHT, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

AKANKSHA MASSEY, as an "aggrieved
employee" on behalf of other similarly
situated "aggrieved employees" under the
Labor Code Private Attorney General Act
of 2004,

Plaintiff,

v.

CHILDREN OF THE NIGHT, INC., a
California corporation; and DOES 1–50,
inclusive,

Defendant.

Case No. 21STCV30464
Assigned to Hon. Kevin C. Brazile
Dept. 20

**DEFENDANT'S ANSWER TO
PLAINTIFF'S COMPLAINT;
DEMAND FOR JURY TRIAL**

Pursuant to Sections 431.10, *et seq.*, of the California Code of Civil Procedure,
Defendant CHILDREN OF THE NIGHT, INC. ("Defendant") answers the Complaint of
Plaintiff AKANKSHA MASSEY ("Plaintiff"). Defendant denies, both generally and
specifically, each and every allegation of the Complaint and denies that Plaintiff is entitled
to any relief whatsoever.

AFFIRMATIVE DEFENSES

Defendant pleads the following separate defenses. Defendant reserves the right to
assert additional affirmative defenses that discovery indicates are proper.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

1. As a separate and first affirmative defense to the Complaint, and to the purported causes of action set forth therein, Defendant alleges that the Complaint fails to state facts sufficient to constitute a cause of action.

SECOND AFFIRMATIVE DEFENSE

(Accord and Satisfaction)

2. As a separate and second affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that an accord and satisfaction was made between Plaintiff and Defendant.

THIRD AFFIRMATIVE DEFENSE

(Adequate Remedy at Law)

3. As a separate and third affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Plaintiff has an adequate remedy at law.

FOURTH AFFIRMATIVE DEFENSE

(All Obligations Performed)

4. As a separate and fourth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Defendant has fully and/or substantially performed any and all obligations it may have had to Plaintiff.

FIFTH AFFIRMATIVE DEFENSE

(Apportionment of Fault)

5. As a separate and fifth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Plaintiff's damages, if any, were caused by the negligence and/or acts or omissions of parties other than the Defendant, whether or not parties to this action. By reason thereof, Plaintiff's damages, if any, as against the Defendant, must be reduced by the proportion of fault attributable to such other parties, and to the extent that this is

1 necessary, Defendant may be entitled to partial indemnity from others on a comparative fault
2 basis.

3 **SIXTH AFFIRMATIVE DEFENSE**

4 **(Attorneys' Fees Barred)**

5 6. As a separate and sixth affirmative defense to the Complaint and each purported
6 cause of action contained therein, Defendant alleges that Plaintiff's claim for attorneys' fees is
7 barred by the provisions of California Code of Civil Procedure § 1021.

8 **SEVENTH AFFIRMATIVE DEFENSE**

9 **(Authorization)**

10 7. As a separate and seventh affirmative defense to the Complaint and each purported
11 cause of action contained therein, Defendant alleges that by virtue of the acts of the Plaintiff,
12 and/or the persons and/or entities acting on her behalf, Plaintiff is barred from prosecuting the
13 purported causes of action set forth in the Complaint by the doctrine of authorization.

14 **EIGHTH AFFIRMATIVE DEFENSE**

15 **(Business Judgment)**

16 8. As a separate and eighth affirmative defense to the Complaint and each purported
17 cause of action contained therein, Defendant alleges that the actions taken by Defendant, if any,
18 were the exercise of reasonable business judgment.

19 **NINTH AFFIRMATIVE DEFENSE**

20 **(Comparative Fault)**

21 9. As a separate and ninth affirmative defense to the Complaint and each purported
22 cause of action contained therein, Defendant alleges that Plaintiff's damages, if any, were caused
23 by the primary negligence and/or acquiescence in the acts and omissions alleged in the Complaint
24 by the Plaintiff, and Plaintiff's agents, employees, representatives, relatives, heirs, assigns,
25 attorneys, and/or any others acting on Plaintiff's behalf. By reason thereof, Plaintiff is not entitled
26 to damages or any other relief whatsoever as against Defendant.

27 ///

28 ///

TENTH AFFIRMATIVE DEFENSE

(Compliance with the Law)

10. As a separate and tenth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that the actions taken by Defendant were in full compliance with the law.

ELEVENTH AFFIRMATIVE DEFENSE

(Consent)

11. As a separate and eleventh affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Plaintiff is barred from prosecuting the purported causes of action set forth in the Complaint because Plaintiff, and/or the persons and/or entities acting on her behalf, consented to and acquiesced in the subject conduct.

TWELFTH AFFIRMATIVE DEFENSE

(Estoppel)

12. As a separate and twelfth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Plaintiff is barred in whole or in part from prosecuting the purported causes of action set forth in the Complaint by the doctrine of estoppel.

THIRTEENTH AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

13. As a separate and thirteenth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Plaintiff's claims are barred because Plaintiff failed to exhaust her administrative remedies.

FOURTEENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

14. As a separate and fourteenth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Plaintiff's claims, if any, are barred for her failure, and/or the failure of the persons and/or entities acting on her behalf, to mitigate any purported damages.

FIFTEENTH AFFIRMATIVE DEFENSE

(In pari delicto)

15. As a separate and fifteenth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that the claims therein are barred by the doctrine of *in pari delicto*.

SIXTEENTH AFFIRMATIVE DEFENSE

(Intervening and Superseding Cause)

16. As a separate and sixteenth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that if Plaintiff suffered or sustained any loss, damage or injury as alleged in the Complaint, such loss, damage or injury was legally caused or contributed to by the negligence or wrongful conduct of other parties, persons or entities, and that their negligence or wrongful conduct was an intervening and superseding cause of the loss, damage or injury of which Plaintiff complains.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Justification/Excuse)

17. As a separate and seventeenth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that by virtue of the acts of the Plaintiff, and/or the persons and/or entities acting on his behalf, Plaintiff is barred from prosecuting the purported causes of action set forth in the Complaint because the acts and/or omissions alleged in the Complaint were justified and/or excused.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Laches)

18. As a separate and eighteenth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Plaintiff is barred in whole or in part from prosecuting the purported causes of action set forth in the Complaint by the doctrine of laches.

NINETEENTH AFFIRMATIVE DEFENSE

(Lack of Deception)

19. As a separate and nineteenth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that the actions taken by it were not deceptive.

TWENTIETH AFFIRMATIVE DEFENSE

(Lack of Standing)

20. As a separate and twentieth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Plaintiff lacks standing to prosecute the purported claims set forth in the Complaint.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Mistake)

21. As a twenty-first separate and affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Plaintiff is barred from recovering on the claims in its Complaint on the grounds of mistake.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(No Injury or Damage)

22. As a separate and twenty-second affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Plaintiff has not been injured or damaged as a proximate result of any act or omission for which Defendant is responsible.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(No Malicious Intent)

23. As a separate and twenty-third affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Defendant did not act with malicious intent to deprive any person of any Constitutional right or to cause any other injury and therefore is not liable.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Offset)

24. As a separate and twenty-fourth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that by virtue of the acts of the Plaintiff and/or the persons and/or the entities acting on Plaintiff's behalf, the Defendant have been damaged in an amount equal to or greater than the amount of damages, if any, to which Plaintiff might be entitled. As a result, the Defendant is entitled to an offset against any sums found owing to the Defendant from Plaintiff.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Privilege)

25. As a separate and twenty-fifth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that in each act or statement done or made by Defendant, its officers, employees and/or agents, with reference to Plaintiff were and continue to be made in good faith and are proper assertions of Defendant's legal rights and obligations and, therefore, were and are privileged.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Proximate Cause – Other Persons)

26. As a separate and twenty-sixth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that the damages alleged to have been suffered by Plaintiff in the Complaint were proximately caused or contributed to by acts or failures to act of persons other than this answering Defendant, which acts or failures to act constitute an intervening and superseding cause of the damages alleged in the Complaint.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Proximate Cause – Plaintiff)

27. As a separate and twenty-seventh affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that the injuries and damages alleged in the Complaint by Plaintiff occurred, were proximately caused by and/or were contributed to by Plaintiff's own acts or failures to act and that Plaintiff's recovery, if any, should

1 be reduced by an amount proportionate to the amount by which said acts caused or contributed to
2 said alleged injury or damages.

3 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

4 **(Ratification)**

5 28. As a separate and twenty-eighth affirmative defense to the Complaint and each
6 purported cause of action contained therein, Defendant alleges that by virtue of the acts of the
7 Plaintiff, and/or the persons and/or entities acting on her behalf, Plaintiff is barred from
8 prosecuting the purported causes of action set forth in the Complaint by the doctrine of
9 ratification.

10 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

11 **(Statute of Limitations)**

12 29. As a separate and twenty-ninth affirmative defense to the Complaint and each
13 purported cause of action contained therein, Defendant alleges that the purported causes of action
14 asserted in the Complaint are barred by such statutes of limitation as may be applicable, including,
15 but not limited to, California Code of Civil Procedure and Labor Code.

16 **THIRTIETH AFFIRMATIVE DEFENSE**

17 **(Unclean Hands)**

18 30. As a separate and thirtieth affirmative defense to the Complaint and each purported
19 cause of action contained therein, Defendant alleges that Plaintiff is barred in whole or in part
20 from prosecuting the purported causes of action set forth in the Complaint by the doctrine of
21 unclean hands.

22 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

23 **(Waiver and Estoppel)**

24 31. As a separate and thirty-first affirmative defense to the Complaint and each
25 purported cause of action contained therein, Defendant alleges that as a result of his own acts
26 and/or omissions, Plaintiff has waived any right which he may have had to recover, and/or is
27 estopped from recovering, any relief sought against Defendant.

THIRTY-SECOND AFFIRMATIVE DEFENSE

(Waiver)

32. As a separate and thirty-second affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Plaintiff is barred in whole or in part from prosecuting the purported causes of action set forth in the Complaint by the doctrine of waiver.

THIRTY-THIRD AFFIRMATIVE DEFENSE

(PAGA Barred for Labor Code sections 201-203 and 226)

33 As a separate and thirty-third affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Plaintiff's claims for violations under Labor Code sections 201 through 203, and 226 are not subject to the Labor Code Private Attorney General's Act.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

(PAGA Penalties Not Warranted Labor Code section 2699(e)(2))

34 As a separate and thirty-fourth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Penalties under PAGA are discretionary and the facts and theories alleged herein by Plaintiff fail to support her claim under Labor Code section 2699, et seq. and the imposition of a penalty against Defendant would be unjust, arbitrary, oppressive and/or confiscatory.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

(PAGA Penalties Prohibited)

35 As a separate and thirty-fifth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Plaintiff's Complaint and each cause of action are barred because the Private Attorneys General Act, Labor Code §2699 et seq., is unconstitutionally vague and overly broad as applied to the facts and circumstances of this case. The imposition of replicating penalties, as applied to the alleged facts and circumstances of this case, would violate this Answering Defendant's due process rights under the fourteenth Amendment of the United States Constitution and under the Constitution and laws of the State of

1 California. (*Lockyer v. R.J. Reynolds tobacco Co.*, (2005) 37 Cal.4th 707; *Ratner v. Chemical*
2 *Bank New York Trust Co.* (S.D.N.Y. 1972) 54 F.R.D. 412) Because this legal defense is raised
3 before the parties have completed discovery, Answering Defendant reserves the right to add to,
4 supplement, or omit this defense as additional information becomes known.

5 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

6 **(PAGA Penalties Not Warranted Labor Code section 2699(e)(2))**

7 36 As a separate and thirty-sixth affirmative defense to the Complaint and each
8 purported cause of action contained therein, Defendant alleges that Plaintiff's Complaint and each
9 claim therein is barred because the principals of fairness and equity operate to bar the imposition
10 of penalties under California Labor Code §§1198, 1194, et seq., 226 et seq., 221, 2802, 1197, and
11 201-203. This defense applies with particular regard to the Defendant's defense of good faith in
12 compensating Plaintiff and the purported "class" for their hours worked.

13 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

14 **(PAGA Penalties Excessive)**

15 37 As a separate and thirty-seventh affirmative defense to the Complaint and each
16 purported cause of action contained therein, Defendant alleges that Labor Code §2699, which
17 authorizes former employees to file private actions against a former employer and recover
18 excessive civil penalties, three quarters of which are paid to an executive agency of the State of
19 California, constitutes an unlawful delegation of power in violation of the California Constitution.

20 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

21 **(No Aggrieved Employees Identified)**

22 38. As a separate and thirty-eighth affirmative defense to the Complaint and each
23 purported cause of action contained therein, Defendant alleges that Plaintiff has failed to identify
24 any other allegedly "aggrieved employees", pursuant to PAGA, Labor Code §2698, and such
25 claims are barred and/or limited by law.

26 ///

27 ///

28 ///

THIRTY-NINTH AFFIRMATIVE DEFENSE

(PAGA – Unjust Enrichment)

39. As a separate and thirty-ninth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Plaintiff, and the individuals on whose behalf Plaintiff seeks relief, are not entitled to recovery of penalties under PAGA to the extent that such penalties are sought in addition to penalties for the same claims and such duplicative recovery is barred and constitutes unjust enrichment.

FORTIETH AFFIRMATIVE DEFENSE

(PAGA – Lack of Notification)

40. As a separate and fortieth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Plaintiff failed to provide the Labor Workforce Development Agency and/or Defendant proper notification of the claims and/or names of the "aggrieved employees" on whose behalf he seeks penalties, pursuant to PAGA, Labor Code §2698, and such claims are thus barred and/or limited by law.

FORTY-FIRST AFFIRMATIVE DEFENSE

(PAGA – Retroactive Application)

41. As a separate and forty-first affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Labor Code §2699 cannot be applied retroactively because such application would violate Article I, section 9 of the California Constitution and would violate Article I, section 9, clause 3 of the United States Constitution.

FORTY-SECOND AFFIRMATIVE DEFENSE

(PAGA – Administrative Remedies)

42. As a separate and forty-second affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Plaintiff's claims are barred to the extent that Plaintiff was required to exhaust his administrative remedies and/or satisfy the prerequisites of PAGA, California Labor Code §§2699.3 and 2699.5 prior to filing a civil lawsuit and failed to do so.

FORTY-THIRD AFFIRMATIVE DEFENSE

(Good Faith Dispute)

43. As a separate and forty-third affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Plaintiff's claims under the Labor Code are barred to the extent that there exists a bona fide, good faith dispute as to whether Defendant acted at all time in good faith vis-à-vis the Plaintiff.

FORTY-FOURTH AFFIRMATIVE DEFENSE

(No Damages)

44. As a separate and forty-fourth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Plaintiff did not suffer an actual injury and therefore cannot recover damages or statutory penalties under the provisions of the Labor Code, including but not limited to Labor Code sections 200 et seq., 201-204, 226 et seq., 226.7, 256, 510, 512, 558, 1194 et seq., 1185, 1194 et seq., 1197 et seq., 2699 et seq., and 2802, as well as under applicable ordinances or Industrial Welfare Commission Wage Orders or the provisions of Business and Professions Code section 17200 et seq.

FORTY-FIFTH AFFIRMATIVE DEFENSE

(Substantial Compliance)

45. As a separate and forty-fifth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Plaintiff's causes of action are barred because Defendant fully or substantially complied with the requirements of Labor Code sections 201, 202, 203, 226, 226.7, 510, 1194, 2802, as well as the respective Industrial Welfare Commission Wage Orders and local ordinances, and their progeny. Furthermore, Defendant alleges that it provided Plaintiff with the opportunity and instruction to timely take all meal and rest periods prescribed under the Labor Code, ordinances, applicable Industrial Welfare Commission Wage Orders, or other laws governing the employment relationship between Defendant and Plaintiff. Moreover, Defendant alleges that it maintains legally compliant meal and rest period policies and practices.

FORTY-SIXTH AFFIRMATIVE DEFENSE

(No Wrongdoing)

46. As a separate and forty-sixth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Plaintiff cannot recover additional damages or penalties under the California Labor Code because Defendant's alleged acts, omissions and/or other conduct did not result from bad faith or willful wrongdoing on the part of Defendant.

FORTY-SEVENTH AFFIRMATIVE DEFENSE

(Avoidable Consequences)

47. As a separate and forty-seventh affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Plaintiff's damages and penalties are barred, in whole or in part, under the doctrine of avoidable consequences.

FORTY-EIGHTH AFFIRMATIVE DEFENSE

(Failure to Disclose)

48. As a separate and forty-eighth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that Plaintiff failed to disclose important facts which they knew or believed to be true and which they had a duty to disclose. Plaintiff therefore cannot recover damages or penalties under the Labor Code because Defendant's alleged acts, omissions and/or other conduct did not result from bad faith or willful wrongdoing on the part of Defendant but rather Plaintiff's failure to disclose relevant information to Defendant related to his claims, including without limitation, missed or untimely meal or rest periods taken, and/or hours worked.

FORTY-NINTH AFFIRMATIVE DEFENSE

(Unknown Defenses)

49. As a separate and forty-ninth affirmative defense to the Complaint and each purported cause of action contained therein, Defendant alleges that they presently have insufficient knowledge or information to form a belief as to whether it has additional, as yet unstated defenses available, this Answering Defendant reserve the right to assert

1 such additional affirmative defenses in the event discovery or subsequent events indicate.

2 DATED: November 29, 2021

**MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP**



By: _____

Steven C. Amundson

Alina Sookasian

Attorneys for Defendant, CHILDREN OF
THE NIGHT, INC.

DEMAND FOR JURY TRIAL

Defendant CHILDREN OF THE NIGHT, INC. hereby demands trial by jury.

12 DATED: November 29, 2021

**MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP**



By: _____

Steven C. Amundson

Alina Sookasian

Attorneys for Defendant, CHILDREN OF
THE NIGHT, INC.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 801 S. Figueroa St, 15th Floor, Los Angeles, CA 90017-3012.

On December 3, 2021, I served true copies of the following document(s) described as **DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT; DEMAND FOR JURY TRIAL** on the interested parties in this action as follows:

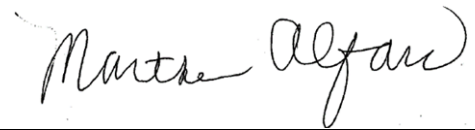
David G. Spivak, Esq.
Maya Cheaitani, Esq.
THE SPIVAK LAW FIRM
16530 Ventura Blvd., Suite 203
Encino, CA 91436
Telephone (213) 725-9094
Facsimile (213) 634-2485
david@spivaklaw.com
mava@spivaklaw.com

Attorneys for Plaintiff, *AKANKSHA MASSEY*, and all others similarly situated

ONLY BY ELECTRONIC TRANSMISSION: Only by emailing the document(s) to the persons at the e-mail address(es). This is necessitated during the declared National Emergency due to the Coronavirus (COVID-19) pandemic because this office will be working remotely, not able to send physical mail as usual, and is therefore using only electronic mail. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission. We will provide a physical copy, upon request only, when we return to the office at the conclusion of the National Emergency.

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

Executed on December 3, 2021, at Los Angeles, California.



Martha Alfaro

EXHIBIT 6

EXHIBIT 7

41
FILED

Superior Court Of California
County Of Los Angeles

JUN 21 2012

John A. Clarke, Executive Officer/Clerk
BY Nancy Sandoval Deputy
Nancy Sandoval

Received

MAY 18 2012

Fax Filing

SUPERIOR COURT OF THE STATE OF CALIFORNIA

**FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT
(UNLIMITED JURISDICTION)**

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

Plaintiffs,

vs.

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

Defendants.

Case No.: BC430633

**~~(PROPOSED)~~ JUDGMENT AGAINST
DEFENDANT RAMIL ABALKHAD**

Action filed: 01/28/2010
CMC: 09/29/2010, 8:30 a.m.
FSC: 04/09/2012, 8:30 a.m.
Trial: 04/09/2012, 8:30 a.m.
Dept: 41, Hon. Ronald M.
Sohigian

Plaintiffs Alina Ghrdilyan and Evgenia Sultanian ("Plaintiffs") filed a complaint Defendant RJ Financial, Inc., a California corporation, on January 28, 2010. On February 24, 2010, Plaintiffs filed a First Amended Complaint which added Ramil Abalkhad, an individual, as a defendant, and a claim against him for civil penalties under the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.* ("The PAGA"). In the First Amended Complaint, the Plaintiffs contended that Defendants violated Labor Code sections 226.7, 510, 512, 1194, 1197, and 1198 and Industrial Welfare Commission Wage Order 7-2001 and in so doing, was liable to the Plaintiffs and other aggrieved employees under the PAGA.

On July 26, 2011, the Court granted Plaintiffs' motion to compel further responses to deposition questions, and ordered Defendant Ramil Abalkhad to pay monetary sanctions to

1 Plaintiffs in the amount of \$2,700.00. Defendant Ramil Abalkhad has not paid such amount to
2 date.

3 On April 10 through 23, 2012, the case was tried in Department 41 of the above-entitled
4 court, the Honorable Ronald M. Sohigian, presiding. Defendant Ramil Abalkhad was present
5 throughout the trial. Plaintiffs Alina Ghrdilyan and Evgenia Sultanian appeared for the trial.
6 David Spivak of the Spivak Law Firm and Louis Benowitz of the Law Offices of Louis
7 Benowitz represented the Plaintiffs, Alina Ghrdilyan and Evgenia Sultanian, and the other
8 aggrieved employees. F. Michael Sabzevar of the Law Office of Michael Sabzevar represented
9 the Defendant Ramil Abalkhad.

10 Before the trial without a jury began, Defendant RJ Financial, Inc. petitioned for
11 bankruptcy protection. Pursuant to 11 U.S.C. section 362, the claims against RJ Financial, Inc.
12 were stayed, and the case proceeded to trial against Defendant Ramil Abalkhad only on the
13 claim for civil penalties under the PAGA.

14 The jury was waived. Testimony was heard and documentary evidence was admitted.
15 Following argument, the court considered the evidence. Only Plaintiffs requested a written
16 statement of decision, however, on April 23, 2012, the Court orally presented its tentative
17 statement of decision on the record.

18 **Plaintiff Alina Ghrdilyan**

19 In its tentative statement of decision, the Court awarded the following amounts to
20 Plaintiff Alina Ghrdilyan: (1) For violations of Labor Code sections 510 and 512, \$7,654.60
21 pursuant to Labor Code section 558; and (2) For violations of Labor Code sections 1198 and
22 Wage Order 7, \$14,218.00 pursuant to Labor Code section 1197.1. This totals \$21,872.60 for
23 Plaintiff Alina Ghrdilyan, of which \$4,572.60 is wages. Of the \$17,300.00 in civil penalties that
24 do not represent wages, twenty-five percent (25%), \$4,325.00, is awarded to Plaintiff Alina
25 Ghrdilyan, and the remaining seventy-five percent (75%), \$12,975.00, is awarded to the
26 California Labor & Workforce Development Agency pursuant to Labor Code § 2699(i).

27 **Plaintiff Evgenia Sultanian**

28 Additionally, the Court awarded the following amounts to Plaintiff Evgenia Sultanian:
(1) For violations of Labor Code sections 510 and 512, \$5,264.19 pursuant to Labor Code
section 558; and (2) For violations of Labor Code sections 1198 and Wage Order 7, \$13,936.50
pursuant to Labor Code section 1197.1. This totals \$19,200.69 for Plaintiff Evgenia Sultanian,

of which \$3,000.69 represents wages. Of the \$16,200.00 in civil penalties that do not represent wages, twenty-five percent (25%), \$4,050.00, is awarded to Plaintiff Evgenia Sultanian, and the remaining seventy-five percent (75%), \$12,150.00, is awarded to the California Labor & Workforce Development Agency pursuant to Labor Code § 2699(i).

Other Aggrieved Employees

Moreover, the Court awarded the following amounts to the other aggrieved employees:

(1) For violations of Labor Code sections 510 and 512, \$125,000.00 pursuant to Labor Code section 558; and (2) For violations of Labor Code sections 1198 and Wage Order 7, \$200,000.00 pursuant to Labor Code section 1197.1. This totals \$325,000.00 for the aggrieved employees. Of the \$325,000.00 in civil penalties, twenty-five percent (25%), \$81,250.00, is awarded to the aggrieved employees other than the two named-Plaintiffs, and the remaining seventy-five percent (75%), \$243,750.00, is awarded to the California Labor & Workforce Development Agency pursuant to Labor Code § 2699(i).

As part of its statement of decision, the Court stated that, in committing the acts that led to the Court's award, Defendant Ramil Abalkhad had "the intention simply of trying to run things through and get off as cheaply as he could while he was running his businesses."

After more than ten days had passed from the Court's tentative statement of decision, Defendant Ramil Abalkhad did not request a written statement of decision, object to the tentative statement of decision, nor specify omitted issues to be included in the statement of decision. The Court adopted that tentative statement of decision as its final statement of decision in the manner prescribed by Rule of Court 3.1590(c)(4).

In accordance with the court's Statement of Decision, it is hereby ORDERED, ADJUDGED AND DECREED:

~~1. Plaintiffs Alina Ghrdilyan and Evgenia Sultanian shall have judgment against Defendant Ramil Abalkhad in the amount of \$2,700.00 as sanctions against Defendant Ramil Abalkhad pursuant to the Court's July 26, 2011 decision on Plaintiffs' motion to compel.~~

1 Plaintiff Alina Ghrdilyan shall have judgment under the PAGA against Defendant Ramil Abalkhad in the amount of \$8,897.60.

2 Plaintiff Evgenia Sultanian shall have judgment under the PAGA against Defendant Ramil Abalkhad in the amount of \$7,050.69.

1 **3** The aggrieved employees shall have judgment under the PAGA against
2 Defendant Ramil Abalkhad in the amount of \$81,250.

3 **4** The California Labor & Workforce Development Agency shall have judgment
4 against Defendant Ramil Abalkhad in the amount of \$268,875.00.

5 The total amount awarded against Defendant Ramil Abalkhad, exclusive of interest,
6 attorneys' fees and costs, is ~~\$268,875.00~~ **\$366,073.29**

7 Defendant Ramil Abalkhad must pay the Plaintiffs and their attorneys on the First
8 Amended Complaint attorneys' fees in the amount of \$ **581,770.78** ^{PP} and costs in the amount
9 of \$ **21,272.00** ^{PP}

10 The total amount awarded against Defendant Ramil Abalkhad, inclusive of attorneys'
11 fees and costs, is \$ **969,116.95** ^{PP}, plus interest thereon at the legal rate of ten percent (10%)
12 per year.

13 IT IS SO ORDERED, ADJUDGED AND DECREED.

14 **JUNE 21, 2012**
15 DATE

Ronald M. Sohigian
16 THE HONORABLE RONALD
17 SOHIGIAN, JUDGE OF THE
18 SUPERIOR COURT
19
20
21
22
23
24
25
26
27
28

1 PROOF OF SERVICE

2
3 State of California,
County of Los Angeles

4 1. I am a citizen of the United States and am employed in the County
5 of Los Angeles, State of California. I am over the age of 18 years, and not a
6 party to the within action. My business address is 9454 Wilshire Blvd., Suite
303, Beverly Hills, California 90212.

7 2. I am familiar with the practice of The Spivak Law Firm, for
8 collection and processing of correspondence for mailing with the United
9 States Postal Service. It is the practice that correspondence is deposited
with the United States Postal Service the same day it is submitted for
mailing.

10 On Friday, May 18, 2012, I served the foregoing document described as
11 [PROPOSED] JUDGMENT AGAINST DEFENDANT RAMIL ABALKHAD on interested parties by
placing a true and correct copy thereof enclosed in a sealed envelope, with
12 postage fully prepaid, addressed as follows:

13 F. Michael Sabzevar, Esq.
14 Law Ofc F Michael Sabzevar
16633 Ventura Blvd #555
Encino, CA 91436
15 msabzevar@aol.com

16 XXXX (BY MAIL) I caused such an envelope to be mailed by placing it for
17 collection and mailing, in the course of ordinary business practice, with
other correspondence of The Spivak Law Firm, 9454 Wilshire Boulevard, Suite
18 303, Beverly Hills, California 90212.

19 (BY PERSONAL SERVICE) My agent delivered such envelope by hand to the
home/offices of the addressee.

20 EXECUTED on Friday, May 18, 2012, at Beverly Hills, California.

21 XXXX (State) I declare under penalty of perjury under the laws of the State
22 of California that the above is true and correct.

23 (Federal) I declare that I am employed in the office of a member of the
bar of this court at whose direction the service was made.

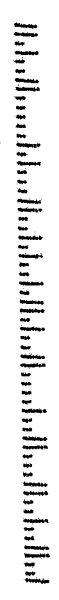
24 
25 BROCK OYAMA

26
27
28
6/1/2012

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
CENTRAL DISTRICT-STANLEY MOSK COURTHOUSE
CIVIL DIVISION **ROOM 118**
111 NORTH HILL STREET
LOS ANGELES, CALIFORNIA 90012

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

9021232904 0077



UNITED STATES POSTAGE
02 1M
0008003008
MAILED FROM ZIP CODE 90012
\$00.650
SEP 13 2012
FIRST CLASS PERMIT NO. 1000 LOS ANGELES CA

EXHIBIT 8

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

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

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

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

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

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

Case No.: BC430633

CLASS ACTION

13 *Plaintiffs,*

14 vs.

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

19 *Defendants.*

FIRST AMENDED COMPLAINT FOR:

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

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

20
21
22
23
24
25
26 On behalf of both himself and all other persons similarly situated, plaintiff ALINA
27 GHRDILYAN and EVGENIA SULTANIAN ("Plaintiffs") bring this action against defendants
RJ FINANCIAL, INC., RAMIL ABALKHAD, and the other defendants, (collectively

THE
SPIVAK
LAW FIRM

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

4 INTRODUCTION

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

12 PARTIES AND CONDUCT

13 A. Plaintiffs and Class Members

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

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

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

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

3 **B. Defendants**

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

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

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

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

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

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

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

8 CLASS ACTION ALLEGATIONS

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

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

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

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

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

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

1 date that final judgment is entered in this action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 O. Are class members entitled to prejudgment interest?

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

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

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

1 action cases.

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

12 **FIRST CLAIM FOR RELIEF**

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

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

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

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

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

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

1 23. California Labor Code § 510(a) also requires employers to compensate
2 employees at two times their regular rates of pay for:

3 A. All hours worked in excess of twelve hours in one day; and,

4 B. All hours worked in excess of eight hours on a seventh consecutive
5 workday during a workweek.

6 24. During the applicable limitations period, Plaintiffs have worked more than eight
7 hours in one workday, more than forty hours in one workweek, and eight or more hours on a
8 seventh consecutive workday without being paid for all of those hours at the rates required
9 under California Labor Code § 510(a).

10 25. Plaintiffs are informed and believe and thereon allege that Defendants have
11 maintained a policy or practice of not compensating him and the other members of the **Wages**
12 **Class** for all hours worked. Additionally, Plaintiffs are informed and believe and thereon allege
13 that Defendants have maintained a policy or practice of not compensating the other members of
14 the **Wages Class** and the **Overtime Class** at the rates required under California Labor Code §
15 510(a) for all hours worked in excess of eight hours in one day, all hours worked in excess of
16 forty hours in one week, the first eight hours on a seventh consecutive workday, and all worked
17 hours in excess of eight hours on a seventh consecutive workday.

18 26. As a result of Defendants' conduct, Plaintiffs, on behalf of themselves and the
19 other members of the **Wages Class** and the **Overtime Class**, seeks declaratory and injunctive
20 relief, damages for unpaid overtime wages, interest thereon, costs of suit, and reasonable
21 attorney's fees pursuant to California Labor Code § 1194(a).

22 **SECOND CLAIM FOR RELIEF**

23 **FAILURE TO PROVIDE REST AND MEAL PERIODS**

24 **(By Plaintiffs, the Rest Period Class, and the Meal Period Class)**

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

27 28. At all relevant times, Plaintiffs and other members of the **Rest Period Class** and
Meal Period Class have been employees of Defendants covered by California Labor Code §§

1 226.7 and 512, and Wage order 11.

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

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

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

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

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

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

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

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

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

10 **THIRD CLAIM FOR RELIEF**

11 **FORFEITURE OF VACATION PAY**

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

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

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

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

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

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

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

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

7 **FOURTH CLAIM FOR RELIEF**

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

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

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

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

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

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

1 worked.

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

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

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

21 **FIFTH CAUSE OF ACTION**

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

23 **(Cal. Lab. Code §§ 201-203)**

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

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

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

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

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

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

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

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

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

9 **SIXTH CLAIM FOR RELIEF**

10 **UNAUTHORIZED DEDUCTIONS**

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

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

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

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

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

1 Procedure § 1021.5.

2 **SEVENTH CLAIM FOR RELIEF**

3 **FAILURE TO INDEMNIFY**

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

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

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

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

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

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

6 **EIGHTH CLAIM FOR RELIEF**

7 **UNFAIR COMPETITION**

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

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

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

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

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

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

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

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

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

20 **NINTH CLAIM FOR RELIEF**

21 **CIVIL PENALTIES**

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

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

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

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

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

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

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

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

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

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

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

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

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

8 **PRAYER FOR RELIEF**

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

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

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

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

15 D. Declaratory relief;

16 E. Injunctive relief;

17 F. Actual damages;

18 G. Liquidated damages;

19 H. Restitution;

20 I. Civil penalties;

21 J. Statutory penalties;

22 K. Pre-judgment interest;

23 L. Costs of suit;

24
25 ///

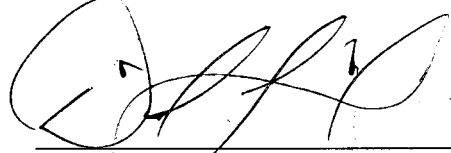
26
27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

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

Respectfully submitted,

THE SPIVAK LAW FIRM



By:

Date: February 23, 2010

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

EXHIBIT 9

1 CASE NUMBER: BC430633
2 CASE NAME: ALINA GHRDILYAN, ET AL., VERSUS
3 RJ FINANCIAL, ET AL.,
4 LOS ANGELES, CALIFORNIA MONDAY, APRIL 23, 2012
5 DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE
6 APPEARANCES: (SEE TITLE PAGE.)
7 REPORTER: ANGELA Z. PARADELA, CSR NO. 9659
8 TIME: A.M. SESSION
9

10 (THE FOLLOWING PROCEEDINGS WERE HELD IN
11 OPEN COURT:)

12
13 THE COURT: OKAY. THANK YOU VERY MUCH. I'M GOING
14 TO ASK YOU LAWYERS TO WAIT FOR JUST A MOMENT.

15 AS YOU CAN PROBABLY TELL, FROM THE QUESTIONS
16 AND THE WAY I'VE BEEN TAKING NOTES, SO FORTH, I HAVE A CASE
17 IN MIND AND I HAVE BEEN WORKING ON IT BOTH WHILE YOU'VE BEEN
18 WITH ME AND DURING THE RECESSES LIKE WEEKENDS AND NIGHTS.
19 JUST A SECOND. I HAVE TWO MORE THINGS I HAVE TO BRING OUT.
20 I WILL DO SOME MORE WORK WITH YOU.

21 (A PAUSE IN THE PROCEEDINGS.)

22 THE COURT: OKAY. YOU PROBABLY ALREADY GOT THE
23 IMPRESSION THAT I AM A JUDGE WHO TRIES TO DOCUMENT AND SHOW
24 THE LEGAL PREMISES FOR PROCEDURAL STEPS WE TAKE, AND I INTEND
25 TO DO THAT. I JUST WANT TO TELL YOU WHAT I'M GOING TO DO
26 HERE AND I GUESS I WILL START THIS WAY.

27 I SAID I AM GOING TO BRING OUT TWO THINGS. I
28 BROUGHT OUT ONLY ONE.

1 (A PAUSE IN THE PROCEEDINGS.)

2 THE COURT: THE -- I'M GOING TO CALL YOUR ATTENTION
3 TO SOME CASES THAT HAVEN'T BEEN CITED. I'M GOING TO DEAL
4 WITH THE MERITS OF YOUR CLIENTS'S CASE. SO HERE WE GO.

5 UNDER CALIFORNIA CONSTITUTION ARTICLE VI,
6 SECTION 6 AND GOVERNMENT CODE 68070(B) AND 68603(A), THE
7 CALIFORNIA JUDICIAL COUNCIL HAS CONSTITUTIONALLY GRANTED AND
8 LEGISLATIVELY AFFIRMED POWER TO ADOPT RULES, REPORT
9 ADMINISTRATION PRACTICE AND PROCEDURE THAT ARE CONSISTENT
10 WITH STATUTES. THE CALIFORNIA RULES OF COURT HAVE THE FORCE
11 OF LAW AND BINDING AS PROCEDURAL STATUTES AS LONG AS THEY ARE
12 CONSISTENT WITH LEGISLATIVE ENACTMENTS AND CONSTITUTIONAL
13 GUARANTEES.

14 I WILL CITE YOU THREE CASES WHERE THAT POINT
15 IS MADE. THEY ARE IN RE JUAN -- THAT'S J-U-A-N -- C.,
16 (1993), 20 CALIFORNIA APPELLATE 4TH, 748, PARTICULARLY AT
17 PAGES 752 TO 753; ALICIA T. VERSUS COUNTY OF LOS ANGELES,
18 (1990), 222 CALIFORNIA APPELLATE 3D 869 AT 884, AND OATS
19 VERSUS OATS. OATS IS SPELLED O-A-T-S, (1983) 14 CALIFORNIA
20 APPELLATE 3D 416 AT 420. THIS IS HOW THE OATS VERSUS OATS
21 COURT EXPRESSED THIS VIEW.

22 RULES OF COURT HAVE THE FORCE OF POSITIVE LAW.
23 THEY ARE AS BINDING ON THIS COURT AS PROCEDURAL STATUTES
24 UNLESS THEY TRANSCEND LEGISLATIVE ENACTMENTS OR
25 CONSTITUTIONAL GUARANTEES.

26 SO THE HIERARCHY THEN WOULD BE CONSTITUTION,
27 STATUTES AND CALIFORNIA RULES OF COURT, AND THEN CASE LAW.

28 I SAY THAT BECAUSE THE CASE OF WHITTINGTON

1 VERSUS MCKINNEY -- WHITTINGTON IS SPELLED

2 W-H-I-T-I-N-G-T-O-N, VERSUS MCKINNEY, CAPITAL M, C, CAPITAL
3 K, I-N-N-E-Y, (1991), 234 CALIFORNIA APPELLATE 3D 123 --
4 CRITICIZED THE CONDUCT OF A NOW FORMER JUDGE, I BELIEVE, AT
5 THE ORANGE COUNTY SUPERIOR COURT, WHO ANNOUNCED A DECISION,
6 GAVE A STATEMENT OF DECISION ORALLY AND SAID IF YOU WANTED A
7 WRITTEN STATEMENT OF DECISION, YOU COULD MAKE REFERENCE TO
8 THE COURT TRANSCRIPT. THAT CASE, WHITTINGTON VERSUS MCKINNEY
9 WAS, AS I SAY, DECIDED IN 1991.

10 IN 2010, EFFECTIVE JANUARY 1, 2010, THE
11 CALIFORNIA RULES OF COURT WERE AMENDED WITH RESPECT TO, AMONG
12 OTHER PROVISIONS OF THE CALIFORNIA RULES OF COURT, RULE
13 3.1590 HAVING TO DO WITH ANNOUNCEMENT OF TENTATIVE DECISION
14 AND STATEMENT DECISION AND JUDGMENT.

15 THE (C) SUBSECTION OF RULE 15 -- RULE 3.1590
16 WAS AMENDED BY THE ELIMINATION OF SOME PROVISIONS AND BY
17 BEING INSERTION OF OTHER PROVISIONS. I'M GOING TO REFER TO
18 THE (C) SUBSECTION.

19 IT READS NOW, (READING:)

20 THE COURT IN ITS TENTATIVE DECISION MAY:
21 STATE THAT IT IS THE COURT'S PROPOSED
22 STATEMENT OF DECISION, SUBJECT TO A PARTY'S
23 OBJECTION UNDER SUBSECTION (G);

24 (2) INDICATE THAT THE COURT WILL PREPARE
25 A STATEMENT OF DECISION;

26 (3) ORDER A PARTY TO PREPARE A STATEMENT
27 OF DECISION; OR

28 (4) DIRECT THAT THE TENTATIVE DECISION

1 WILL BECOME THE STATEMENT OF DECISION UNLESS,
2 WITHIN 10 DAYS AFTER ANNOUNCEMENT OR SERVICE
3 OF THE TENTATIVE DECISION, A PARTY SPECIFIES
4 THOSE PRINCIPAL CONTROVERTED ISSUES AS TO
5 WHICH THE PARTY IS REQUESTING A STATEMENT OF
6 DECISION OR MAKES PROPOSALS NOT INCLUDED IN
7 THE TENTATIVE DECISION.

8 NOW, I WILL NOT USE METHOD TWO. THAT'S THE
9 COURT WILL PREPARE A STATEMENT OF DECISION. I WILL USE
10 EITHER (1), (3), OR (4) EITHER SAYING THAT THIS IS A PROPOSED
11 STATEMENT OF DECISION SUBJECT TO OBJECTIONS UNDER SUBSECTION
12 (G), OR ORDER A PARTY TO PREPARE A STATEMENT OF DECISION, OR
13 DIRECT THAT THE TENTATIVE DECISION WILL BECOME THE STATEMENT
14 OF DECISION UNLESS WITHIN TEN DAYS A PARTY SPECIFIES
15 PRINCIPAL CONTROVERTED ISSUES AS TO WHICH THE PARTY IS
16 REQUESTING A STATEMENT OF DECISION OR MAKES PROPOSALS NOT
17 INCLUDED IN THE TENTATIVE DECISION.

18 I WOULD LIKE TO HEAR FROM BOTH SIDES NOW
19 CONCERNING WHICH OF THREE ALTERNATIVES WHICH I PROPOSED THEY
20 PREFER, AND THEN I WILL MAKE THE DECISION CONCERNING THAT
21 THAT IS PROPER. LET'S START WITH THE DEFENSE. DEFENDANT?

22 MR. SABZEVAR: YOUR HONOR, I PREFER THAT THE COURT
23 ISSUES A STATEMENT OF DECISION ITSELF AND NOT LEAVE IT TO THE
24 PARTIES OR TEN DAYS.

25 THE COURT: I TOLD YOU I'M NOT GOING TO PREPARE A
26 STATEMENT OF DECISION. I'M GOING TO USE EITHER METHOD (1),
27 (3), OR (4). (1) IS THIS IS THE PROPOSED STATEMENT OF
28 DECISION SUBJECT TO OBJECTIONS UNDER (D). (3) IS ORDER A

1 PARTY TO PREPARE A STATEMENT OF DECISION; OR (4), DIRECT THAT
2 THE TENTATIVE DECISION WILL BECOME THE STATEMENT OF DECISION
3 UNLESS WITHIN TEN DAYS AFTER ANNOUNCEMENT OR SERVICE OF THE
4 TENTATIVE DECISION, THE PARTY SPECIFIES THOSE PRINCIPAL
5 CONTROVERTED ISSUES AS TO WHICH THE PARTY IS REQUESTING A
6 STATEMENT OF DECISION OR MAKES PROPOSALS NOT INCLUDED IN THE
7 TENTATIVE DECISION.

8 MR. SABZEVAR: DEFENSE PREFERENCE IS NUMBER ONE.

9 THE COURT: STATE THAT THIS IS THE COURT'S
10 STATEMENT OF DECISION SUBJECT TO A PARTY'S OBJECTION UNDER
11 (G)?

12 MR. SABZEVAR: YES, YOUR HONOR.

13 THE COURT: PLAINTIFF?

14 MR. SPIVAK: WE PREFER TO WRITE THE DECISION, YOUR
15 HONOR, ONCE THE COURT HAS MADE ITS POSITION KNOWN.

16 THE COURT: ALL RIGHT.

17 MR. SPIVAK: BY "WE" I MEAN WE BELIEVE IT SHOULD BE
18 PREVAILING PARTY.

19 THE COURT: UH-HUH. I'M GOING TO USE -- I
20 APPRECIATE -- I'M GOING TO USE METHOD (4). THIS TENTATIVE
21 DECISION WILL BECOME THE STATEMENT OF DECISION UNLESS WITHIN
22 TEN DAYS AFTER ANNOUNCEMENT, AND SO FORTH. THAT'S
23 3.1590(C)(4).

24 SO WHAT I'M GOING TO DO NOW IS ANNOUNCE A
25 TENTATIVE WHICH, AS YOU CAN SEE, IS ALSO A CONDITIONAL
26 STATEMENT OF DECISION.

27 THIS CASE CAME BEFORE ME PRESIDING IN THIS
28 DEPARTMENT 41 ON THE 10TH OF APRIL, 2012, FOR TRIAL WITHOUT

1 JURY. DAVID G. SPIVAK, STATE BAR 179684, APPEARED AS
2 ATTORNEY FOR PLAINTIFFS ALINA GHRDILYAN AND EVGENIA
3 SULTANIAN, AND F. MICHAEL SABZEVAR, STATE BAR 172312 APPEARED
4 AS ATTORNEY FOR DEFENDANT, RAMIL ABALKHAD.

5 THE CASE WAS SUBMITTED FOR DECISION TODAY, THE
6 23RD OF APRIL, 2012.

7 IN THIS CASE, TWO PLAINTIFFS CLAIM THAT
8 DEFENDANT ABALKHAD IS LIABLE TO THEM ON VARIOUS
9 EMPLOYMENT-DERIVED THEORIES INCLUDING AND ESPECIALLY FOR
10 PENALTIES AND THAT THEY CAN ENFORCE VARIOUS REMEDIES AGAINST
11 THEM UNDER THE LABOR CODE PRIVATE ATTORNEY GENERAL ACT, WHICH
12 IS AT LABOR CODE 2698, AND FOLLOWING.

13 IN OPEN COURT ON THE 10TH OF APRIL, 2012, THE
14 ATTORNEYS CONFIRMED THAT THE OPERATIVE PLEADINGS ARE THE
15 PLAINTIFFS'S FIRST AMENDED COMPLAINT, ET CETERA, FILED
16 FEBRUARY 24, 2010, AND THE DEFENDANT'S ANSWER TO THEIR FIRST
17 AMENDED COMPLAINT FILED SEPTEMBER 13, 2010. I WILL MAKE A
18 COUPLE OF QUICK COMMENTS ABOUT THOSE TWO DOCUMENTS NOW.

19 THE FULL NAME OF THE PLAINTIFFS'S OPERATIVE
20 PLEADING IS FIRST AMENDED COMPLAINT FOR -- AND THEN THERE ARE
21 NINE THEORIES LISTED: FAILURE TO COMPENSATE EMPLOYEES FOR
22 ALL HOURS WORKED; NUMBER TWO IS FAILURE TO PROVIDE BOTH REST
23 AND MEAL PERIODS; NUMBER THREE IS FORFEITURE OF VESTED
24 VACATION BENEFITS; NUMBER FOUR IS FAILURE TO PROVIDE ACCURATE
25 WRITTEN WAGE STATEMENTS; NUMBER FIVE IS FAILURE TO TIMELY PAY
26 ALL FINAL WAGES; NUMBER SIX IS UNAUTHORIZED DEDUCTIONS;
27 NUMBER SEVEN IS FAILURE TO INDEMNIFY; NUMBER EIGHT IS UNFAIR
28 COMPETITION; AND NUMBER NINE IS CIVIL PENALTIES.

1 THE DEFENDANT'S ANSWER TO THE FIRST AMENDED
2 COMPLAINT WAS ON A JUDICIAL COUNCIL FORM PLEADING.

3 INSOFAR AS IT'S PERTINENT TO THIS PORTION OF
4 MY ANALYSIS, LABOR CODE 2699 READS, (READING:)

5 SUBSECTION (A), NOTWITHSTANDING ANY OTHER
6 PROVISION OF LAW, ANY PROVISION OF THIS CODE
7 THAT PROVIDES FOR A CIVIL PENALTY TO BE
8 ASSESSED AND COLLECTED BY THE LABOR AND
9 WORKFORCE DEVELOPMENT AGENCY OR ANY OF ITS
10 DEPARTMENTS, DIVISIONS, COMMISSIONS, BOARDS,
11 AGENCIES, OR EMPLOYEES FOR A VIOLATION OF THIS
12 CODE MAY, AS AN ALTERNATIVE, BE RECOVERED
13 THROUGH A CIVIL ACTION BROUGHT BY AN AGGRIEVED
14 EMPLOYEE ON BEHALF OF HIMSELF OR HERSELF AND
15 OTHER CURRENT OR FORMER EMPLOYEES PURSUANT TO
16 THE PROCEDURES SPECIFIED IN SECTION 2699.3.

17 THE PLAINTIFFS HAD ORIGINALLY DENOMINATED THIS
18 CASE AS A CLASS ACTION AND THEY CONTINUED THAT DESIGNATION
19 THROUGH VARIOUS OTHER FILINGS, BUT THEY HAVE NEVER OBTAINED
20 AN ORDER CERTIFYING THE CLASS. THEY CLAIM, THOUGH, THAT THEY
21 ARE ENTITLED TO PROCEED ON BEHALF OF OTHERS PURSUANT TO THE
22 CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL ACT AS TO
23 DEFENDANT ABALKHAD.

24 THE PLAINTIFFS HAD TRIED THIS CASE BEFORE ME
25 SOLELY AS TO CAUSE OF ACTION NINE. THEY CONCEDE THAT THIS
26 CASE IS STAYED IN THIS COURT IN PART BECAUSE OF THE FACT THAT
27 DEFENDANT RJ FINANCIAL, INC., ORIGINALLY THE ONLY NAMED
28 DEFENDANT, BUT BY VIRTUE OF THE FIRST AMENDED PLEADING, A

1 CODEFENDANT, THAT CORPORATION IS A DEBTOR IN CHAPTER 11
2 PROCEEDING, WHICH IS STILL PENDING.

3 PURSUANT TO 11 U.S.C. 362, THIS CASE WOULD BE
4 STAYED AS TO THAT PARTY. BUT MR. ABALKHAD HAS NOT BEEN SHOWN
5 TO BE A DEBTOR IN A BANKRUPTCY PROCEEDING AND DURING CLOSING
6 ARGUMENT OF THE 17TH OF APRIL, 2012, MR. SPIVAK CONFIRMED HIS
7 CLIENTS HAVE CLAIMS PENDING IN THE BANKRUPTCY CASE. THAT
8 WILL MEAN THAT THE CASE CAN PROCEED AND HAS PROCEEDED ON THE
9 BASIS PLEADED AGAINST MR. ABALKHAD AS AN INDIVIDUAL.

10 ALTHOUGH BECAUSE OF 11 U.S.C. 362, IT IS STAYED AS TO THE
11 CORPORATION.

12 THE PERSONS WHO GAVE TESTIMONY AT THE TRIAL
13 WERE JOSEPH HARSANY, H-A-R-S-A-N-Y, AN EMPLOYEE OF PAYROLL
14 CHECK WRITING SERVICE USED BY THE DEFENDANTS; BREK OYAMA --
15 BREK IS SPELLED B-R-E-K; AND OYAMA IS O-Y-A-M-A, MR. SPIVAK'S
16 PARALEGAL; RAMIL ABALKHAD, ONE OF THE DEFENDANTS, THE
17 PRESIDENT AND CHIEF EXECUTIVE OFFICER OF DEFENDANT RJ
18 FINANCIAL AND, INDEED, THAT -- APPARENTLY THAT COMPANY'S ONLY
19 OFFICER AND ONLY DIRECTOR. THE FOURTH WITNESS WAS ALINA
20 GHRDILYAN, ONE OF THE PLAINTIFFS, AND THE FIFTH WAS EVGENIA
21 SULTANIAN, ONE OF THE PLAINTIFFS, THE OTHER PLAINTIFF.

22 I'M GOING TO REFER TO THE LABOR CODE PRIVATE
23 ATTORNEY GENERAL ACT IN THE WAY THE ATTORNEYS HAVE -- IT
24 SEEMS TO ME TO BE SERVICEABLE -- AND I'M GOING TO REFER --
25 I'M GOING TO USE THE ACRONYM PAGA, P-A-G-A.

26 PAGA ACTIONS DO NOT HAVE BEEN MAINTAINED AS
27 CLASS ACTIONS. THEY CAN BE, BUT THEY ARE NOT REQUIRED TO BE.
28 THE AUTHORITY ON THAT IS ARIAS VERSUS SUPERIOR COURT, (2009),

1 46 CALIFORNIA 4TH, 969, 981 TO 982.

2 WE WILL GO INTO RECESS NOW. COME BACK AT
3 1:30, PLEASE.

4 (AT 11:58 A.M., A LUNCH RECESS WAS TAKEN.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

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

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

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

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

THE KINDS OF PENALTIES THAT PAGA PLAINTIFFS
CAN SEEK TO RECOVER, ASSUMING THAT THE FACTS SUPPORT IT, ARE
THOSE FOR FAILURE TO PAY STATUTORILY PRESCRIBED WAGES --
THAT'S LABOR CODE 210 -- UNLAWFULLY WITHHELD WAGES -- THAT'S
LABOR CODE 225.5 -- OR FOR VIOLATING, FOR EXAMPLE, AN
INDUSTRIAL WELFARE COMMISSION ORDER -- THAT'S LABOR CODE 558.
AN AGGRIEVED EMPLOYEE -- THAT WOULD MEAN ANYONE EMPLOYED BY
THE ALLEGED VIOLATOR AND AGAINST WHOM ONE OR MORE VIOLATIONS
WAS COMMITTED -- AND I PICKED UP THAT DEFINITION FROM LABOR
CODE 2699(C) AND FROM THE COMMENTS IN AMALGAMATED TRANSIT
UNION VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH 993 AT
1004 TO 1005 -- AN AGGRIEVED EMPLOYEE CAN SUE TO RECOVER
CIVIL PENALTIES FOR VIOLATIONS OF THE LABOR CODE ON BEHALF OF

1 HIMSELF, OR HERSELF, AND OTHER CURRENT OR FORMER EMPLOYEES
2 AGAINST WHOM ONE OR MORE OF THE ALLEGED VIOLATIONS WAS
3 COMMITTED. THAT'S LABOR CODE 2699(G)(1).

4 THE ATTORNEYS HAVE FROM TIME TO TIME REFERRED
5 TO WHAT THEY HAVE CALLED THE BRINKER CASE.

6 NOW, WHAT THEY ARE REFERRING TO IS THE CASE
7 ENTITLED BRINKER RESTAURANT CORPORATION VERSUS SUPERIOR
8 COURT, REAL PARTY IN INTEREST, HOHNBAUM H-O-H-N-B-A-U-M. THE
9 VERSION OF THAT THAT I HAVE USED IN MY ANALYSIS AND
10 PREPARATION IS THE VERSION THAT WAS PRINTED AT 2012 DAILY
11 JOURNAL, DAILY APPELLATE REPORT, PAGE 4615, AND FOLLOWING.

12 I HAVE BEEN REQUIRED TO EVALUATE THE TESTIMONY
13 OF THE PARTY WITNESSES IN THIS CASE, THAT IS, MS. GHRDILYAN,
14 MS. SULTANIAN, AND MR. ABALKHAD WITH SOME CAUTION AND
15 RESERVATIONS. THOSE THREE PERSONS IN THEIR CAPACITIES AS
16 WITNESSES ARGUED AND WRANGLERED WITH THE QUESTIONERS DURING
17 TRIAL, AND SOME OF THAT WAS PROVOKED BY THE QUESTIONERS; SOME
18 OF IT WAS NOT. THAT BECOMES AN IMPORTANT FACTOR IN
19 EVALUATING RELATIVE CREDIBILITIES UNDER EVIDENCE CODE 780(A).
20 THOSE THREE PARTIES ALL HAVE AN INTEREST, BIAS, AND OTHER
21 MOTIVE FOR SLANTING THEIR TESTIMONY, OBVIOUSLY, AND THAT
22 BECOMES SIGNIFICANT UNDER EVIDENCE CODE 780(F) AND EVIDENCE
23 CODE 780(J).

24 MR. ABALKHAD HAS SUFFERED FELONY CONVICTIONS
25 ON HIS PLEA OF NOLO CONTENDERE AS TO PERJURY AND TAX EVASION
26 AND DID NOT OWN UP TO THAT COMPLETELY IN DISCOVERY. THAT'S
27 EVIDENCE -- THAT BECOMES PERTINENT UNDER EVIDENCE CODE 780(E)
28 AND EVIDENCE CODE 780(H), AND EVIDENCE CODE 780(I) AND IS

1 COMMENTED ON IN THE CASE OF RUSHEEN, R-U-S-H-E-E-N, VERSUS
2 DREWS, D-R-E-W-S, (2002) 99 CALIFORNIA APPELLATE 4TH 279 AT
3 PAGES 283 TO 284.

4 ASPECTS OF THE TESTIMONY OF THESE WITNESSES,
5 THESE THREE PEOPLE AS WITNESSES, WERE EXAGGERATED AND
6 OVERSTATED. THAT BECOMES PERTINENT UNDER EVIDENCE CODE
7 780(B).

8 FURTHERMORE, EVIDENCE CODE SECTION 412
9 PROVIDES THAT IF WEAKER AND LESS SATISFACTORY EVIDENCE IS
10 OFFERED WHEN IT WAS IN -- WHEN IT WAS WITHIN THE POWER OF THE
11 PARTY TO PRODUCE STRONGER AND MORE SATISFACTORY EVIDENCE, THE
12 EVIDENCE ACTUALLY OFFERED SHOULD BE VIEWED WITH DISTRUST.
13 THIS, OF COURSE, IS A PERMISSIBLE INFERENCE AND NOT A
14 MANDATORY ONE, BUT THIS COURT HAS, AS THE LAW INDICATES,
15 TAKEN THIS INTO CONSIDERATION.

16 BUT ALL THAT HAVING BEEN SAID, THE COURT DOES
17 NOT ACCEPT MR. SABZEVAR'S INVITATION TO REJECT THE ENTIRETY
18 OF THE PLAINTIFFS'S TESTIMONY. INSTEAD, THIS COURT HAS HAD
19 TO ACCEPT THE PART OF THE TESTIMONY OF THE WITNESSES WHICH
20 THIS COURT FOUND -- HAS FOUND TO BELIEVE TRUE AND -- AND WILL
21 REJECT THE REST. THIS IS PRECISELY WHAT THE COURT -- PARDON
22 ME -- IS AUTHORIZED TO DO OR ANY FINDER OF FACT WOULD BE
23 AUTHORIZED TO DO. ONE MODEL FOR THAT IS CACI INSTRUCTION
24 107, FOURTH PARAGRAPH.

25 THE DATES INVOLVED IN THIS CASE -- AND THE
26 DATES BECOME SIGNIFICANT -- ARE AS FOLLOWS. MS. SULTANIAN
27 WAS HIRED ON -- IN NOVEMBER, 2007, AND WAS FIRED ON NOVEMBER
28 19, 2009. MS. GHRDILYAN WAS HIRED IN AUGUST, 2008, AND WAS

1 FIRED ON DECEMBER 3, 2009. ONE OF THE QUESTIONS WHICH I HAVE
2 BEEN CALLED UPON TO ANSWER IS WHETHER MR. ABALKHAD AS AN
3 INDIVIDUAL WAS AN EMPLOYER OF PLAINTIFFS AND -- UNDER WAGE
4 ORDER 7. I FIND THAT HE WAS NOT. BUT I FIND THAT THE
5 THEORIES OF LIABILITY UNDER -- I SHOULD BACK OFF. BUT I FIND
6 THAT THE OTHER BASES FOR ASSERTING LIABILITY ON THE PART OF
7 MR. ABALKHAD DO HAVE MERIT, AND LIABILITY DOES ATTACH TO HIM
8 UNDER THOSE THEORIES.

9 THE THEORIES I'M REFERRING TO ARE LABOR CODE
10 558 TO WHICH LABOR CODE 510 AND 512 ARE APPENDED OR INCLUDED
11 SUBSTANTIVE PROVISIONS AND LABOR CODE 1197.1 TO WHICH THE
12 SUBSTANTIVE PROVISIONS OF LABOR CODE 1198 AND THE WAGE ORDER
13 ARE ASSOCIATED THEORIES OF LIABILITY.

14 IN OTHER WORDS, I AM FINDING THAT UNDER 558
15 LABOR CODE AND 1197.1 LABOR CODE FOR THE SUBSTANTIVE REASONS
16 REFERRED TO IN THE OTHER TWO SOURCES AS TO EACH OF THOSE
17 SECTIONS, THAT IS 510 AND 512 LABOR CODE, AND 1193 AND WAGE
18 ORDER, LIABILITY CAN ATTACH TO MR. ABALKHAD AND UNDER THE
19 CIRCUMSTANCES OF THIS CASE, WILL ATTACH.

20 I'M GOING TO MAKE A FINDING ON THAT, AS YOU
21 WILL SEE, IN FAVOR OF -- PARDON ME -- OF THE PLAINTIFFS'S
22 POSITION.

23 NOW, I SAY IN FAVOR OF THE PLAINTIFFS'S
24 POSITION BECAUSE THAT MEANS NOT JUST IN FAVOR OF THE
25 PLAINTIFFS BUT SINCE WE HAVE A PAGA ACTION, I AM REFERRING TO
26 THE PLAINTIFFS'S POSITION.

27 NOW -- PARDON ME. I WILL SAY THIS.

28 AS YOU CAN TELL, I AM AT SOME PAINS TO GO

1 THROUGH THE LEGAL REASONING AND STEPS PREPARATORY TO REACHING
2 A DECISION IN THIS CASE WITH SOME CARE BECAUSE IT MAY VERY
3 WELL BE THAT THIS CASE WILL REACH ITS WAY INTO THE APPELLATE
4 COURTS AND THAT IT IS ALSO POSSIBLE THAT THE APPELLATE COURTS
5 MAY DECIDE THIS CASE IN A PUBLISHED OPINION, AND I WILL SAY
6 THAT THE DETERMINATION I HAVE MADE ABOUT ABALKHAD AS AN
7 EMPLOYER -- I SAID THAT HE'S NOT -- OR ABALKHAD AS A
8 POTENTIALLY LIABLE PARTY UNDER LIABILITY-ENHANCING STATUTES
9 OTHER THAN LABOR CODE 558 AND LABOR CODE 1197.1, THAT IS, THE
10 ABALKHAD-FAVORING DETERMINATIONS I HAVE MADE ON THOSE POINTS,
11 ARE NOT BEYOND REASONABLE ARGUMENT.

12 MY DECISION IS, AS I HAVE EXPRESSED IT, AND I
13 BELIEVE THAT I AM CORRECT -- BUT I -- BUT I DO RECOGNIZE THAT
14 THERE ARE ARGUMENTS THAT CAN BE MADE -- AND THEY HAVE BEEN
15 MADE HERE IN THIS COURTROOM -- ON THOSE POINTS.

16 I HAVE COMPARED THE EMPLOYEE HANDBOOKS,
17 EXHIBIT 3 AND EXHIBIT D. IT APPEARS TO ME THAT EXHIBIT D
18 FROM THE EVIDENCE IN THIS CASE WAS NOT SUPPLIED BY ABALKHAD
19 DURING THE DISCOVERY PHASE OF THIS CASE. THE PARTICULAR
20 PROVISIONS THAT I AM DEALING WITH ARE THOSE HAVING TO DO WITH
21 OVERTIME AND LUNCH AND EXHIBIT 3 IS COMMENTED ON BY THE
22 PLAINTIFFS AS BEING DEFICIENT BECAUSE THEY SAY THAT A LUNCH
23 PERIOD MUST BE PROVIDED AFTER FIVE HOURS OF WORK, NOT SIX
24 HOURS OF WORK, AND THE PLAINTIFFS'S POSITION IS THAT THAT WAS
25 THE ONLY PERTINENT EMPLOYEE HANDBOOK.

26 I THINK THE PLAINTIFFS ARE RIGHT AS TO BOTH
27 THOSE CONTENTIONS. EXHIBIT 3 BEARS THE DATE OF JANUARY,
28 2003. PLAINTIFFS ADMIT THAT THIS IS THE CORRECT DATE. THAT

1 IS, IT SEEMS TO ME, THE OPERATIVE EMPLOYEE HANDBOOK. EXHIBIT
2 D WHICH HAS DIFFERENT PROVISIONS IN IT CONCERNING THE SAME
3 TOPICS WAS, IN MY VIEW, FIRST NOT PRODUCED DURING DISCOVERY;
4 SECOND, A WRITING THAT CAME INTO EXISTENCE IN AUGUST, 2010,
5 SUBSTANTIAL PERIOD OF TIME AFTER THE PLAINTIFFS HAD ALREADY
6 HAD THEIR EMPLOYMENT TERMINATED AND INDEED AUGUST, 2010, IS
7 EVEN AFTER THE PRESENT SUIT WAS FILED. THIS CAN BE SEEN FROM
8 EXHIBIT D PAGE 17, SECOND FULL PARAGRAPH.

9 AS I HAVE SAID, THIS SUIT WAS FILED ON THE
10 28TH OF JANUARY, 2010.

11 ONE OF THE COMPLICATING FACTORS IN THIS
12 CASE -- AND THE LAWYERS HAVE RECOGNIZED IT, AND IT'S OBVIOUS
13 TO ANYONE WITH ANY LEGAL EXPERIENCE -- IS THAT ALTHOUGH THE
14 LAWSUIT ORIGINALLY NAMED RJ FINANCIAL, INC., THAT DEFENDANT
15 IS A DEBTOR IN A CHAPTER 11 BANKRUPTCY. AS I HAVE SAID, THE
16 CASE IS OBVIOUSLY STAYED AS TO THAT PARTY, BUT THE PLAINTIFFS
17 HAVE HAD TO REORGANIZE THEIR CASE TO PRESS IT AGAINST
18 MR. ABALKHAD WHO IS NOT IN BANKRUPTCY AND IT SEEMS TO ME THEY
19 HAVE DONE SO SUCCESSFULLY.

20 THERE IS NO SERIOUS QUESTION BETWEEN THE SIDES
21 CONCERNING THE FOLLOWING PROPOSITIONS OF LAW. AN EMPLOYEE IS
22 ENTITLED TO OVERTIME COMPENSATION FOR WORK IN EXCESS OF EIGHT
23 HOURS IN ONE WORKDAY, FOR WORKING IN EXCESS OF 40 HOURS IN
24 ONE WORKWEEK, AND FOR WORK ON THE SEVENTH DAY IN ONE WORK
25 WEEK. THE OVERTIME COMPENSATION DIFFERS, BUT THOSE ARE
26 OVERTIME ITEMS.

27 IT IS ALSO TRUE -- BY THE WAY, THIS IS
28 PROVIDED FOR UNDER LABOR CODE 510(A). IT'S ALSO TRUE THAT

1 EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EMPLOYEES WHO ARE
2 SPECIFICALLY EXEMPTED BY THE CALIFORNIA INDUSTRIAL WELFARE
3 AND COMMISSION ARE EXEMPT FROM THE HOURS WORKED AND DAYS
4 WORKED PER WEEK LIMITATIONS AS PROVIDED FOR IN LABOR CODE 515
5 BUT -- PARDON ME -- THE PLAINTIFFS IN THIS CASE DO NOT FALL
6 INTO THAT EXEMPTED CATEGORY AND INDEED THE DEFENDANT DOES NOT
7 CLAIM THAT THEY DO.

8 FOR THE REASONS THAT I HAVE MENTIONED EARLIER
9 ABOUT THE RESERVATIONS WITH WHICH THE TESTIMONY OF THE
10 WITNESSES HAVE TO BE INTERPRETED WITH, I DO NOT ATTEMPT TO
11 SUMMARIZE ALL THE TESTIMONY OF ALL THE WITNESSES.

12 IT IS ALSO TRUE THAT SUCCESSFUL EMPLOYEE
13 PLAINTIFFS WHO ARE AWARDED UNPAID OVERTIME ARE ENTITLED TO
14 INTEREST ACCRUING FROM THE DATE ON WHICH THE RIGHT TO RECOVER
15 THEIR OVERTIME VESTS. THIS WOULD BE ON THE MODEL INDICATED
16 IN CIVIL CODE 3287(A) COMPUTED TO THE DATE OF ENTRY OF
17 JUDGMENT. THIS IS LABOR CODE 1194(A), AND IT'S ALSO
18 DISCUSSED IN ESPINOSA VERSUS CLASSIC PIZZA, WHICH IS A CASE
19 THAT APPEARS IN 114 CALIFORNIA APPELLATE 4TH. THE PARTICULAR
20 PASSAGE THAT I'M MAKING REFERENCE TO IS AT PAGE 975.

21 THE TERM "WILLFUL" UNDER THE LABOR CODE --
22 THIS APPEARS IN LABOR CODE 203 -- IT MEANS ONLY THAT AN
23 EMPLOYER INTENTIONALLY FAILED OR REFUSED TO PERFORM AN ACT
24 THAT WAS REQUIRED TO BE DONE. THAT POINT IS MADE IN BARNHILL
25 VERSUS ROBERT SAUNDERS & COMPANY, (1981) 125 CALIFORNIA
26 APPELLATE 3D 1 AT PAGES 7 AND 8.

27 OBVIOUSLY, IN THE CURRENT CASE, UNLIKE THE
28 SITUATION IN BARNHILL, THERE'S NO EVIDENCE OF OFFSET. I'M

1 CITING BARNHILL JUST FOR THE PURPOSE OF THE DEFINITION OF THE
2 WORD "WILLFUL."

3 I WILL MAKE A COUPLE OF OTHER POINTS.

4 I RECOGNIZE THE INTENSITY WITH WHICH THE
5 DEFENSE HAS MAINTAINED THAT THIS IS A CASE DRIVEN BY
6 ATTORNEYS AND ATTORNEY'S FEES ON THE PLAINTIFFS'S SIDE. FOR
7 THE REASONS THAT I HAVE MENTIONED PREVIOUSLY, THAT IS, THAT
8 ONE OF THE PURPOSES OF PAGA IS PRECISELY TO INCENTIVIZE
9 ATTORNEYS TO -- TO FILE AND TO PROSECUTE SUCH CASES -- THAT
10 ARGUMENT EXISTS AND IT DOES HAVE A CERTAIN AMOUNT OF
11 OCCURRENCE, BUT I DO NOT REGARD IT AS BEING A STRONG
12 ARGUMENT. IT IS THE PURPOSE OF THE LAW PRECISELY TO PROVIDE
13 AN INCENTIVE FOR ATTORNEYS WHO MIGHT OTHERWISE BE UNABLE TO
14 HANDLE CASES OF THIS TYPE TO BE ABLE TO HANDLE CASES OF THIS
15 TYPE.

16 I WILL SAY THAT APPLICATIONS FOR ATTORNEYS'S
17 FEES, IF ANYBODY CLAIMS ENTITLEMENT TO ANY, CAN BE MADE BY
18 POST-JUDGMENT MOTION FOR ALLOWANCE OF ATTORNEY'S FEES AS
19 PARTS OF COSTS UNDER CIVIL CODE 1717(A), IF THAT'S WHAT
20 APPLIES, OR UNDER THE CORRESPONDING STATUTE IN THE LABOR
21 CODE. AND THE METHOD OF MAKING A POST-JUDGMENT MOTION FOR
22 ALLOWANCE IS REFERRED TO IN SUCH CASES AS ALLSTATE INSURANCE
23 VERSUS LEW, (1996) 46 CALIFORNIA APPELLATE 4TH 174 -- 1794 AT
24 1797, AND BANKES VERSUS LUCAS -- BANKES IS SPELLED
25 B-A-N-K-E-S, VERSUS LUCAS -- (1992) 9 CALIFORNIA --
26 9 CALIFORNIA APPELLATE 4TH, 365 AT 370.

27 I CITE THOSE TWO CASES NOT FOR THE PROPOSITION
28 THAT THEY APPLY IN LABOR CASES OR THAT THEY ARE DISPOSITIVE

1 ON THE ISSUE OF THE AMOUNT OF LEGAL FEES BUT JUST TO SHOW
2 THAT THAT IS AN APPROPRIATE TIME TO MAKE APPLICATIONS FOR
3 FEES.

4 IN THE PREMISES OF THIS CASE, THOUGH, FOR
5 REASONS THAT I WILL EXPLAIN IN JUST A SECOND, THE APPLICATION
6 FOR ATTORNEY'S FEES, IF THERE IS GOING TO BE ONE ON THE PART
7 OF THE PLAINTIFFS'S ATTORNEY, SHOULD BE, IT SEEMS TO ME, MADE
8 AFTER DISTRIBUTION OF ALL THE FUNDS THAT WILL BE DISTRIBUTED
9 UNDER MY AWARD WHICH I'M GOING TO MAKE UNDER PAGA SO THAT WE
10 DON'T HAVE THE SITUATION WHERE THE ATTORNEY IS PAID,
11 PLAINTIFFS'S ATTORNEY IS PAID FIRST OR SEEKS PAYMENT FIRST
12 WITHOUT ALSO DOING ALL THE, IT SEEMS TO ME, RATHER LABORIOUS
13 WORK THAT'S GOING TO BE REQUIRED UNDER PAGA, AND IT'S 25
14 PERCENT, 75 PERCENT SHARING ARRANGEMENT WITH THE PLAINTIFFS
15 TO GET 25 PERCENT AND WITH THE STATE OF CALIFORNIA TO GET THE
16 75 PERCENT.

17 SO I'M GOING TO TREAT THAT ASPECT OF THIS CASE
18 AS CALLING FOR ATTORNEY FEE MOTIONS, IF ANY ARE TO BE MADE,
19 AT A TIME AFTER THAT STEP OF CONCURSUS OF CLAIMS AND
20 DISTRIBUTION OF FUNDS HAS EITHER BEEN COMPLETELY FINISHED OR
21 HAS BEEN FINISHED WITH THE EXCEPTION OF A FEW SMALL
22 MINISTERIAL ACTS.

23 PARDON ME.

24 WITH RESPECT TO THE -- TO THE REMEDIES, IT
25 SEEMS TO ME THAT THE EVIDENCE STRONGLY SUPPORTS THE
26 PLAINTIFFS'S ARGUMENTS AS TO WHAT I WILL CALL THE 558-510-512
27 THEORY AND THE 1197.1-1198-WORK ORDER THEORY.

28 I THINK THAT THE EVIDENCE ESTABLISHES

1 VIOLATIONS OF THOSE SUBSTANTIVE PROVISIONS AND THAT THE
2 EVIDENCE ESTABLISHES A RIGHT TO RECOVER ON BEHALF OF THE
3 PAGA-AGGRIEVED EMPLOYEES AND ON BEHALF OF THE PLAINTIFFS BUT
4 IN AMOUNTS THAT ARE DIFFERENT FROM THOSE -- THE THEORIES ARE
5 THOSE ADVOCATED BY MR. SPIVAK AND HIS CLIENTS. THE AMOUNTS
6 ARE AMOUNTS THAT I AM GOING TO ALTER, THOUGH, AS WILL BE
7 CLEAR.

8 WITH RESPECT TO THE GHRDILYAN 558-510-512
9 LABOR CODE RECOVERY, I AM GOING TO AWARD \$7,654.60 -- THAT'S
10 EXACTLY AS CALCULATED BY MR. SPIVAK AND THOSE ARE -- THAT'S
11 IN FAVOR OF MS. GHRDILYAN AND AGAINST MR. ABALKHAD.

12 WITH RESPECT TO THE 1197.1 THEORY, WITH 1198
13 AND WORK ORDER BEING THE SUBSTANTIVE BASES, I AGREE WITH
14 MR. SPIVAK THAT MS. GHRDILYAN'S RECOVERY SHOULD BE \$14,218
15 AND THAT COMES OUT TO A TOTAL OF 21,872.60 FOR GHRDILYAN.

16 WITH RESPECT TO SULTANIAN, MY DETERMINATION IS
17 THAT REGARDING THE LABOR CODE 558-510-512 THEORY,
18 MS. SULTANIAN IS ENTITLED TO RECOVERY AGAINST MR. ABALKHAD OF
19 \$5,264.19, AND WITH RESPECT TO HER THEORY UNDER 1197.1 LABOR
20 CODE, MS. SULTANIAN IS ENTITLED TO RECOVER AGAINST
21 MR. ABALKHAD \$13,936.50. TOTAL IS \$19,200.69, AND THAT'S THE
22 AMOUNT THAT SULTANIAN IS ENTITLED TO RECOVER ON HER ACCOUNT
23 AGAINST MR. ABALKHAD.

24 THIS NOW BRINGS US TO THE AWARD IN FAVOR OF
25 THE SO-CALLED AGGRIEVED EMPLOYEES.

26 MY DETERMINATION IS THAT THE AGGRIEVED
27 EMPLOYEES'S CLAIMS ARE VALID AND MERITORIOUS CLAIMS; THAT
28 THEY CAN BE AND HAVE BEEN VALIDLY ASSERTED BY, PROSECUTED BY

1 THE TWO PLAINTIFFS IN OUR CASE.

2 I AM GOING, HOWEVER, NOT TO ACCEPT THE DOLLAR
3 FIGURES IN THE ULTIMATE SENSE THAT MR. SPIVAK AND HIS CLIENTS
4 HAVE ADVOCATED. IN DOING THIS, I AM GOING TO SPECIFICALLY
5 EXERCISE MY POWERS, WHICH IT SEEMS TO ME ARE IN THE NATURE OF
6 JUDICIAL DISCRETION, TO REDUCE THE AMOUNT OF RECOVERY FROM
7 THE AMOUNTS ADVOCATED BY MR. SPIVAK AND HIS CLIENTS.

8 WITH RESPECT TO THE LABOR CODE 558, 510, AND
9 512 THEORIES, AS TO THE AGGRIEVED EMPLOYEES, MY DETERMINATION
10 IS THAT THE AMOUNT WHICH MR. ABALKHAD MUST PAY IS NOT THE
11 \$2,164,278 AMOUNT THAT MR. SPIVAK ARGUED FOR BUT RATHER
12 \$125,000.

13 WITH RESPECT TO THE 1197.1-1198-WAGE-ORDER
14 CLAIM, MY DETERMINATION IS THAT THE AMOUNT THAT MR. ABALKHAD
15 WILL BE REQUIRED TO PAY IS NOT \$3,269,490, WHICH WAS THE
16 AMOUNT ADVOCATED BY MR. SPIVAK ON BEHALF OF HIS CLIENTS BUT
17 RATHER \$200,000.

18 NOW, THAT COMES OUT TO A TOTAL THEN OF
19 \$325,000.

20 NOW, IN DOING THIS, I HAVE EXERCISED MY
21 DISCRETION TAKING INTO CONSIDERATION THE FOLLOWING POINTS. I
22 AGREE WITH MR. SPIVAK'S CHARACTERIZATION OF MR. ABALKHAD AS A
23 PERSON WHO WAS INADEQUATELY OBSERVANT OF CALIFORNIA LAW.
24 MR. SPIVAK REFERS TO HIM AS A "SCOFFLAW." THAT'S A
25 JOURNALISTIC RATHER THAN A -- A LEGAL TERM. BUT I THINK HE
26 DID HAVE THE INTENTION SIMPLY OF TRYING TO RUN THINGS THROUGH
27 AND GET OFF AS CHEAPLY AS HE COULD WHILE HE WAS RUNNING HIS
28 BUSINESSES.

1 BUT I ALSO FIND THAT ONE OF THE PROBLEMS IN
2 THE OPERATION OF HIS BUSINESS WAS THAT HE GOT IN WAY OVER HIS
3 HEAD. HE SIMPLY EXPANDED BEYOND HIS OR HIS CORPORATION'S
4 CAPACITY PROPERLY TO RUN THESE BUSINESSES. HE RAN THEM AS
5 THOUGH HE WERE RUNNING A KIND OF SMALL OPERATIONS OUT OF HIS
6 HIP POCKET, AND I RECOGNIZE THAT THAT IS NOT A PRAISEWORTHY
7 BEHAVIOR, BUT IT SEEMS TO ME THAT IT IS NOT BEHAVIOR OF A
8 HIGHLY BLAMEWORTHY SENSE AND THAT IT IS BEHAVIOR WHICH MERITS
9 A REDUCTION OR SOFTENING OF THE PENALTIES.

10 NOW, I WILL ALSO SAY THE FOLLOWING. IF ON
11 APPEAL, THE APPELLATE COURT DETERMINES THAT I AM MISTAKEN
12 CONCERNING THE POTENTIAL OTHER THEORIES OF LIABILITY ASSERTED
13 BY MR. SPIVAK AND HIS CLIENTS AGAINST MR. ABALKHAD, I WILL
14 TELL YOU WHAT I WOULD HAVE AWARDED ON THOSE THEORIES SO THAT
15 IT MAY BE THAT THE APPELLATE COURT CAN SIMPLY TAKE WHAT I
16 HAVE SAID HERE AND RATHER THAN MAKING A DISPOSITION WHICH
17 REMANDS THE CASE FOR FURTHER CALCULATION OF DAMAGES, THE
18 APPELLATE COURT CAN SIMPLY INSERT THE MONETARY REMEDY THAT I
19 WOULD HAVE INSERTED MYSELF HAD I NOT BEEN PERSUADED THAT
20 MR. ABALKHAD WAS NOT LIABLE EXCEPT UNDER THE THEORIES THAT I
21 HAVE MADE REFERENCE TO.

22 HAD THAT BEEN DONE, I WOULD HAVE AWARDED AN
23 ADDITIONAL \$200,000 AS TO THE AGGRIEVED EMPLOYEES.

24 NOW, I WILL SAY THAT THESE AMOUNTS ARE, I
25 RECOGNIZE, EXTREMELY LENIENT AND PERMISSIVE TO MR. ABALKHAD.
26 IN OTHER WORDS, THIS IS NOT A CASE WHERE THE COURT HAS TRIED
27 TO SOCK IT TO HIM. IT IS, RATHER, A CASE IN WHICH I HAVE
28 TREATED IT AS A SERIES OF OFFENSES BUT ONE AS TO WHICH

1 MR. ABALKHAD SHOULD BE GIVEN AT LEAST SOME LENIENCY IN THE
2 FASHIONING OF A REMEDY. I THINK THAT'S IT. LET ME ASK THE
3 LAWYERS.

4 FIRST OF ALL, PLAINTIFFS'S LAWYER. ARE THERE
5 OTHER MATTERS AS TO WHICH YOUR CLIENTS CONTEND I SHOULD MAKE
6 A STATEMENT OF SOME KIND OR A FINDING OF SOME KIND?

7 MR. SPIVAK: WAS THERE SOME FINDING AS TO THE
8 ADDITIONAL \$200,000 WITH RESPECT TO THE INDIVIDUAL
9 PLAINTIFFS, YOUR HONOR?

10 YOU SPOKE TO THE OTHER CLAIMS WHICH PERHAPS
11 WOULD AFFECT THE APPELLATE COURT SHOULD IT SEND BACK FOR
12 CALCULATION.

13 THE COURT: YEAH.

14 MR. SPIVAK: I KNOW YOU GAVE AN AGGRIEVED EMPLOYEE
15 NUMBER BUT NOT FOR THE TWO PLAINTIFFS.

16 THE COURT: SHOW ME -- JUST A SECOND. COULD YOU,
17 PLEASE, TURN BACK TO -- OH, I GUESS I OUGHT TO SAY THAT. LET
18 ME DO THAT NOW.

19 THE PLAINTIFFS CONTEND THAT THERE WERE THESE
20 WRONGS AS TO BOTH THEMSELVES AND AS TO THE AGGRIEVED
21 EMPLOYEES, AND I WILL JUST REFER TO THEM IN SHORT, COMPRESSED
22 TERMS. AND ESSENTIALLY IT BOILS DOWN TO I THINK NINE
23 THEORIES AND I WILL ENUMERATE THEM NOW: OVERTIME, REST AND
24 MEAL PERIODS, WAGE STATEMENT, IN OTHER WORDS, LABOR CODE 226,
25 UNPAID TRAVEL EXPENSES AND MILEAGE -- THAT'S FOUR --
26 OFF-THE-CLOCK WORK, UNTIMELY PAYMENT OF WAGES, VACATION PAY
27 AT TERMINATION, AND FAILURE FAIRLY TO ADVISE THE EMPLOYEES OF
28 CHANGE IN THE COMMISSION STRUCTURE SO THAT WHAT HAPPENED WAS

1 THAT THEY WERE MADE TO DO WORK WITHOUT KNOWING -- WITHOUT, AS
2 IT TURNED OUT, WHAT THE ULTIMATE PAYMENT FOR IT WAS GOING TO
3 BE.

4 EACH OF THOSE CONTENTIONS -- EACH OF THOSE
5 THEORIES IS A THEORY THAT WOULD BE DECIDED IN FAVOR OF THE
6 PLAINTIFFS AND AGAINST THE -- AND AGAINST THE DEFENDANT
7 ABALKHAD EXCEPT FOR MY DETERMINATION THAT HE INDIVIDUALLY IS
8 NOT LIABLE. BUT IF HE IS LIABLE, THAT IS, IF THE APPELLATE
9 COURT DECIDES THAT I HAVE MADE AN ERROR REGARDING EXCESSIVELY
10 NARROW INTERPRETATION OF THE LABOR CODE PROVISIONS, I WOULD
11 AWARD EACH OF THE PLAINTIFFS AS PENALTIES \$60,000 EACH; 60
12 PLUS 60 IS 120.

13 NOW, I WILL SAY, AGAIN, I RECOGNIZE THAT THIS
14 IS WAY BELOW THE PLAINTIFFS'S TARGET NUMBER, BUT IT IS A
15 NUMBER THAT I THINK IS APPROPRIATE.

16 NOW, I WANT TO SAY SOMETHING ELSE ABOUT THIS,
17 AND THIS IS A COMPLICATION CREATED BY FACTORS THAT I HAD
18 REFERRED TO PREVIOUSLY. THIS IS THE BANKRUPTCY OF THE
19 CORPORATION.

20 WHAT I AM SAYING CONCERNING THESE OTHER
21 PENALTIES AND OTHER AMOUNTS, THAT IS, AMOUNTS I AM NOT
22 ACTUALLY AWARDING ARE FOR THE BENEFIT OF THE APPELLATE COURT
23 IN ASSISTING IT TO FRAME A DISPOSITIONAL ORDER IF THE CASE IS
24 SENT BACK TO THE SUPERIOR COURT UPON A REVERSAL IN PART OR IN
25 WHOLE.

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

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

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

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

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

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

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

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

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

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

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

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

21 MR. SABZEVAR: NO, YOUR HONOR.

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

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

28 SECONDLY, I'M GOING TO ORDER THE PLAINTIFFS

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

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

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

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

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

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

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

6 THE COURT: FORTY-FIVE DAYS.

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

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

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

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

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

17 MR. SPIVAK: YES, YOUR HONOR.

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

21 MR. SPIVAK: YES, YOUR HONOR.

22 MR. SABZEVAR: THAT'S FINE.

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

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

1 FOUR WEEKS. HERE'S OUR SITUATION.

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

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

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

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

1 ALL RIGHT. THANK YOU ALL VERY MUCH.

2 MR. SPIVAK: THANK YOU, YOUR HONOR.

3 MR. SABZEVAR: THANK YOU, YOUR HONOR.

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

5 THE CASE.

6 (PROCEEDINGS CONCLUDED.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE

$$\left. \begin{array}{l}) \\) \\) \\) \\) \\) \\) \\) \\) \\) \end{array} \right\}$$

CERTIFIED COPY

MONDAY, APRIL 23, 2012

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

EXHIBIT 10

OCT 24 2017

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

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

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

Plaintiff,

v.

Security Paving Company, Inc.,

Defendant.

Case No. BC492828

Proposed Statement of Decision

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

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

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

1 I. BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 4 II. OUTLINE OF ISSUES DECIDED AT TRIAL

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

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

23 24 III. PAGA REST BREAK CLAIMS

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

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

1 A. Labor Code Provisions and Wage Order 16

2
3 Labor Code section 226.7 prohibits employers from requiring employees to work during any rest
4 period mandated by a Wage Order. It establishes a premium if an employer fails to provide
5 employees a meal or rest period required by the Wage Orders. Under the rule, employers must
6 pay employees one additional hour's pay for failure to provide one or more rest periods. The
7 employer must pay the premium in addition to the compensation owed for the worked time,
8 including time worked during a missed meal or rest period.
9

10 The applicable Wage Order in this case -- Wage Order 16 -- provides that "[e]very employer *shall*
11 *authorize and permit* all employees to take rest periods, which insofar as practicable, shall be in
12 the middle of each work period The authorized rest period shall be based on the total hours
13 worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major
14 fraction thereof." Wage Order 16-2001, § 11(A)(emphasis added).
15

16 Work Order 16 -- covering the construction industry -- contains a measure of flexibility regarding
17 rest breaks not found in other wage orders. (See Exhibit 513 at 7). Employers in the construction
18 industry may stagger rest periods to avoid interruption in the flow of work and to maintain
19 continuous operations, or may schedule rest periods to coincide with breaks in the flow of work
20 that occur in the course of a workday. Rest periods are to take place at designated areas, which
21 may include or be limited to the employees' immediate work area. Rest periods need not be
22 authorized in limited circumstances when the disruption of continuous operations would
23 jeopardize the product or process of the work. However, the employer shall make up the missed
24
25

26
27 defendant's practices during much of the relevant period. PAGA, however, does not impose class action requirements
28 on its representatives. *Arias v. Superior Court* (2009) 46 Cal.4th 969, 985. Further, the testimony of other witnesses,
including the defendant's witnesses, supported the finding that in certain settings -- most specifically in crews working
on overnight road paving projects with required lane closures -- the defendant's rest break practices were the same in
2015 as they were in 2011.

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

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

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

21
22
23
24
25 ⁷ As for timing, California Wage Orders require employers to authorize and permit rest periods for non-exempt
26 employees whose total daily work time is at least 3 and a half hours. The mandatory rest periods must be, insofar as is
27 practicable, in the middle of each work period and must be at the minimum rate of ten consecutive minutes for each
28 four hours or major fraction thereof. The employer must count rest periods as working time and, accordingly, must
pay for such periods. For a shift longer than 3 and a half hours and less than six hours, a ten minute rest break is
required. For a shift over six hours and up to ten hours, twenty minutes of rest is required. For a shift of over ten up
to fourteen hours, thirty minutes of rest is mandated. The Wage Orders do not mandate when the breaks are taken,
only that they fall in the middle of work periods "insofar as practicable."

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

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

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

16
17 ⁸ In the post-trial brief, plaintiff once again attempted to re-define its “aggrieved employees” group to extend
18 beyond the defendant’s nighttime freeway paving operations employees. Defendant objected strenuously to this
19 “about face” by the plaintiff. (See Defendant’s Motion to Strike Plaintiff’s Post Trial Brief at 3). The Court agrees
20 with the defendant. After five years of litigation and nine years of trial, and two recesses for the plaintiff’s counsel
to confer during their closing statement and rebuttal, the plaintiff identified a representative group upon which the
action was asserted. This decision cannot be revisited two weeks after the close of the case.

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

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

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

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

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

22
23
24
25 ¹¹ Darrel Matheson, a foreman for Security Paving for four years, credibly testified that during the "set up work" part
26 of a paving process -- which accounted for about 20 percent of his shift working on highway projects -- you could take
27 a meal or rest break, but that after the "pour" started -- usually about 80 percent of the shift time -- you could not take
28 any breaks. Work during that part of the shift continued without interruption. As he explained, when you are pouring
concrete, "it's not stopping . . . because you can't have a cold joint on your concrete slab you're pouring." To afford the
crew a break (even of ten minutes) would mean that "all your concrete is going to be hard behind you by the time you
take off again." And, while authorized or permitted breaks would have been possible had additional "relief"
crewmembers been provided, Security Paving did not typically structure its crews with relief workers.

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

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

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

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

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

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

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

20
21
22
23
24 ¹³ Exacerbating the continuous nature of the construction work being performed by pavement crews was the additional
25 pressure of Cal Trans' lane closure rules. As credibly testified to by Darren Jones, the closure time of a freeway lane
is limited. The work to be done has to be completed in a short period of time. "Once we got started, we didn't stop
until we were -- the job was finished for the night."

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

1 The company also monitored its crews to ensure that the workers kept busy all the time. Hake
2 testified that his Superintendent – who was Security Paving’s owner’s son Jason – would sit in a
3 pick-up truck across from work sites and monitor the crews to ensure that they remained busy at
4 all times. As Hake described it, he was "bird-dogged" by Jason to ensure that his crew did not
5 take breaks.

6
7 On occasion, especially at the beginning of a shift during which the project was being set up,
8 workers might be able to take a single rest break during which they were not subject to the control
9 of their supervisors. For example, on a night paving project, the volumetric truck drivers might be
10 able to take a ten-minute break on their way to the freeway location after filling up their truck.
11 Once they arrived at the work site, however, there were no periods of time in which they were free
12 to leave their vehicles, or even take a nap while in their vehicles. Second rest breaks during an
13 eight-hour shift did not occur.

14
15 A number of these witnesses credibly testified that they were either expressly told or were led to
16 believe that you would be fired if you requested or took a rest break. Darren Jones testified that
17 "we knew we weren't allowed to [take a rest break]." And, that if you tried to take a break or
18 lunch, then there was a good chance you probably weren't going to work the next night. John
19 Guerra credibly testified that when workers complained about the absence of breaks, they would
20 not be working at the job site the next day.

21
22 The absence of any written policy or any means by which the company could verify that
23 employees were receiving their required rest breaks further supports the Court’s finding that
24 legally compliant rest breaks were neither authorized nor permitted. Although there was a
25 contention by the defendant that it orally described its meal and rest break policy at every
26 “tailgate” safety meeting and obtained signed statements from employees attesting to that fact, the
27 Court believes the credible testimony that such presentations did not occur. According to the
28 credible testimony of a former foreman for Security Paving, Darrel Matheson, he never spoke with

1 management regarding any rest break policy and he irregularly attended or conducted tailgate
2 meetings. He estimated that he had maybe 15 or 20 of such meetings during his four-year tenure
3 at Security Paving. And, at those meetings, he never discussed rest breaks. Rather, as makes
4 sense, he discussed the work that they were to be performing that week and any unique safety
5 concerns posed by that work. Matheson also credibly testified to handing out multiple, blank
6 forms to his crews to sign before they could receive their paychecks.¹⁵

7
8 Nor did complaints made by these workers as to the unavailability of rest breaks to their unions
9 obtain needed redress. As credibly testified to by several of the plaintiff's witnesses, they told
10 business agents and union officials that they were not getting bargained for rest breaks. But, those
11 complaints were not acted upon.¹⁶ For a significant portion of the relevant period, the economy
12 and construction industry were in steep decline. Work was scarce. Unions were unwilling to
13 lodge complaints against contractors when "we just started to get work again." The unions were
14 unwilling to "piss off" Security Paving – a large employer -- by lodging a complaint about missed
15 rest breaks. And, employees were concerned that if they complained about missed breaks, that
16 they would be "blackballed" at the union hiring hall. As John Guerra reminded everyone, "I
17 wanted just to work, man . . . I lost everything in 2009, you know. I was just getting on my feet
18 again. I was just happy to be working." When Bret Leutzinger complained to his union, he was

19
20
21
22 ¹⁵ Being handed blank forms to have their crews sign was also testified to credibly by Hake. He also recalled being
handed "stacks of sheets" by his superintendents when they were trying to catch up on their paperwork.

23 ¹⁶ The court finds entirely not credible the testimony of a number of union representatives called by the defendant as
24 witnesses. Unlike the characterization of these witnesses as disinterested, they clearly had an interest in appearing to
25 have performed their role as protecting their members. And, surprisingly, one representative in particular, testified as
26 if he currently worked for Security Paving. His testimony was remarkably similar to answers given by current
27 employees of the firm, even though he hadn't worked at the company in some time. The union reps claimed to have
28 never heard a complaint; claimed that their business agents routinely monitored working conditions at these worksites
and generally testified to policies at Security Paving for which they had no personal knowledge. Their demeanor
while testifying was hostile and defensive and they expressed no real concern about the possibility that their union
members had received unfair treatment by an employer. They appeared to be entirely captured by a large employer
who afforded their members regular and high-paying work. The court affords the testimony of these witnesses no
weight.

1 told that there were over 500 operators on the union hall hiring list and that he was lucky to have a
2 job.

3
4 Providing the plaintiff's witnesses with an extra measure of credibility is the fact that the testimony
5 that these witnesses provided at this trial is potentially adverse to their financial interests. These
6 workers work for a number of different contractors and remain busy by moving from one project
7 to the next. It is not without considerable risk to future employment that a worker comes forward
8 to report the types of violations testified about in this case. That they were willing to do so, and
9 that they did so in such a credible fashion, gives even more weight to this testimony.¹⁷

10
11 The witnesses called by Security Paving to rebut the aggrieved employee's claims fell into two
12 general groups -- union officials who had every reason to deny ever hearing or grieving a
13 complaint about missed breaks, and current employees, who also had financial and employment
14 reasons to testify as they did.¹⁸ Every single defense witness who worked for Security paving
15 testified that he had not missed a single rest or meal break (although it might have been briefly
16 postponed for less than ten minutes) or, if he had, he had been paid a premium.

17
18 These witnesses and their testimony were neither credible nor was the testimony corroborated by
19 contemporaneous employment or payroll records. Despite testimony that missed rest breaks were
20 recorded by foremen on timesheets, the defendant failed to mark or admit as a separate exhibit
21
22

23 ¹⁷ By contrast, the defendant's current employees uniformly sponsored the wholly incredible testimony that they were
24 indifferent to losing their jobs -- all of which were incredibly high-paying positions. These defense witnesses had an
25 obvious and clear financial motive to testify in a way to assist the company. When each and every one of them
26 testified that they were indifferent to the possibility of losing their six-figure salaries, they lost a good deal of
credibility. Equally problematic to their credibility was the recurrent admission that they'd spoken with defense
counsel and had been told what questions to expect to be asked.

27 ¹⁸ The union witnesses -- all of whom uniformly testified to hearing nothing and knowing nothing -- were entirely not
28 credible. They actually testified to rest period practices at Security Paving despite their testimony that they personally
had not investigated any complaints nor had they regularly visited Security Paving work sites.

1 even one of those handwritten, amended timesheets.¹⁹ Nor did the company produce any evidence
2 of the premium payments made for most of the relevant period for these missed breaks. The
3 payroll system evidence of premium payments showed 19 missed rest periods since January 2015
4 -- a remarkably small number in light of the company's 500 or more employees and the nature of
5 the work being performed.²⁰

6
7 Many of the witnesses called by the defendant did not work on projects that involved lane closures
8 or night work. Jeremy Strobl rarely worked on freeway repair and panel replacement. Kenneth
9 Dahlke worked at the concrete plant. Charles Graham and Jose Munoz both worked day shifts as
10 carpenter journeymen and carpenter foremen. Robert Walsh worked as a laborer on day shifts.
11 Ryan Tevelde, Chris Manoukian, Abel Lemus, Raymond Reames, Eduardo Castaneda, Kamran
12 Sepanlou and Dan Jelenicki predominantly worked on day shifts at locations where there were no
13 temporary lane closures.

14
15 Of those witnesses who worked day shifts, their testimony was inconsistent and failed to establish
16 defendant's claim that it had a consistent and enforced policy of authorizing and permitting two
17 rest periods -- one in the morning and one in the afternoon. Many of these defense witnesses
18 testified to different rest break practices in key aspects. Graham's crew had fixed rest and meal
19 breaks and would be required to ask permission if they wanted to take a break at a different time.
20 Jose Munoz, also a carpenter foreman, instructed his crew when to take their breaks. Walsh took
21 his breaks at fixed times and never deviated from that schedule for "any reason." Ryan Tevelde,
22 an equipment operator, took regular breaks but would deviate from a fixed schedule if necessitated
23 by the work being performed without asking permission.

24
25
26 ¹⁹ In defendant's post-trial brief, defendant drew the court's attention to two pages of an admitted exhibit of hundreds
27 of certified payroll records -- an exhibit that was so voluminous that it was submitted in the form of a thumb drive.
(Exh. 55). The absolutely scarcity of such examples supports the conclusion that, in the vast, vast, vast majority of
occasions, missed rest break premiums were not paid by the defendant.

28 ²⁰ Until 2015, defendant did not have a time-keeping system that was capable of capturing or preserving this
information.

1 Only five of the defendant's nineteen witnesses worked on the types of shifts that are being
2 challenged by these aggrieved employees -- overnight road replacement and paving shifts
3 involving lane closures during which work assignments for lane removal and replacement had to
4 be performed within a relatively short time period. As to the small number of defense witnesses
5 who had worked on night shifts, they did not testify consistently or credibly as to whether and
6 when rest breaks were provided during those assignments. As discussed above, two defense
7 witnesses testified that they instructed their crews to use "downtimes" for meal and rest breaks.
8 Tevelde testified that he took breaks and he never believed that he could walk away from the
9 equipment during "downtime." Abel Lemus testified that he took his breaks during downtime.
10 But, Kamran Sepanlou, testified that he took breaks whenever he wanted to and he was free to
11 take a break and walk away from his equipment during a cement pour if he wanted and no
12 questions would be asked.

13
14 Other of these defense witnesses were impeached by prior testimony or appeared during their
15 testimony as evasive, defensive and not credible. Michael Rodriguez, the defendant's "PMQ" was
16 entirely not credible. His demeanor while testifying was hostile and defensive. His testimony, in
17 critical aspects, defied common sense. For example, although he testified that there was no
18 record-keeping by the defendant regarding rest breaks until 2015, he was confident that before this
19 change in 2015 employees had been paid premiums "many times" for missed rest breaks.²¹ This
20 testimony was contradicted by his deposition testimony. At his deposition, he testified that he was
21 not aware of employees being paid a one-hour penalty for rest breaks.²² He also incredibly
22 testified that meal and rest breaks were discussed at *every* tailgate meeting, even though he was
23 personally present at only maybe 20 of the more than 2000 weekly meetings held over his seven-

24
25
26 ²¹ The documents show that Security Paving has only paid 19 hours of missed rest periods since the new program was introduced in January 2015.

27 ²² Equally incredible was defendant's witnesses' claim that Wage Order 16 was prominently posted at all the
28 overnight road paving job sites. There was no fixed location based on the nature of these projects at which such a posting could have been provided. The credible testimony of plaintiff's witnesses is that they never saw any postings because they worked hours in which the main offices were closed.

1 year employment history at Security Paving. His most incredible testimony was his claim that the
2 2015 improvement in record-keeping at Security Paving had nothing to do with this lawsuit,
3 despite a complete lack of foundation as to that question because he admitted that he'd never
4 attended a meeting during which the lawsuit was discussed.

5
6 Shane Hunter, a superintendent for Security Paving, provided some of the most unbelievable
7 testimony at the trial. He acknowledged that the road replacement crews were expected to
8 complete a target of pavement removed and pavement replaced for each shift. He also testified
9 that Cal Trans lane closure requirements and stipulated time for completion in contracts are factors
10 in making work schedules. He then, however, went on to testify that these conditions have no
11 effect on the pace at which work is performed and whether breaks are authorized and permitted.
12 He admitted that even though there are liquidated damages as much as \$30,000 per hour, the
13 workers would never work through lunch or breaks for the sake of contract completion. He then,
14 amended his testimony and admitted that although he did discuss daily project completion
15 deadlines with the foremen who reported to him, he never discussed project completion targets
16 with them. How one can discuss one without discussing the other was never made apparent. His
17 inconsistent testimony severely affected the credibility of his testimony regarding whether rest
18 breaks were authorized and permitted by the defendant.

19
20 The defense witness who offered the most unbelievable testimony was Ray Guillen, the foreman
21 who worked, at least for some relevant period, with plaintiff Jon Shields. Guillen was sullen,
22 defensive and avoidant while testifying. His posture and attitude revealed an unbelievable
23 antipathy for the plaintiff. Like other defense witnesses, Guillen started answering questions
24 before defense counsel even finished asking them -- showing that he clearly had been told what
25 questions would be asked and had prepared answers with the assistance of someone else. During
26 cross-examination, Guillen was visibly angry with plaintiff's counsel.

1 Moreover, Guillen's testimony made no sense. His version of Bret Leutzinger's complaint about
2 the absence of breaks is one example. Why would an employee voluntarily retreat from a
3 complaint about receiving breaks -- as Guillen testified? The only logical explanation -- which
4 was proffered by Leutzinger himself -- would be that the employee believed that he would be
5 retaliated against if he continued to complain.

6
7 Another incredible part of Guillen's testimony is that he told his crews -- each and every week at
8 every single tailgate meeting -- about the company's meal and rest break policies. And, what
9 would he have told them? According to him, crews were to take breaks while there was
10 "downtime." The problem with that testimony is that when Jon Shields took a nap during such a
11 "downtime" break, he was written up -- twice. So, if you are disciplined for taking a nap during
12 downtime, how can you take a break during which you are free from management control? How
13 does a foreman know if the nap you are taking is your break or not? How can you be relieved of
14 all responsibility, and yet be disciplined for taking a nap during the same downtime?

15
16 That the defendant is subject to oversight by Cal Trans and other regulatory agencies does not
17 persuade the court that duty-free rest breaks during downtime were authorized and permitted. It
18 would be virtually impossible for the intermittent presence of government representatives during a
19 nighttime road replacement operation -- who would be focused on progress of the task,
20 engineering/plans or questions of safety compliance -- to detect the absence of rest breaks and/or
21 the failure to pay a premium wage for those missed breaks. Even the occasional business agent of
22 the unions failed to detect the defendant's non-compliance. As credibly testified to by a number of
23 plaintiff's witnesses, employees were too scared to complain and business agents were too
24 captured by the employer to investigate. Again and again, the absence of a complaint was
25 considered by the union to be a reason not to investigate.

26
27 Nor does the existence of a number of collective bargaining agreements -- all of which were
28 admitted as exhibits during the defendant's case -- exonerate or excuse the failure by Security

1 Paving to authorize and permit nighttime road repair and replacement crews to take legally
2 compliant rest breaks. While the defendant may have believed that it provided a complete defense
3 for the workplace practices it engaged in, it does not – as a matter of law – provide that protection.
4 And, that the company was required to pay for an eight-hour shift, even if the shift workers
5 completed their tasks before eight hours elapsed does not provide an excuse or defense to the
6 company's failure to authorize and permit employees to take rest periods, or to pay premiums for
7 missed periods.²³

8
9 In conclusion, the plaintiff has met his burden of proving that the defendant failed to comply -- at
10 least with regard to nighttime road replacement and repair crews -- with the Labor Code's
11 requirements with regard to rest breaks.

12
13 C. The Petersen Survey and Damage Study Are Entitled to No Weight

14 Having established the factual existence of a violation of the labor laws based on Security
15 Paving's failure to afford nighttime road repair and replacement crews legally compliant rest
16 breaks, the next question is how many aggrieved employees on how many shifts failed to receive a
17 legally compliant rest break?

18
19 Under Labor Code Section 2699(a), aggrieved employees can initiate actions to recover civil
20 penalties for Labor Code violations that may be recovered by the Labor and Workforce
21 Development Agency ("LWDA") or any of its departments, divisions or employees. To prevail in
22 his representative claims, Plaintiff must prove Labor Code violations with respect to each and
23 every individual on whose behalf plaintiff seeks to recover civil penalties under PAGA. *See*
24 *Hibbs-Rines v. Seagate Tech., LLC* (N.D. Cal. Mar. 2, 2009) 2009 WL 513496, at *4.
25

26
27 ²³ Although one or two witnesses testified to leaving early on those days when rest breaks were missed, the vast
28 majority of the witnesses for both sides testified to working an eight-hour shift and remaining at work until the end of
the shift.

1
2 Such actions are fundamentally law enforcement actions, with the aggrieved employee acting as a
3 private attorney general to collect penalties from employers who violate labor laws. *Esparza v. KS*
4 *Industries* (2017) 13 Cal.App.5th 1240-1241 (the employee plaintiff represents the same legal right
5 and interest as the LWDA). In a PAGA representative action, the government enforcement entity
6 is “always the real party in interest in the suit.” This is an important distinction between civil
7 penalties and statutory damages. *Id.* at 1241.

8
9 To establish the number of Security Paving employees who were not afforded and permitted a
10 legally compliant rest break during the PAGA period, plaintiff proffered a survey and report
11 prepared by Dr. Jeffrey Petersen. This survey was undertaken to measure how many aggrieved
12 employees during the PAGA period missed a legally compliant rest break and to compute their
13 unpaid wage amounts, penalties and interest.²⁴

14
15 As a preliminary matter, Dr. Petersen received from plaintiff’s counsel a list (“the July 2017 list”)
16 of individuals provided by the defendant as part of a “contact list” process. Of the 1013 names on
17 that list, 858 of these individuals had phone numbers. If an individual did not have a phone
18 number, he or she would be excluded from consideration for the survey.²⁵

19
20 Dr. Petersen then randomly ordered the remaining names from the July 2017 contact list provided
21 by the defendant and identified the first 400 persons on this list.²⁶

22
23 ²⁴ Before trial began, defendant moved to exclude Dr. Petersen’s survey as unsupported by general scientific theory
24 and having been conducted using improper scientific survey techniques. *See Sargon Enterprises, Inc. v. University of*
25 *Southern California* (2012) 55 Cal.4th 747, 772. Although the court denied that motion, it did so with the
understanding that the weight to be given to the plaintiff’s evidence would be independently evaluated after the
conclusion of all the testimony. *Cf. Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1, 60.

26 ²⁵ Although Dr. Petersen testified that the elimination of employees without phone numbers would have no effect on
27 the survey results because whether or not an individual has a working phone number is not likely a source of bias, his
only authority for this proposition was an article that he wrote. (Exh. 41 at 3, n.12).

28 ²⁶ Dr. Petersen testified that he believed that 400 was a sufficient size for his survey based on his “pilot study” that he
claims to have performed previously. Dr. Petersen did not perform a pilot for his 2017 survey. The survey that he

1 Dr. Petersen then contacted Susan Allman to survey these persons. Ms. Allman is a CPA and is
2 his business partner's daughter-in-law. Ms. Allman has received no formal training in survey
3 techniques; but she conducted two other surveys for Dr. Petersen. Dr. Petersen gave Ms. Allman
4 instructions on the telephone as to the "proper survey protocol."²⁷ Dr. Petersen instructed Ms.
5 Allman to keep a call log to detail her interaction with potential survey participants, including
6 whether she was able to validate that the phone numbers belonged to the people on the random
7 list.

8
9 Ms. Allman attempted to call each individual on the list of 400 four times. Out of the 400, 162
10 had valid phone numbers and 91 participated in the survey.²⁸

11
12 In the survey that Dr. Petersen prepared, he asked the participants whether they had *received* rest
13 breaks, which he defined as a ten-minute period where they were relieved of their job
14 responsibilities.²⁹ (Exh. 41 at 22 (emphasis added)).

15
16 If the participant provided an answer, such as "everyday" or "always," the survey would conclude.

17
18 submitted to the court for purposes of the 2016 motion for class certification was not a "pilot" for this survey – despite
19 his testimony to the contrary. The declaration filed by Dr. Petersen in support of the 2016 survey did not mention nor
20 did it describe the survey conducted in 2016 as a "pilot" survey. Further, the 2016 survey asked different questions
21 than those posed in the 2017 survey. Dr. Petersen's testimony where he claimed that the 2016 survey was a pilot for
22 the 2017 survey is wholly not credible and generally (adversely) affected his credibility with regards to his entire
23 testimony.

24
25 ²⁷ That protocol and the particular training received by Ms. Allman was not described in Dr. Petersen's report, other
26 than by citing to a chapter in a book written by Robert Groves. Ms. Allman was not given scripts regarding certain
27 responses to particular inquiries by the participants; she was told only to refer questions to Dr. Petersen. Ms. Allman
28 was not told to make her phone calls during identified times of the day, nor was she instructed on how to record
information provided by the participants fully and accurately. At the time that she conducted the survey, Ms. Allman
was aware of the lawsuit, the company and that the survey sought to obtain information regarding the participant's
employment.

²⁸ Listed employees who spoke Spanish were eliminated from participation in the survey because Ms. Allman did not
speak Spanish. (Exh. 41-1).

²⁹ Specifically, the survey asked each participant: "[t]hinking about your entire employment period at Security
Paving and all the different projects you worked on; if you worked a five day work week, how many of those days
would you receive a 10 minute paid rest break for every four hours worked, on average?"

1 For all other respondents, the survey asked each participant to estimate the exact number of days
2 that they had *received* a rest break. (Id.)

3
4 Then, the survey presented the participants with an open-ended question: “What was the reason,
5 or reasons, you did not receive the rest breaks?” (Id.)

6
7 If the participant reported that they did not receive a rest break, the survey then asked whether
8 they’d received a payment for their missed rest break time. (Id.)

9
10 The survey also asked the participants if the frequency regarding receiving rest breaks changed
11 depending on the project and they were asked, by year, to estimate for each year worked how
12 many rest breaks they received, on average. (Id.)

13
14 The potential survey participants knew about the litigation-related purpose of the survey in
15 advance of receiving a phone call. In a letter sent by plaintiff’s counsel to those employees on the
16 July 2017 list in advance of the survey being conducted, the plaintiff’s counsel told the potential
17 interviewees that they were “potentially” aggrieved employees. (Exh. 41 at 4, 25). In the event a
18 survey participant didn’t read or forgot about the letter, Ms. Allman reminded the participants that
19 they were potentially interested parties in a lawsuit: “[w]e have been asked by the lawyers who
20 seek to represent employees who performed work for Security Paving in a collective action
21 lawsuit to conduct a survey.” (Exh. 41 at 21).

22
23 The survey was conducted over a very brief period of time – during approximately six days in late
24 August 2017. (Exh. 41-1 (Excel spreadsheet of Allman call-log contained on disc attached to the
25 hard copy portion of Exhibit 41)).

1 For those persons who participated in the survey, their responses to the open-ended question 6
2 were recorded by Ms. Allman.³⁰ These answers were provided to Dr. Petersen who reviewed and
3 coded the information obtained in the survey. Specifically, Dr. Petersen took these answers to the
4 open-ended question 6 asking the participant to explain why a rest break had not been provided
5 and then assigned either a 1 or 0 to those responses. A 1 was used to signify that a break had been
6 provided and a 0 was used to show that a legally-compliant break had not been received. (See CD
7 attached as part of Exhibit 41 at Excel Tab Analy L2). Thus, coding was used by Dr. Petersen to
8 interpret answers to the open-ended question 6 ("What was the reason, or reasons, you did not
9 receive the rest breaks?") to determine how frequently a violation occurred.

10
11 Dr. Hildreth, defendant's expert, challenged certain of the coding decisions made by Dr. Petersen.
12 For example, he declined to agree with Dr. Petersen that an answer of "Don't know just went
13 along with the program" should be counted as a rest break violation. Another example, "pouring
14 concrete they would leave early" was also recorded as a violation, even though the employee can
15 elect to take their rest break at the end of the shift by leaving early.

16
17 When asked to explain the methodology that he used in assigning a violation to an explanation,
18 Dr. Petersen vaguely testified that these answers didn't "indicate any personal choice to me." As
19 he explained further why he coded certain answers as violations:

20
21 "Well, they were just – the situation, as I understood it, is they're just out there working
22 and they didn't get a break, so they don't know why they didn't get a break. It just didn't
23 happen."

24
25
26
27
28 ³⁰ An additional four responses were included by Dr. Petersen in his report, but they were obtained in an earlier survey
conducted by him as part of plaintiff's class certification motion.

1 Based on this coding, Dr. Petersen then computed the percentage of survey participants who stated
2 that they did not receive all of their required rest breaks due to reasons other than personal choice
3 and computed PAGA penalties based upon this information.

4
5 Dr. Hildreth, who testified for the defendant, criticized a number of errors in the design and
6 implementation of this survey and further challenged the conclusions reached by Dr. Petersen.

7
8 The Court finds the testimony of Dr. Hildreth very credible and adopts, as findings, many of his
9 conclusions with regard to the unscientific nature of Dr. Petersen's survey.

10
11 First, the sample employed by Dr. Petersen was self-selected and biased. Before the survey
12 process even began, the plaintiff's law firm sent a letter out to persons on the 2017 contact list to
13 inform them of the impending survey contact and questionnaire. The letter explicitly stated the
14 plaintiff's law firm was preparing for trial and that, although none of them would be required to
15 appear or attend the trial, they were potentially aggrieved employees. In this way, the letter
16 entreated future participants in the upcoming survey by a promise of potential financial gain.³¹
17 (Exh. 41 at 25). Similarly, the interviewer in this case also knew about the lawsuit. Thus both
18 respondents and interviewer were on notice of the possibility of financial gain associated with
19 certain answers to the questions that were to be posed. This survey design is clearly contrary to
20 the "double blind" standard methods of scientific survey research.³²

21
22 The survey letter and script also allowed participants to believe that their answers would not
23 subject them to legal process, thus providing them with a degree of anonymity. These notices

24
25
26 ³¹ In the event that survey participants had not received the letter or had forgotten its contents, they were reminded as
27 part of the telephone script that "this survey is part of a collective action lawsuit." While an advance letter may have
been useful to improve respondent cooperation, Dr. Hildreth competently testified that these should be written without
mentioning the purpose or the sponsor of the survey.

28 ³² Although Dr. Petersen (again citing only to his own article) opined that double-blind surveys were impossible in
wage and hour cases, he cited no factual basis for that conclusion.

1 gave the impression that any information the survey provided would be anonymous. As Dr.
2 Petersen himself acknowledged in one of his articles, the promise of anonymity increases bias
3 because the participants will exaggerate their reported harm. Both the letter and the survey taker's
4 remarks in this case alerted and informed a specific sub-section of the sample that they were
5 aggrieved and could exaggerate their alleged harms without consequence.

6
7 Second, the sample size selected by Dr. Petersen was too small to obtain the 95 percent confidence
8 estimates sponsored by Dr. Petersen. Moreover, the reason provided by Dr. Petersen to support
9 his decision to limit the sample size to 400 (i.e., that a pilot study was performed previously and
10 supported this sample size) is found by the court to be factually untrue.

11
12 Third, even if the survey methodology were proper, the survey questions themselves failed to
13 elicit how often a violation of the relevant Labor Code rest break provisions had occurred. By
14 asking whether they received breaks, employees were incorrectly directed to report every instance
15 in which a rest break was not 'received,' not whether the employer authorized or permitted such
16 breaks – which is what the law requires.³³

17
18 Fourth, the use of an open-ended question failed to convert the improper "received" breaks
19 question into one that discovered whether employees were "authorized and permitted" but simply
20 elected not to take breaks. Dr. Petersen coded answers from respondents in a biased and
21 unscientific manner, thus rendering the survey's conclusion as to the frequency of violations
22 invalid. A number of Dr. Petersen's coding decisions demonstrate his partisan viewpoint and his
23 lack of objectivity – taking this survey well outside the bounds of proper scientific study.³⁴

24
25 ³³ An employer is obligated only to authorize and permit rest breaks; it has no obligation to ensure that employees take
26 rest breaks. *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1033. Employees are free to decline rest
27 breaks. *Id.* Thus, the survey (which inquires as to whether a rest break was received in four separate questions) did
28 not gather relevant information regarding the defendant's liability.

³⁴ Another example of Dr. Petersen's embroilment in this litigation is his computation of the margin of error, which he
admitted was underestimated. Performing the correct scientific calculations and accepting Dr. Petersen's 95%
confidence level, the relative margin of error using a t-distribution (due to the small sample size) was 23.7%. In other

1 Fifth, Dr. Petersen's damages analysis, based on his survey results, failed to utilize rates of pay of
2 specific employees to calculate the amounts due for allegedly unpaid premiums for missed rest
3 breaks. Instead he impermissibly used a 'blended' rate averaging the pay rates of the entire
4 Security Paving workforce. This aggregation is legally impermissible for two reasons. By
5 looking at the entire workforce, Dr. Petersen failed to use the pay rates only of those nighttime
6 shift employees who suffered the violations. Secondly, this use of a blended average is flatly
7 contrary to the requirement of Labor Code section 226.7, which requires a premium be computed
8 as "one additional hour of pay *at the employee's* regular rate of compensation for each workday
9 that the . . . rest . . . period is not provided. *See Medlock v. Taco Bell Corp.* (E.D. Cal. Dec. 11,
10 2015) 2015 WL 10791410 at *5.

11
12 In short, the court concludes that the plaintiff's survey results cannot be used to identify each and
13 every employee who did not receive a legally compliant rest break, nor does it permissibly
14 compute back wages or PAGA penalties for aggrieved employees in this case.

15 D. If the Petersen Survey and Damage Study Are Entitled to No Weight, What Is the Effect of that
16 Failure of Proof?

17
18 The only evidence adduced by the plaintiff to quantify how frequently the defendant failed to
19 provide its nighttime road replacement and repair crews with legally compliant rest breaks was the
20 Petersen survey. The only evidence adduced by the plaintiff to quantify unpaid wages and
21 penalties for the aggrieved employees was the Petersen damage study.³⁵

22
23 words, to give an estimate of the proper penalty with 95 percent confidence, Dr. Petersen's estimate would have to
24 vary by almost a quarter from the lower end to the higher end. While this is, admittedly, better than the 49 percent
25 margin of error in the *Duran* case, it is substantially worse than the 5 or 10 margins of error that Dr. Hildreth testified
were found in well-performed statistical studies.

26 ³⁵ Although in his post-trial brief, plaintiff's counsel attempted to reopen the trial to adduce two more evidentiary
27 bases by which to identify the number of rest breaks missed by aggrieved employees, such evidence cannot be
28 "deduced" from Exhibit 55. Exhibit 55 is a "thumb drive" that holds pdf copies of thousands of handwritten
signatures on the bottom of numerous Security Paving "tail gate meeting" forms and other undifferentiated payroll
reports and business records. It is incapable – without considerable review, selection, computation and handwriting
discernment – of becoming the basis by which to "deduce" the basis for any employee's claim for rest break
violations. It is not, as plaintiff contends, nothing more than "simple math." Moreover, even if it were, defendant has

1 The individual plaintiff, Jon Shields, did not testify regarding the number of rest breaks (or meal
2 breaks) that he contended were not received. None of the witnesses from these crews called by the
3 plaintiff testified regarding the number of shifts they worked during the relevant period and how
4 often, once or twice per eight-hour shift, they were not afforded and provided a legally compliant
5 rest break. Nor did any of these witnesses testify as to their hourly or regular rate of pay.

6
7 Where, as here, the plaintiff has met his burden of proof of establishing the fact of a Labor Code
8 violation but has failed to answer by competent evidence how often that violation occurred, what
9 is the effect of that failure of proof?

10
11 Defendant contends that as plaintiff has failed to adduce any competent evidence as to the
12 measurement of how often the aggrieved employees suffered this violation, it should be granted
13 judgment in this case. In support of that contention, defendant cites a number of cases holding
14 that a plaintiff's failure to establish an amount of damage is fatal to the claim. *See, e.g., City of*
15 *Oakland v. Pacific Gas & Elec. Co.* (1941) 47 Cal.App.2d 444, 450; *Saunders v. Taylor* (1996) 42
16 Cal.App.4th 1538, 1543.

17
18 The court agrees that, in general except as otherwise provided by law, a party has the burden of
19 proof as to each fact the existence or non-existence of which is essential to the claim for relief or
20 defense that he is asserting. *Amaral v. Cintas* (2008) 163 Cal. App. 4th 1157, 1188. On occasion,
21 however, courts may alter the normal allocation of the burden of proof. *Id.* In determining
22 whether the normal allocation of proof should be altered, courts consider a number of factors: the
23 knowledge of the parties concerning the particular fact, the availability of the evidence to the

24
25 been deprived of the opportunity to question a witness who has conducted that mathematical analysis. Plaintiff's
26 attempt to reopen the trial at this late date to adduce alternative evidence to the Petersen survey violates due process
27 and shall not be considered by the Court. *See People v. Bolton* (1979) 23 Cal.3d 208, 213 n.2 (axiomatic that new
28 evidence cannot be adduced in closing argument."); *Garcia v. ConMed Corp.* (2014) 204 Cal.App.4th 144, 159.
Defendant Security Paving's motion to strike Exhibit A and B of Plaintiff's Post-Trial Brief. There is no basis upon
which to reopen the proceeding and to allow plaintiff to present new evidence that could have been presented at trial.
See Town of Atherton v. California High-Speed Rail Auth. (2014) 228 Cal.App.4th 314, 325.

1 parties, the most desirable result in terms of public policy in the absence of proof of a particular
2 fact, and the probability of the existence or nonexistence of the fact. *Id.*

3
4 A long-standing application of burden-shifting occurs in the wage and hour context when an
5 employer's compensation records are so incomplete or inaccurate that an employee cannot prove
6 his or her damages.³⁶ *Id.* Even when the records at issue are not legally required to be maintained,
7 the burden may be shifted. *Id.* at 1190 ("fundamental principle of American jurisprudence that for
8 every wrong there is a remedy, and that, unless countered by public policy, an injured party should
9 be compensated for all damage proximately caused by the wrongdoer.")

10
11 The problem in this case, however, is that the aggrieved plaintiff never argued for that burden-
12 shifting to be applied and defendant adduced no evidence whatsoever from which an estimate
13 could be made of the frequency of the violations or the employees on the nighttime road repair and
14 replacement crews who suffered them. Accordingly, while the lack of this evidence may not be
15 fatal to the plaintiff's PAGA case – as the burden had shifted to the defendant to provide this
16 critical, missing information – it still presents the problem that the Court does not have any
17 competent evidence by which to award unpaid wages or penalties to the aggrieved employees.

18
19 Where, as here, the fact that the defendant has failed to comply with the Labor Code's requirement
20 of authorizing and permitting rest breaks during which employees are free from supervisory
21 control has been established, but the frequency of occurrence of this violation and the employees
22 who suffered this deprivation cannot be identified, nominal damages should be available.
23 Nominal damages are granted neither to compensate the plaintiff nor punish the defendant.
24 Nominal damages can be awarded when the defendant has invaded a cognizable legal interest of
25 the plaintiff, *i.e.*, to be afforded legally compliant rest breaks, even when the plaintiff cannot prove

26
27
28 ³⁶ Outside of the wage and hour context, when the parties have unequal access to evidence necessary to prove a
disputed issue, the party who exclusively possesses facts essential to that claim bears the burden of going forward with
the evidence on the issue, although it is not the party asserting the claim. *See Amaral*, 163 Cal.App.4th at 1189-1190.

1 compensatory damages and sues only to establish a right or to obtain a ruling regarding the
2 defendant's conduct. *See Restatement 2d of Torts* § 907. The award of nominal damages in such
3 cases avoids allowing a wrongdoer to avoid punishment and furthers the public's interest in the
4 robust enforcement of the labor laws. Nominal damages are properly awarded when, although the
5 claimant has shown significant harm, its amount is not proved with sufficient certainty to entitle
6 him to an award of compensatory damages. *Id.*

7
8 In this case, therefore, the aggrieved employees have shown significant harm, but its amount has
9 not been proved with sufficient certainty to allow the court to compute or award civil penalties.
10 Accordingly, the court awards a nominal civil penalty assessment of \$50 for an initial violation of
11 Labor Code § 558.³⁷

12 IV. SHIELDS' INDIVIDUAL CLAIMS

13
14 Jon Shields also alleged individual causes of action for lost wages due to missed meal and rest
15 breaks, waiting period penalties and an individual claim for restitution and/or injunctive under the
16 UCL based on these statutory violations.

17 A. Meal and Rest Breaks

18
19 California's meal period rules are set forth in Labor Code Section 512 and the Wage Orders.
20 These rules generally prohibit employers from employing an employee for a work period of more
21 than five hours without providing a meal period of at least 30 minutes. As explained and
22

23 ³⁷ Injunctive relief is not available under PAGA. PAGA actions can recover only statutory penalties in fixed amounts
24 per violation. *Plaisted v. Dress Barn, Inc.* (C.D. Cal. Sept. 20, 2012) 2012 WL 4356158, *2). Moreover, even if such
25 relief were available, plaintiff adduced no evidence after March 27, 2015 with regard to Security Paving's rest break
26 practices. Thus, there is no basis to find an ongoing violation that would occasion the need for an injunction.

27 The court declines to award a separate PAGA statutory penalty in this case. PAGA is simply a procedural statute
28 allowing aggrieved employees to recover civil penalties for Labor Code violations. PAGA's plain language confirms
that the statute allows only civil penalties. The civil penalty awarded in this case of \$50 must be distributed 75% to
the Labor and Workforce Development Agency and 25% to the aggrieved employees. *See* Labor Code § 2699(i).
Where, as here, Labor Code Section 558 provides a civil penalty, PAGA does not allow a separate double penalty to
be imposed. *See Wert v. U.S. Bancorp* (S.D. Cal. Jun. 23, 2014) 2014 WL 2860287, *2-3.

1 examined in *Brinker Restaurant Corp. v. Superior Court*, (2012) 53 Cal.4th 1004, it is not a duty of
2 an employer to ensure that no work is performed. Rather, an employer satisfies its obligation if it
3 (1) relieves employees of all duties; (2) relinquishes control over their activities; (3) permits them
4 a reasonable opportunity to take a 30-minute break, and (4) does not discourage or impede them
5 from doing so.

6
7 Employers must also comply with the meal period timing rules when providing meal periods. In
8 the absence of a waiver, Labor Code Section 512 requires a first meal period no later than the end
9 of an employee's fifth hour of work, and a second meal period no later than the end of an
10 employee's tenth hour of work. This has been construed to mean that a meal break should be
11 afforded no later than the start of an employee's sixth hour of work and no later than what would
12 be the start of the 11th hour of work.³⁸

13
14 Shields' individual claim for missed rest breaks, as discussed *supra*, are controlled by Wage Order
15 16, which provides that "[e]very employer *shall authorize and permit* all employees to take rest
16 periods, which insofar as practicable, shall be in the middle of each work period The
17 authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes
18 net rest time for every four (4) hours worked, or major fraction thereof." Wage Order 16-2001, §
19 11(A).

20
21
22 ³⁸ The plaintiff -- at a very late point in the case -- asserted that his individual meal break claim could also be proved
23 based on the absence of potable water, soap and towels with which to wash his hands before eating. *See* Wage Order
24 Section 10(c). Defendant objects, understandably, to the lateness of these allegations. The plaintiff's complaint fails
25 to mention a claim for individual meal period violations pursuant to Section 10(c). Section 10(c) requires that
26 employers provide "an adequate supply of potable water, soap, or other suitable cleansing agent, and single use towels
27 for handwashing." There is nothing that requires the potable water to be provided at any particular location or to be
28 located proximately to the soap and towels. The credible testimony adduced from the witnesses proffered by both
plaintiff and defendant established that defendant's work sites had both potable water and separate wash stations with
soap and hand towels -- albeit at different locations. There was no testimony adduced by the plaintiff suggesting that it
was a problem for soap and towels to be taken over to the potable water for use in handwashing. Thus, it is not
necessary to rule on defendant's late objection to the claim because plaintiff failed to meet his burden of proving that
defendant violated 10(c).

1 Shields testified credibly that he had not been provided legally compliant meal and rest breaks
2 during the eight months that he drove a volumetric mixer for Security Paving as part of a night
3 roadway repair and replacement crews. He did not, however, quantify that claim. He did not
4 testify how often he missed his meal and/or rest breaks, how many shifts he worked for Security
5 Paving during the eight months that he worked on overnight road crews, what his regular or hourly
6 rate was, or any other fact upon which his individual losses could be calculated with reasonable
7 certainty.

8
9 Unlike the position that the PAGA aggrieved employees found themselves in, however, Shields
10 possessed all of the information required to perfect his individual claims. He testified that he
11 verified the hours appearing on his paychecks against his personally maintained work records and,
12 on occasion, brought errors to the attention of his employer.³⁹ Unlike the representative group of
13 employees, Shields as an individual plaintiff possessed the information from which a reasonable
14 estimate of missed meal and/or rest breaks during this eight-month period could have been
15 computed and sponsored at trial.⁴⁰ And, he testified that he knew the number of occasions for
16 which he had received premium pay for missed breaks. But, for reasons not entirely clear to the
17 court, he failed to provide any evidence concerning his damages at trial.

18
19 Where, as here, there is no basis to shift the burden of demonstrating damages to the defendant,
20 the plaintiff's failure to prove the amount of his loss is fatal to his individual meal and rest break
21 claims. *See City of Oakland*, 47 Cal.App.2d at 450.

22
23
24
25 ³⁹ He further testified that he received premium payments for some missed meal periods during the time that he
worked on asphalt projects and could answer the question of how often by referring to his "notes." (Trial Transcript –
September 20, 2017 at 26:2-3).

26
27 ⁴⁰ Jon Shields kept track of every hour that he worked for Security Paving and followed up with the company if his
records did not match the company records. (See Exh. 508 at 2.) The company also maintained payroll records to the
same effect for his days of employment. (Id. at 17-21.) The Court, however, declines to consider the plaintiff's late
28 interjection of this information – which has been extracted, manipulated and computed -- in the post-trial brief as
proof of individual damages for Jon Shields. *See supra* n. 35.

1
2 B. Derivative Wage Statement Claims and Waiting Time Penalties

3
4 Not only did plaintiff Jon Shields fail to adduce competent evidence with which to establish his
5 damages from missed meal periods and rest breaks during the time that he worked with nighttime
6 road paving crews, he adduced no evidence on either his derivative wage statement claim or his
7 cause of action for waiting time penalties.

8 C. UCL Claims

9
10 Jon Shields' final individual cause of action asserts a claim for restitution and injunctive relief
11 under the UCL. There is no evidence in this record as to the amount of any unpaid wages that
12 might be claimed by the individual plaintiff as restitution. Nor is there any basis for injunctive
13 relief presented in this case. Jon Shields was fired by Security Paving many years ago. A UCL
14 representative plaintiff who is no longer employed by or otherwise affiliated in any way with a
15 defendant-employer apart from a lawsuit lacks standing to pursue an injunction against his former
16 employer as he faces no "real and immediate threat of repeated injury from such practices."
17 *Cleveland v. Groceryworks.com LLC* (N.D. Cal. 2016) 200 F. Supp.3d 924, 961-962.

18
19 CONCLUSION

20
21 Shields, as an aggrieved employee on behalf of the representative group, shall receive a nominal
22 award in the amount of \$50. Defendant has prevailed on the remaining causes of action. Plaintiff
23 shall prepare a judgment consistent with this ruling.

24
25 DATED: *October 24, 2017*

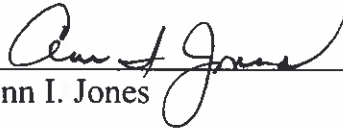
26 
Hon. Ann I. Jones

EXHIBIT 11

TSLF TIME MASSEY

Attorney/Paralegal	Total Hours	Rate	Pre-Multiplier Lodestar
David Spivak (26th Year Attorney)	17.24	\$700.00	\$12,068.00
Michelle Grimberg (Formerly Employed 20+ Year Attorney)	0.17	\$650.00	\$110.50
Gregory Wilbur (Formerly Employed 7th Year Attorney)	0.08	\$450.00	\$36.00
A. Beatrice Hilke (7+ Year Paralegal)	2.92	\$300.00	\$876.00
Breck Oyama (13th Year Paralegal)	7.94	\$300.00	\$2,382.00
Lizzett Cortez (9th Year Paralegal)	0.08	\$250.00	\$20.00
Maya Cheaitani (2nd Year Attorney)	62.68	\$250.00	\$15,670.00
Daniel McGuire (Formerly Employe 10+ Year Paralegal)	0.17	\$200.00	\$34.00
David Pham (Former 10+ Year Paralegal)	3.16	\$200.00	\$632.00
Lori Fuega (Formerly Employed 10+ Year Paralegal)	4.06	\$200.00	\$812.00
Nora Greer (15+ Year Paralegal)	4.98	\$200.00	\$996.00
Stacy Aguirre (4+ year Paralegal)	21.83	\$200.00	\$4,366.00
Daniela Linares (1st Year Intake Assistant)	1.92	\$150.00	\$288.00
Emily Ly (1st Year Paralegal)	0.25	\$150.00	\$37.50
Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	23.66	\$150.00	\$3,549.00
TOTAL AS OF 11/7/22	151.14		\$41,877.00

Fees Requested	\$16,666.67
Multiplier	0.398

TSLF TIME MASSEY

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
12/4/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	Client call re intake	0.08	\$ 150.00	\$ 12.00
12/4/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	email sent to client re social media privacy settings	0.08	\$ 150.00	\$ 12.00
12/4/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	Drafted detailed intake notes	0.92	\$ 150.00	\$ 138.00
12/4/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	Calendaring	0.08	\$ 150.00	\$ 12.00
12/4/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	Social Media Search	0.50	\$ 150.00	\$ 75.00
12/4/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	Client call re intake	1.00	\$ 150.00	\$ 150.00
12/4/2020	David Spivak (26th Year Attorney)	intake ands prepare file	0.58	\$ 700.00	\$ 406.00
12/7/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	Client Call re EDD/additional intake info	0.33	\$ 150.00	\$ 49.50
12/7/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	Call to Client	0.08	\$ 150.00	\$ 12.00
12/7/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	SOS search	0.33	\$ 150.00	\$ 49.50
12/7/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	Created Client Folder	0.08	\$ 150.00	\$ 12.00
12/7/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	Draft evid. preservation lt re cell records	0.25	\$ 150.00	\$ 37.50
12/7/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	Draft evid. preservation lt re cell records	0.25	\$ 150.00	\$ 37.50
12/7/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	BeenVerified	0.50	\$ 150.00	\$ 75.00
12/14/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	correspondence with P and email to DGS/CK re following up on retainer;	0.25	\$ 150.00	\$ 37.50
12/23/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	Client call re intake; updated intake notes; confer with CK re retainer	0.58	\$ 150.00	\$ 87.00
12/29/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	email CK re retainer verbiage	0.08	\$ 150.00	\$ 12.00
12/31/2020	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	email CK re retainer verbiage/ claims	0.08	\$ 150.00	\$ 12.00
1/8/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	Call w P re retainer status update; email DGS/CK	0.17	\$ 150.00	\$ 25.50
1/13/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	Began drafting evid pres lt and retainer	0.67	\$ 150.00	\$ 100.50

TSLF TIME MASSEY

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
1/13/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	ev pres lt and retainer emailed to DGS for review	0.17	\$ 150.00	\$ 25.50
1/13/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	Personnel Autho sent circulated for sig to P	0.08	\$ 150.00	\$ 12.00
1/14/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	retainer agreement finalized and circulated for P sig	0.25	\$ 150.00	\$ 37.50
1/14/2021	David Spivak (26th Year Attorney)	review and revise ev pres letter and retainmer	0.33	\$ 700.00	\$ 231.00
1/15/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	client call re explaining retainer agreement + evid pres lt	0.33	\$ 150.00	\$ 49.50
1/15/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	uploaded client docs to file	0.08	\$ 150.00	\$ 12.00
1/19/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	uploaded Personnel Autho and P sig retainer to file	0.17	\$ 150.00	\$ 25.50
1/19/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	retainer agreement circulated for DGS sig	0.17	\$ 150.00	\$ 25.50
1/25/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	saved Fully executed retainer to file	0.08	\$ 150.00	\$ 12.00
1/29/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	Fully Executed Retainer Agreement and FAQ emailed to Client	0.25	\$ 150.00	\$ 37.50
2/1/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	c/w client re FAQ & retainer	0.17	\$ 150.00	\$ 25.50
2/24/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	attempted to leave client v/m	0.08	\$ 150.00	\$ 12.00
3/3/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	attempted to leave client v/m	0.08	\$ 150.00	\$ 12.00
3/5/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	client call; txt CK; email MC re calendaring call to discuss LWDA lt; email DGS re client question; draft EDD autho; circulated for client sig; sent client confirmation email	1.00	\$ 150.00	\$ 150.00
3/8/2021	Maya Cheaitani (2nd Year Attorney)	call w/ JB abt client intake + review files	1.00	\$ 250.00	\$ 250.00
3/17/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	Draft lt to EDD re client autho	0.08	\$ 150.00	\$ 12.00
3/18/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	mailed lt to EDD with attached autho	0.08	\$ 150.00	\$ 12.00
3/22/2021	Maya Cheaitani (2nd Year Attorney)	email CK case update	0.17	\$ 250.00	\$ 42.50
3/29/2021	Maya Cheaitani (2nd Year Attorney)	text client abt intake	0.17	\$ 250.00	\$ 42.50
3/30/2021	Maya Cheaitani (2nd Year Attorney)	client intake	1.00	\$ 250.00	\$ 250.00
3/30/2021	Maya Cheaitani (2nd Year Attorney)	text w/client abt facts	0.17	\$ 250.00	\$ 42.50
3/31/2021	Maya Cheaitani (2nd Year Attorney)	call w/DGS about claims	0.17	\$ 250.00	\$ 42.50

TSLF TIME MASSEY

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
4/12/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	circulated ev pres lt. for DGS sig; mailed fully executed ev pres lt.	0.17	\$ 150.00	\$ 25.50
4/22/2021	Maya Cheaitani (2nd Year Attorney)	Emailed client update	0.08	\$ 250.00	\$ 20.00
4/23/2021	Maya Cheaitani (2nd Year Attorney)	Messaged client about evd. Pres.	0.25	\$ 250.00	\$ 62.50
5/3/2021	Maya Cheaitani (2nd Year Attorney)	review PF/msg JB/email DGS	0.42	\$ 250.00	\$ 105.00
5/3/2021	Maya Cheaitani (2nd Year Attorney)	call w/ client abt PF	0.92	\$ 250.00	\$ 230.00
5/3/2021	Maya Cheaitani (2nd Year Attorney)	email client abt PF	0.25	\$ 250.00	\$ 62.50
6/2/2021	Maya Cheaitani (2nd Year Attorney)	draft LWDA letter	3.00	\$ 250.00	\$ 750.00
6/2/2021	Maya Cheaitani (2nd Year Attorney)	email/msg client	0.50	\$ 250.00	\$ 125.00
6/2/2021	Maya Cheaitani (2nd Year Attorney)	email LWDA lt to client	0.08	\$ 250.00	\$ 20.00
6/3/2021	David Spivak (26th Year Attorney)	Review and revise notice to the Labor & Workforce Development Agency; review personnel records	0.58	\$ 700.00	\$ 406.00
6/4/2021	Maya Cheaitani (2nd Year Attorney)	msg client	0.42	\$ 250.00	\$ 105.00
6/4/2021	Maya Cheaitani (2nd Year Attorney)	revise LWDA lt	1.50	\$ 250.00	\$ 375.00
6/6/2021	Maya Cheaitani (2nd Year Attorney)	review client docs + upload new docs to file	1.00	\$ 250.00	\$ 250.00
6/8/2021	David Spivak (26th Year Attorney)	Review and revise second version of the letter to the Labor & Workforce Development Agency	0.17	\$ 700.00	\$ 119.00
6/8/2021	Maya Cheaitani (2nd Year Attorney)	revise LWDA lt	1.42	\$ 250.00	\$ 355.00
6/10/2021	Maya Cheaitani (2nd Year Attorney)	msg client/upload client docs	0.50	\$ 250.00	\$ 125.00
6/10/2021	Maya Cheaitani (2nd Year Attorney)	research def company + review client docs	0.75	\$ 250.00	\$ 187.50
6/10/2021	Maya Cheaitani (2nd Year Attorney)	revise LWDA lt	0.83	\$ 250.00	\$ 207.50
6/11/2021	Michelle Grimberg (Formerly Employed 20+ Year Attorney)	review and analyze LWDA letter and execute.	0.17	\$ 650.00	\$ 110.50
6/11/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	finalized LWDA lt; mtg w/NG; circulated for sig; created 2 mailing packages and labels; printed; uploaded to LWDA; mailed; email CL copy; updated calendar 65 day reminder	1.00	\$ 150.00	\$ 150.00
6/11/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	email CL witness list request	0.08	\$ 150.00	\$ 12.00
6/11/2021	Maya Cheaitani (2nd Year Attorney)	email JB abt LWDA lt & # of aggrieved employees	0.25	\$ 250.00	\$ 62.50
6/15/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	updated LWDA lit chain	0.08	\$ 150.00	\$ 12.00
6/15/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	returned CL call; was unable to leave v/m because her inbox was full; sent a follow up email and text	0.08	\$ 150.00	\$ 12.00
6/17/2021	Maya Cheaitani (2nd Year Attorney)	draft DFEH complaint	3.00	\$ 250.00	\$ 750.00
6/18/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	c/w and txt CL re emails; email MC/DGS	0.25	\$ 150.00	\$ 37.50

TSLF TIME MASSEY

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
6/18/2021	David Spivak (26th Year Attorney)	Review and revise DFEH complaint	0.33	\$ 700.00	\$ 231.00
6/21/2021	Maya Cheaitani (2nd Year Attorney)	Call w/ client abt DFEH claims + revisions	1.50	\$ 250.00	\$ 375.00
6/21/2021	Maya Cheaitani (2nd Year Attorney)	review Akanksha Massey emails & update DFEH	0.58	\$ 250.00	\$ 145.00
6/21/2021	Lizzett Cortez (9th Year Paralegal)	reviewed emails	0.08	\$ 250.00	\$ 20.00
6/21/2021	Maya Cheaitani (2nd Year Attorney)	revise DFEH complaint	1.42	\$ 250.00	\$ 355.00
6/23/2021	Breck Oyama (13th Year Paralegal)	scan/circulate mail	0.17	\$ 300.00	\$ 51.00
6/24/2021	Breck Oyama (13th Year Paralegal)	emails w/ JB re lwda notice/deadline chain	0.08	\$ 300.00	\$ 24.00
6/24/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	saved received LWDA cert mail to file; downloaded USPS tracking info	0.25	\$ 150.00	\$ 37.50
6/24/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review emails; updated PAGA lit chain in FV; email BO status	0.17	\$ 150.00	\$ 25.50
6/24/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review emails; saved CL docs to CL doc folder; checked CL social media privacy	0.25	\$ 150.00	\$ 37.50
6/28/2021	Maya Cheaitani (2nd Year Attorney)	review client intake notes/read pretext 101 article/supplement DFEH complaint/save versions to Gdrive/emails DGS	2.33	\$ 250.00	\$ 582.50
6/29/2021	David Spivak (26th Year Attorney)	Review and revise complaint to the department of fair employment and housing; email to MC re same	0.67	\$ 700.00	\$ 469.00
6/29/2021	Maya Cheaitani (2nd Year Attorney)	revise DFEH complaint/review emails +intakes/email DGS/email client	2.25	\$ 250.00	\$ 562.50
6/29/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review fv feed; review emails	0.08	\$ 150.00	\$ 12.00
6/30/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	reviewed CL email re DFEH	0.17	\$ 150.00	\$ 25.50
7/1/2021	Breck Oyama (13th Year Paralegal)	review emails from client	0.08	\$ 300.00	\$ 24.00
7/1/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	reviewed emails	0.08	\$ 150.00	\$ 12.00
7/1/2021	Maya Cheaitani (2nd Year Attorney)	review emails/respond to client/edit DFEH complaint	1.00	\$ 250.00	\$ 250.00
7/2/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	reviewed CL email re DFEH	0.08	\$ 150.00	\$ 12.00
7/2/2021	David Spivak (26th Year Attorney)	review Massey file; email client	0.25	\$ 700.00	\$ 175.00
7/2/2021	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
7/6/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	reviewed emails re DFEH	0.08	\$ 150.00	\$ 12.00
7/12/2021	Breck Oyama (13th Year Paralegal)	review emails/feed	0.08	\$ 300.00	\$ 24.00
7/12/2021	Emily Ly (1st Year Paralegal)	Reviewed emails.	0.08	\$ 150.00	\$ 12.00
7/12/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review CL email	0.08	\$ 150.00	\$ 12.00

TSLF TIME MASSEY

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
7/12/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review and respond to CL txt	0.08	\$ 150.00	\$ 12.00
8/11/2021	Maya Cheaitani (2nd Year Attorney)	draft paga-only complaint/email&msg DGS	2.50	\$ 250.00	\$ 625.00
8/12/2021	Maya Cheaitani (2nd Year Attorney)	Proofread Lwda/email DGS	0.75	\$ 250.00	\$ 187.50
8/13/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	assembled summons/civil case cover sheet	0.50	\$ 150.00	\$ 75.00
8/13/2021	Maya Cheaitani (2nd Year Attorney)	Revise Lwda Lt/email jb	0.33	\$ 250.00	\$ 82.50
8/13/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	email MC; saved complaint	0.08	\$ 150.00	\$ 12.00
8/16/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	finalized complaint and related docs/circulated to BO for review	0.17	\$ 150.00	\$ 25.50
8/17/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	c/w CL giving status update on the case; review FV and complete tasks	0.33	\$ 150.00	\$ 49.50
8/17/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	implemented DGS revisions to complaint; circulated for sig	0.25	\$ 150.00	\$ 37.50
8/17/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	reviewed emails; updated complaint, civil case cover sheet, and addendum; attached exhibit; circulated for sig	0.67	\$ 150.00	\$ 100.50
8/17/2021	Maya Cheaitani (2nd Year Attorney)	review emails	0.17	\$ 250.00	\$ 42.50
8/17/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	filed complaint; updated expenses; emailed DB/BO	0.25	\$ 150.00	\$ 37.50
8/17/2021	David Spivak (26th Year Attorney)	review and revise complaint	0.33	\$ 700.00	\$ 231.00
8/18/2021	Nora Greer (15+ Year Paralegal)	TC with JB re LWDA Submission	0.08	\$ 200.00	\$ 16.00
8/18/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review file; completed fv tasks	0.42	\$ 150.00	\$ 63.00
8/18/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	c/w NG; saved conformed copies of the lawsuit; assembled S&C for service; filed complaint w/LWDA; updated FV; fwd confirmation emails to FV/BO	0.83	\$ 150.00	\$ 124.50
8/19/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review and respond to email; calculated and updated calendar re deadlines for SOP	0.17	\$ 150.00	\$ 25.50
8/19/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review and respond to emails	0.08	\$ 150.00	\$ 12.00
8/23/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review and respond to CL email	0.17	\$ 150.00	\$ 25.50
8/31/2021	Maya Cheaitani (2nd Year Attorney)	review emails/coa/cmc/calendar	1.50	\$ 250.00	\$ 375.00
8/31/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	saved scanned doc; included notice in S&C for service (OCrd); updated calendar and deadlines; email BO	0.42	\$ 150.00	\$ 63.00
9/2/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	emailed CL copy of S&C; assembled/filed S&C for service via One Legal	0.75	\$ 150.00	\$ 112.50

TSLF TIME MASSEY

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
9/3/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review status of SOP; fwd email	0.08	\$ 150.00	\$ 12.00
9/10/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review and respond to BO email; checked file and S&C sent for service; saved notice of cmc and OCRd; calendar reminder to draft notice	0.17	\$ 150.00	\$ 25.50
9/10/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	emails w/BO; email One Legal re status on SOP	0.17	\$ 150.00	\$ 25.50
9/10/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	checked status of one legal SOP order; email BO	0.08	\$ 150.00	\$ 12.00
9/13/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	prepared notice of cmc	0.50	\$ 150.00	\$ 75.00
9/13/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review and respond to email re status on SOP	0.08	\$ 150.00	\$ 12.00
9/14/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	mtg w/BO re SOP; c/w One Legal re status; revised notice of pleading	0.25	\$ 150.00	\$ 37.50
9/17/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review and respond to email re OC vcard; prepared N&A and cover lt to OC	1.00	\$ 150.00	\$ 150.00
9/17/2021	Maya Cheaitani (2nd Year Attorney)	review Oc emails/review complaint	0.58	\$ 250.00	\$ 145.00
9/20/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	mtg w/BO; revised N&A cover lt; circulated for sig	0.42	\$ 150.00	\$ 63.00
9/20/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	assembled finalized N&A and cover lt with sig; emailed OC and printed/prepared postage; calendared 20 day deadline	0.42	\$ 150.00	\$ 63.00
9/20/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	finalized cover lt/N&A; circulated for review	0.33	\$ 150.00	\$ 49.50
9/21/2021	David Spivak (26th Year Attorney)	Review complaint and related documents sent to opposing counsel	0.17	\$ 700.00	\$ 119.00
10/4/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	updated expenses and uploaded one legal inv; email BO	0.08	\$ 150.00	\$ 12.00
10/5/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	reviewed and saved emails; reviewed file and one legal orders; checked calendar re OCs deadline to respond to N7A; saved docs in CL file	0.17	\$ 150.00	\$ 25.50
10/13/2021	Gregory Wilbur (Formerly Employed 7th Year Attorney)	Review of emails to confirm no return of N&A	0.08	\$ 450.00	\$ 36.00
10/14/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review emails; sent follow up email to OC re status of N&A	0.08	\$ 150.00	\$ 12.00
10/15/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review and respond to emails	0.08	\$ 150.00	\$ 12.00
10/15/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	reviewed emails; saved signed N&A	0.08	\$ 150.00	\$ 12.00
10/18/2021	Maya Cheaitani (2nd Year Attorney)	review emails	0.33	\$ 250.00	\$ 82.50
10/18/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	revised pos on POS summons; calculated deadlines (responsive pld/discovery/depo notice); updated calendar	0.25	\$ 150.00	\$ 37.50

TSLF TIME MASSEY

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
10/18/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	assembled POS Summons with pos and sigs; email BO for final review	0.08	\$ 150.00	\$ 12.00
10/18/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	c/w EL; filed POS Summons; served OC; emailed CL copy; emailed DGS re S&C	0.25	\$ 150.00	\$ 37.50
10/18/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review emails and file; assembled pos summons; circulated for sig	0.58	\$ 150.00	\$ 87.00
10/18/2021	Emily Ly (1st Year Paralegal)	Met with JB re efilng.	0.17	\$ 150.00	\$ 25.50
10/18/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	updated expenses and uploaded OLC inv; email BO	0.08	\$ 150.00	\$ 12.00
10/25/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review emails; downloaded and saved conformed copies of POS summons and related docs; fwd docs to FV/BO	0.17	\$ 150.00	\$ 25.50
10/26/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review emails; updated pos service list	0.08	\$ 150.00	\$ 12.00
11/2/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	updated expenses and uploaded olc inv; email BO	0.08	\$ 150.00	\$ 12.00
11/12/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review emails, file, fv, and calendar; checked docket; draft and email OC re scheduling meet and confer; updated calendar re appearance	0.33	\$ 150.00	\$ 49.50
11/12/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	review and respond to email re service list	0.08	\$ 150.00	\$ 12.00
11/18/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	follow up email to OC re meet and confer	0.08	\$ 150.00	\$ 12.00
11/24/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	follow up email to OC re scheduling a meet and confer	0.08	\$ 150.00	\$ 12.00
11/29/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	follow up email to OC re availability to schedule meet and confer	0.08	\$ 150.00	\$ 12.00
11/29/2021	David Spivak (26th Year Attorney)	meet and confer with OC re case management and mediation; notes to staff	0.25	\$ 700.00	\$ 175.00
11/30/2021	David Spivak (26th Year Attorney)	prepare mediation requests and review P's records	0.75	\$ 700.00	\$ 525.00
12/3/2021	Lori Fueva (Formerly Employed 10+ Year Paralegal)	Review email from DGS prepare POS for Sprogs, R4PD, PMQ and Natural Person Depo Notices & Bel and Protective Order Stipulations and prep Form Rogs General and Employment and Serve by email and USPS	2.40	\$ 200.00	\$ 480.00
12/3/2021	David Spivak (26th Year Attorney)	prepare initial discovery	2.33	\$ 700.00	\$ 1,631.00
12/6/2021	Lori Fueva (Formerly Employed 10+ Year Paralegal)	Review email from DGS and email word versions of PO re Confidential Docs and Belaire Stip for OC review and redline	0.08	\$ 200.00	\$ 16.00
12/7/2021	Lori Fueva (Formerly Employed 10+ Year Paralegal)	Review email agreeing to suspend formal discovery and exchange information informally	0.08	\$ 200.00	\$ 16.00
12/23/2021	Nora Greer (15+ Year Paralegal)	Email LF re CMC statement deadline, review CMC statement, send LF corrections	0.33	\$ 200.00	\$ 66.00
12/23/2021	Nora Greer (15+ Year Paralegal)	Review emails, Prepare CMC Statement, Prepare POS, Serve and file CMC Statement, email LF to send copy to CL	0.75	\$ 200.00	\$ 150.00

TSLF TIME MASSEY

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
12/28/2021	Lori Fuega (Formerly Employed 10+ Year Paralegal)	Review Stamps.com to enter postage for December 3rd to serve OC with discovery	0.08	\$ 200.00	\$ 16.00
12/30/2021	Lori Fuega (Formerly Employed 10+ Year Paralegal)	prepare notice of posting jury fees and send to HS for atty Signature	0.42	\$ 200.00	\$ 84.00
1/3/2022	Lori Fuega (Formerly Employed 10+ Year Paralegal)	File (RL) and serve by USPS plaintiff's notice of posting jury fees, email and text client and cc to OC and team; set up Court Connect for DGS upcoming Hrg and update calendar	1.00	\$ 200.00	\$ 200.00
1/4/2022	Nora Greer (15+ Year Paralegal)	F/U email to LF	0.08	\$ 200.00	\$ 16.00
1/7/2022	Breck Oyama (13th Year Paralegal)	review status of cmc statement and jury fees, save to file, email OLC re courtesy copy	0.17	\$ 300.00	\$ 51.00
1/10/2022	Breck Oyama (13th Year Paralegal)	review emails/FV, update calendar	0.33	\$ 300.00	\$ 99.00
1/10/2022	Nora Greer (15+ Year Paralegal)	Updated Calendar entry for CMC, message to DGS	0.08	\$ 200.00	\$ 16.00
2/1/2022	Breck Oyama (13th Year Paralegal)	reassign calendar entries, review emails and fwd to DM task	0.08	\$ 300.00	\$ 24.00
2/2/2022	Daniel McGuire (Formerly Employee 10+ Year Paralegal)	Review docket for future hearings, confirm dates are calendared	0.17	\$ 200.00	34
2/4/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
2/4/2022	Nora Greer (15+ Year Paralegal)	Review emails, prepare, file serve notice of entry of order	0.67	\$ 200.00	\$ 134.00
2/9/2022	Breck Oyama (13th Year Paralegal)	review emails, draft f/u to OC	0.08	\$ 300.00	\$ 24.00
2/17/2022	Breck Oyama (13th Year Paralegal)	review emails, f/u OC re mediation, review FV and save answer	0.17	\$ 300.00	\$ 51.00
2/24/2022	Breck Oyama (13th Year Paralegal)	email OC re mediators, check w/ DGS re discovery	0.17	\$ 300.00	\$ 51.00
3/7/2022	Breck Oyama (13th Year Paralegal)	review emails, check w/ OC re mediator dates	0.08	\$ 300.00	\$ 24.00
3/10/2022	Breck Oyama (13th Year Paralegal)	review emails/calendar, email OC re mediation dates and calendar tentative dates	0.17	\$ 300.00	\$ 51.00
3/10/2022	Breck Oyama (13th Year Paralegal)	f/u OC re mediation, email mediators for availability	0.17	\$ 300.00	\$ 51.00
3/11/2022	Breck Oyama (13th Year Paralegal)	review emails re mediation	0.08	\$ 300.00	\$ 24.00
3/22/2022	Breck Oyama (13th Year Paralegal)	review emails, email w/ mediator office, update calendar, email client re mediation	0.17	\$ 300.00	\$ 51.00
3/22/2022	Breck Oyama (13th Year Paralegal)	review emails, email OC re mediation dates, update calendar	0.17	\$ 300.00	\$ 51.00
3/25/2022	Breck Oyama (13th Year Paralegal)	review emails, email client	0.08	\$ 300.00	\$ 24.00
3/28/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
3/30/2022	Daniela Linares (1st Year Intake Assistant)	Call w CL. Saved contact to fv and case folder	0.50	\$ 150.00	\$ 75.00
4/12/2022	Breck Oyama (13th Year Paralegal)	review emails, f/u mediator re confirmation, email AA re calendar	0.33	\$ 300.00	\$ 99.00
4/15/2022	Breck Oyama (13th Year Paralegal)	review calendar entries re mediation	0.08	\$ 300.00	\$ 24.00
4/15/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
4/15/2022	Breck Oyama (13th Year Paralegal)	review emails re mediation, fwd AA tasks, email AL invoice	0.08	\$ 300.00	\$ 24.00
4/18/2022	Breck Oyama (13th Year Paralegal)	update team/tasks	0.08	\$ 300.00	\$ 24.00

TSLF TIME MASSEY

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
4/27/2022	Breck Oyama (13th Year Paralegal)	email OC and fwd emails to team, check w/ AL re mediation fees	0.08	\$ 300.00	\$ 24.00
4/28/2022	Daniela Linares (1st Year Intake Assistant)	reviewed interview notes. called witness list. no answer, lvm	0.42	\$ 150.00	\$ 63.00
5/5/2022	Breck Oyama (13th Year Paralegal)	review/fwd emails	0.08	\$ 300.00	\$ 24.00
5/10/2022	Daniela Linares (1st Year Intake Assistant)	linkedin search.	0.17	\$ 150.00	\$ 25.50
5/11/2022	David Pham (Former 10+ Year Paralegal)	review email re selection of 10 witnesses	0.08	\$ 200.00	\$ 16.00
5/13/2022	David Pham (Former 10+ Year Paralegal)	review calendar re 6-2-22 mediation and 5-18-22 fees	0.08	\$ 200.00	\$ 16.00
5/20/2022	David Pham (Former 10+ Year Paralegal)	review emails for aggrieved employee list	0.08	\$ 200.00	\$ 16.00
5/23/2022	David Pham (Former 10+ Year Paralegal)	email OPC re random sampling of 10 employees	0.08	\$ 200.00	\$ 16.00
5/24/2022	David Pham (Former 10+ Year Paralegal)	Follow up email to OPC re random sampling of 10 employees	0.08	\$ 200.00	\$ 16.00
5/24/2022	Daniela Linares (1st Year Intake Assistant)	call w cl re witnesses	0.08	\$ 150.00	\$ 12.00
5/26/2022	David Pham (Former 10+ Year Paralegal)	review file and email OPC re PAGA number and follow up on sample requests	0.17	\$ 200.00	\$ 34.00
5/26/2022	Breck Oyama (13th Year Paralegal)	fwd mediator email to DP to update calendar	0.08	\$ 300.00	\$ 24.00
5/26/2022	Maya Cheaitani (2nd Year Attorney)	review OC prod/msg team/email DGS	1.50	\$ 250.00	\$ 375.00
5/26/2022	Breck Oyama (13th Year Paralegal)	review emails, check w/ team re mediation brief, msg DP	0.17	\$ 300.00	\$ 51.00
5/26/2022	Maya Cheaitani (2nd Year Attorney)	msg DP re def data/email team/review records	2.00	\$ 250.00	\$ 500.00
5/27/2022	Maya Cheaitani (2nd Year Attorney)	draft mediation brief	5.00	\$ 250.00	\$ 1,250.00
5/27/2022	David Pham (Former 10+ Year Paralegal)	review mediation brief and assemble exhibits	0.50	\$ 200.00	\$ 100.00
5/27/2022	Daniela Linares (1st Year Intake Assistant)	email review	0.08	\$ 150.00	\$ 12.00
5/27/2022	David Pham (Former 10+ Year Paralegal)	download sample employee doc prod and OCR	0.50	\$ 200.00	\$ 100.00
5/27/2022	Nora Greer (15+ Year Paralegal)	Review brief and messages with DP	0.25	\$ 200.00	\$ 50.00
5/31/2022	David Pham (Former 10+ Year Paralegal)	assemble/finalize Mediation brief and email mediator and client	0.92	\$ 200.00	\$ 184.00
5/31/2022	David Pham (Former 10+ Year Paralegal)	update mediation brief exhibit tabs and email team	0.17	\$ 200.00	\$ 34.00
5/31/2022	Nora Greer (15+ Year Paralegal)	TC with DP re Mediation Brief	0.33	\$ 200.00	\$ 66.00
5/31/2022	Maya Cheaitani (2nd Year Attorney)	review FV for def prod/search for def med brief/email dgs	0.50	\$ 250.00	\$ 125.00
5/31/2022	Nora Greer (15+ Year Paralegal)	TC with DP re Mediation Brief emails	0.17	\$ 200.00	\$ 34.00
5/31/2022	Maya Cheaitani (2nd Year Attorney)	revise mediation brief/msg DP/review exhibits	1.25	\$ 250.00	\$ 312.50
5/31/2022	Maya Cheaitani (2nd Year Attorney)	finalize mediation brief/email dgs	1.17	\$ 250.00	\$ 292.50
6/1/2022	Maya Cheaitani (2nd Year Attorney)	case law research [REDACTED] /email dgs	0.75	\$ 250.00	\$ 187.50
6/1/2022	Maya Cheaitani (2nd Year Attorney)	review client email/review LWDA facts	0.75	\$ 250.00	\$ 187.50
6/1/2022	David Pham (Former 10+ Year Paralegal)	compile preliminary costs/spreadsheet	0.33	\$ 200.00	\$ 66.00

TSLF TIME MASSEY

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
6/1/2022	Breck Oyama (13th Year Paralegal)	review emails/calendar, msg DP tasks re mediation	0.33	\$ 300.00	\$ 99.00
6/1/2022	David Pham (Former 10+ Year Paralegal)	enter zoom meeting on calendar and email client mediation information	0.17	\$ 200.00	\$ 34.00
6/1/2022	Daniela Linares (1st Year Intake Assistant)	call w EL. Email	0.17	\$ 150.00	\$ 25.50
6/2/2022	Nora Greer (15+ Year Paralegal)	Mediation Day assistance	0.25	\$ 200.00	\$ 50.00
6/2/2022	David Spivak (26th Year Attorney)	Prepare for mediation and participate in mediation; draft settlement memorandum of Understanding	8.00	\$ 700.00	\$ 5,600.00
6/2/2022	Daniela Linares (1st Year Intake Assistant)	email review	0.17	\$ 150.00	\$ 25.50
6/2/2022	Maya Cheaitani (2nd Year Attorney)	mediation prep/email DGS/msg team/review docs	3.00	\$ 250.00	\$ 750.00
6/2/2022	Breck Oyama (13th Year Paralegal)	review/update costs fees spreadsheet re mediation	0.67	\$ 300.00	\$ 201.00
6/6/2022	Daniela Linares (1st Year Intake Assistant)	email	0.08	\$ 150.00	\$ 12.00
6/7/2022	Nora Greer (15+ Year Paralegal)	Review email, circulate MOU for signatures	0.25	\$ 200.00	\$ 50.00
6/8/2022	Breck Oyama (13th Year Paralegal)	review emails/calendar	0.08	\$ 300.00	\$ 24.00
6/9/2022	Nora Greer (15+ Year Paralegal)	Send OC plaintiff's signed MOU, review emails	0.17	\$ 200.00	\$ 34.00
6/13/2022	Nora Greer (15+ Year Paralegal)	F/U email to OC re MOU, Review emails, circulate fully executed MOU, save long form settlement draft, update calendar	0.33	\$ 200.00	\$ 66.00
6/13/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
6/13/2022	David Spivak (26th Year Attorney)	prepare bid requests for administration of settlement	0.25	\$ 700.00	\$ 175.00
6/13/2022	David Spivak (26th Year Attorney)	Prepare settlement agreement	1.17	\$ 700.00	\$ 819.00
6/14/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
6/14/2022	Nora Greer (15+ Year Paralegal)	Review and save 2 TPA bids to file	0.17	\$ 200.00	\$ 34.00
6/15/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
6/15/2022	Nora Greer (15+ Year Paralegal)	Review FV, messages with MC, email TPA bids to OC	0.17	\$ 200.00	\$ 34.00
6/17/2022	Nora Greer (15+ Year Paralegal)	F/U email to OC re Settlement Agreement	0.08	\$ 200.00	\$ 16.00
6/21/2022	Breck Oyama (13th Year Paralegal)	review emails/status	0.08	\$ 300.00	\$ 24.00
6/22/2022	Nora Greer (15+ Year Paralegal)	F/U email to OC re Settlement Agreement	0.08	\$ 200.00	\$ 16.00
6/23/2022	Nora Greer (15+ Year Paralegal)	Save OC redlines re settlement agreement to file, update calendar	0.08	\$ 200.00	\$ 16.00
6/24/2022	Nora Greer (15+ Year Paralegal)	Review emails, save redlines to file, f/u email to OC	0.17	\$ 200.00	\$ 34.00
6/24/2022	Daniela Linares (1st Year Intake Assistant)	email review. status of case	0.17	\$ 150.00	\$ 25.50
7/1/2022	Breck Oyama (13th Year Paralegal)	review/fwd emails to BH w/ tasks re settlement agmt	0.25	\$ 300.00	\$ 75.00
7/8/2022	A. Beatrice Hilke (7+ Year Paralegal)	Finalized redline word, clean word and clean PDF for NG's review	0.42	\$ 300.00	\$ 126.00
7/8/2022	A. Beatrice Hilke (7+ Year Paralegal)	Settlement Agreement Revised	1.00	\$ 300.00	\$ 300.00

TSLF TIME MASSEY

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
7/8/2022	A. Beatrice Hilke (7+ Year Paralegal)	Made one change to the Settlement Agreement	0.08	\$ 300.00	\$ 24.00
7/8/2022	A. Beatrice Hilke (7+ Year Paralegal)	Email to OC re PAGA Stlmt Agreement for Signatures	0.17	\$ 300.00	\$ 51.00
7/11/2022	A. Beatrice Hilke (7+ Year Paralegal)	emailed OC re the last change in the PAGA stlmt.	0.08	\$ 300.00	\$ 24.00
7/13/2022	A. Beatrice Hilke (7+ Year Paralegal)	Sent email to client re PAGA Settlement Agreement and uploaded to Hello Sign for signature.	0.42	\$ 300.00	\$ 126.00
7/13/2022	Nora Greer (15+ Year Paralegal)	Review emails	0.08	\$ 200.00	\$ 16.00
7/15/2022	A. Beatrice Hilke (7+ Year Paralegal)	emailed client back received signed PAGA Stlmt; saved it to the file	0.08	\$ 300.00	\$ 24.00
7/18/2022	A. Beatrice Hilke (7+ Year Paralegal)	re-sent hellosign to client PAGA stlmt was missing one signature	0.17	\$ 300.00	\$ 51.00
7/19/2022	A. Beatrice Hilke (7+ Year Paralegal)	Finalized PDF with DGS and AM signatures, sent to OC for his signature	0.25	\$ 300.00	\$ 75.00
7/19/2022	A. Beatrice Hilke (7+ Year Paralegal)	Downloaded Clients signed PAGA agreement. Arranged signatures to the PAGA Settlement for DGS' signature. Sent to DGS for signature	0.25	\$ 300.00	\$ 75.00
7/26/2022	Breck Oyama (13th Year Paralegal)	review emails/FV, check w/ team re status, email tasks BH/MC	0.17	\$ 300.00	\$ 51.00
8/11/2022	Stacy Aguirre (4+ year Paralegal)	Reviewed File Materials and Emails	0.67	\$ 200.00	\$ 134.00
8/15/2022	Stacy Aguirre (4+ year Paralegal)	Emailing Settlement Administrators for Bids	0.25	\$ 200.00	\$ 50.00
8/15/2022	Nora Greer (15+ Year Paralegal)	Review emails re TPA bids	0.08	\$ 200.00	\$ 16.00
8/15/2022	Stacy Aguirre (4+ year Paralegal)	Reviewed old emails to look for TPA bids and spoke with NG	0.42	\$ 200.00	\$ 84.00
8/17/2022	David Spivak (26th Year Attorney)	Prepare moving papers for approval of private attorney general act settlement; instructions to staff	1.08	\$ 700.00	\$ 756.00
8/17/2022	Maya Cheaitani (2nd Year Attorney)	review case/emails/moving papers mx settlement	2.75	\$ 250.00	\$ 687.50
8/17/2022	Stacy Aguirre (4+ year Paralegal)	Corresponded with Team re TPA Bid Selection and researched different bid amounts	0.33	\$ 200.00	\$ 66.00
8/17/2022	Stacy Aguirre (4+ year Paralegal)	Reviewed PAGA payment timeline and emailed team	0.25	\$ 200.00	\$ 50.00
8/17/2022	Stacy Aguirre (4+ year Paralegal)	Edited Moving Papers for PAGA Settlement Approval State Court, Spoke with Client and sent PAGA Payment Timeline	1.58	\$ 200.00	\$ 316.00
8/19/2022	Maya Cheaitani (2nd Year Attorney)	mx paga settlement/revise/review emails	3.00	\$ 250.00	\$ 750.00
8/25/2022	Maya Cheaitani (2nd Year Attorney)	paga settlement moving papers	5.00	\$ 250.00	\$ 1,250.00
8/26/2022	Nora Greer (15+ Year Paralegal)	TC with SA re mx	0.33	\$ 200.00	\$ 66.00
8/26/2022	Stacy Aguirre (4+ year Paralegal)	Edited Moving Papers for PAGA Settlement Approval State Court, worked on TOC and Declaration and exhibits	6.00	\$ 200.00	\$ 1,200.00
8/29/2022	Stacy Aguirre (4+ year Paralegal)	Worked on exhibits for MX PAGA approval	0.92	\$ 200.00	\$ 184.00
8/29/2022	Breck Oyama (13th Year Paralegal)	review emails, reassign calendar entries, add deadline chain, email SA tasks re mx settlement	0.25	\$ 300.00	\$ 75.00
9/1/2022	Stacy Aguirre (4+ year Paralegal)	Confirmed all Invoices are saved and entered	0.83	\$ 200.00	\$ 166.00
9/2/2022	Stacy Aguirre (4+ year Paralegal)	Worked on Client Time Log	0.83	\$ 200.00	\$ 166.00
9/2/2022	Breck Oyama (13th Year Paralegal)	mtg w/ SA re time log	0.25	\$ 300.00	\$ 75.00

TSLF TIME MASSEY

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Pre-Multiplier Lodestar
9/6/2022	Stacy Aguirre (4+ year Paralegal)	looked up hearing dates for PAGA MX and sent to team for selection	0.33	\$ 200.00	\$ 66.00
9/6/2022	Breck Oyama (13th Year Paralegal)	review emails, assemble emails to/from client and send to SA for time log, check w/ SA re hearing dates	0.33	\$ 300.00	\$ 99.00
9/7/2022	Stacy Aguirre (4+ year Paralegal)	Worked on Client Time Log	0.92	\$ 200.00	\$ 184.00
9/13/2022	Daniela Linares (1st Year Intake Assistant)	email w SA	0.08	\$ 150.00	\$ 12.00
9/22/2022	Maya Cheaitani (2nd Year Attorney)	mx paga approval/revise/msg SGS/review emails	2.00	\$ 250.00	\$ 500.00
9/22/2022	Stacy Aguirre (4+ year Paralegal)	Editing Motion or prelim paga	0.67	\$ 200.00	\$ 134.00
10/7/2022	Breck Oyama (13th Year Paralegal)	review/update time log, review emails, email w/ team	1.00	\$ 300.00	\$ 300.00
10/11/2022	Breck Oyama (13th Year Paralegal)	review emails, email team	0.08	\$ 300.00	\$ 24.00
10/12/2022	Maya Cheaitani (2nd Year Attorney)	review mx/msg SA/review emails & FV	0.75	\$ 250.00	\$ 187.50
10/12/2022	Stacy Aguirre (4+ year Paralegal)	Reserved hearing date and added hearing date to motion, removed highlights and redlines and sent to OC	1.00	\$ 200.00	\$ 200.00
10/13/2022	Stacy Aguirre (4+ year Paralegal)	Drafting clients time log and emailed to client for review	0.58	\$ 200.00	\$ 116.00
10/14/2022	Stacy Aguirre (4+ year Paralegal)	Spoke to client re time log	0.17	\$ 200.00	\$ 34.00
10/14/2022	Maya Cheaitani (2nd Year Attorney)	review emails	0.17	\$ 250.00	\$ 42.50
10/14/2022	Stacy Aguirre (4+ year Paralegal)	Emailed team about clients time log and case settling status	0.08	\$ 200.00	\$ 16.00
10/18/2022	Stacy Aguirre (4+ year Paralegal)	Spoke with CL about payment schedule	0.08	\$ 200.00	\$ 16.00
10/20/2022	Stacy Aguirre (4+ year Paralegal)	Updated client time log and sent new version to client	0.42	\$ 200.00	\$ 84.00
11/2/2022	Stacy Aguirre (4+ year Paralegal)	Resent client time log, calendared mx deadline, returned clients call	0.25	\$ 200.00	\$ 50.00
11/3/2022	Breck Oyama (13th Year Paralegal)	review emails, run TOA, redline version	0.58	\$ 300.00	\$ 174.00
11/3/2022	Stacy Aguirre (4+ year Paralegal)	Worked on PAGA approval mx, exhibits, and TOA, TC with BO & MC	5.25	\$ 200.00	\$ 1,050.00
TOTAL PRE-MULTIPLIER LODESTAR AS OF 11/7/2022			151.14		\$41,877.00

EXHIBIT 12

TSLF COSTS MASSEY

Date	Expense Type	Expense Description	Expense Amount
4/1/2021	Postage	Postage Mar 2021	\$ 0.51
5/13/2021	Postage	Postage Apr 2021	\$ 0.51
6/11/2021	LWDA Filing Fee	LWDA-CM-834780-21	\$ 75.00
7/6/2021	Postage	Postage June 2021	\$ 15.30
8/17/2021	Attorney Service-Filing	OLC Filing Confirmation Envelope #21LA03965432	\$ 458.22
10/1/2021	Postage	Postage September 2021	\$ 3.09
10/1/2021	Attorney Service-Filing	One Legal Invoice #16858997	\$ 133.84
10/18/2021	Attorney Service-Filing	OLC Invoice #5657527	\$ 10.17
10/19/2021	Attorney Service-Filing	OLC Invoice #4283	\$ 14.95
12/23/2021	Court Filing Fees (non-Attorney Service)	LASC Receipt No. EFM-2021-4179280.1	\$ 10.17
1/3/2022	Postage	Postage December 2021	\$ 8.04
1/3/2022	Attorney Service-Filing	Rapidlegal #5351001 jury fee \$150	\$ 171.60
2/2/2022	Postage	Postage January 2022	\$ 1.06
2/4/2022	Attorney Service-Filing	On Line Legal Envelope Number 22LA00150764	\$ 12.12
2/6/2022	Attorney Service-Filing	OLC invoice #4866	\$ 14.95
4/15/2022	Mediator Fees	Judicate West Invoice 561473	\$ 6,250.00
7/5/2022	Lexis or Westlaw	Lexis usage June 2022	\$ 23.00
10/12/2022	Attorney Service-Service	LA Court Reservation	\$ 61.65
TBD	Attorney Service-Chambers Copies	Estimated attorney service charges for efilng motion for settlment and delivering courtesy copies	\$ 144.47
TBD	Attorney Service-Chambers Copies	Estimated attorney service charges for efilng notice of entry of order and delivering courtesy copies	\$ 27.07
TBD	Attorney Service-Chambers Copies	Estimated attorney service charges for chambers copies of final accounting declarations	\$ 54.14
The Spivak Law Firm Costs Through 11/7/22			\$ 7,264.18
The Spivak Law Firm Estimated Future Costs			\$ 225.68
CLASS COUNSEL TOTAL COSTS THROUGH FINAL ACCOUNTING OF SETTLEMENT			\$ 7,489.86

EXHIBIT 13



June 14, 2022

CASE ASSUMPTIONS

Class Members	49
Opt Out Rate	N/A
Opt Outs Received	
Total Class Claimants	49
Subtotal Admin Only	\$5,159.31

Not-to-Exceed Total \$3,000.00

For 49 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Case: Massey v. Children Of The Night, PAGA Administration

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

Requesting Attorney: David Spivak
 Firm: The Spivak Law Firm
 Contact Number: (877) 277-2950
 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 **49** 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	1		\$100.00
Toll Free Setup*	\$100.00	1		\$100.00
Call Center & Long Distance	\$2.50	8		\$19.60
NCOA (USPS)	\$25.00	1		\$25.00
Total				\$444.60

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Check & Postage				
Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	1		\$100.00
Data Merge & Duplication Scrub	\$0.09	49		\$4.41
Notice and Check Packet	\$0.85	49		\$41.65
Estimated Postage (up to 1 oz.)*	\$0.53	49		\$25.97
Total				\$172.03

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



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	2		\$110.00
Skip Tracing Undeliverables	\$0.75	12		\$9.19
Remail Notice Packets	\$0.50	9		\$4.63
Estimated Postage	\$0.53	9		\$4.90
Programming Undeliverables	\$50.00	1		\$50.00
			Total	\$178.72

Database Programming

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Claims Database	\$150.00	1		\$150.00
Case Associate	\$55.00	5		\$275.00
Case Manager	\$85.00	3		\$255.00
			Total	\$680.00

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	1		\$95.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	4		\$540.00
			Total	\$1,175.00

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



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	3		\$345.00
Remail Undeliverable Checks (Postage Included)	\$1.50	9		\$13.97
Case Associate	\$55.00	3		\$165.00
Reconcile Uncashed Checks	\$85.00	5		\$425.00
Conclusion Reports	\$115.00	2		\$230.00
Case Manager Conclusion	\$85.00	2		\$170.00
Final Reporting & Declarations	\$115.00	4		\$460.00
QSF Annual Tax Reporting * (State Tax Reporting Included)	\$400.00	1		\$400.00
Check to Cy-Pres	\$150.00	1		Included
Uncashed Checks to the State of California Controllers Office Estimated <u>19</u> Total Class Members	\$300.00	1		\$300.00
Total				\$2,508.97

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

Estimate Total: \$5,159.31



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

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

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

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

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

Tax Reporting Requirements

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

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

EXHIBIT 14

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Massey v. Children Of The Night

Monday, June 13, 2022

Requesting Attorneys Name: David Spivak
 E-Mail: david@spivaklaw.com
 ILYM Contact: Sean Hartranft
 E-Mail: Sean@ilymgroup.com
 Contact Number: 949.690.2564

Assumptions: PAGA Settlement

ASSUMPTIONS	
Total Number of Aggrieved Employees	49
Toll-Free Telephone Support	Yes
Certified Spanish Translation	No
Case Duration (Years)	1

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	1	\$150.00
Project Manager (Case notification and maintenance)	Hourly	\$120.00	3	\$360.00
Toll Free Phone Support	Flat Rate	\$20.00	1	\$20.00
NCOA	Flat Rate	\$14.12	1	\$14.12

*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 \$544.12

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	\$2.00	49	\$98.00
USPS First Class 1oz Postage	Per Piece	\$0.76	49	\$37.24
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$3.00	5	\$14.70
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 \$3,449.94

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	2	\$200.00
Process Unclaimed Funds to State Controller	Flat Rate	\$500.00	1	\$500.00
Declaration	Hourly	\$125.00	2	\$250.00

Subtotal \$950.00

Will Not Exceed: \$4,944.06

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 15



Nora Greer <nora@spivaklaw.com>

Fwd: Massey v. Children Of The Night: Settlement Administration Bid Request to Simpluris, Inc.

1 message

Maya Cheaitani <maya@spivaklaw.com>
To: Nora Greer <nora@spivaklaw.com>

Wed, Jun 15, 2022 at 9:55 AM

Please promptly and carefully review this email message and any documents or other files attached to it. Please promptly contact me if you have any questions or concerns about the message or the attachments.

In response to the Covid-19 pandemic, the entire staff of the Spivak Law Firm works remotely. As such, we will not be regularly checking our U.S. mail, Fedex, UPS, and other deliveries to the office address below. We urge you to email any and all written communications you expect us to receive, especially if it is time sensitive. Thank you for your patience.

MAYA CHEAITANI | Attorney at Law | Employee Rights
THE SPIVAK LAW FIRM | FightWrongfulTermination.com
(818) 205-9032 | (213) 634-2485 Fax
[15303 Ventura Bl. Ste 900, Sherman Oaks, CA 91403](#)

**SPIVAK LAW**

This communication (including attachments, if any) constitutes an electronic communication within the meaning of the Electronic Communications Privacy Act, 18 U.S.C. § 2510, and its disclosure is strictly limited to the recipient intended by the sender of this message. This communication may contain confidential and privileged material for the sole use of the intended recipient and receipt by anyone other than the intended recipient does not constitute a loss of the confidential or privileged nature of the communication. Nothing contained herein should be construed as creating or intending to create an attorney-client relationship. Any and all communications are undertaken in an effort to evaluate potential claims and determine whether we are interested in representing you. Unless and until a formal attorney-client contract / retainer agreement is signed by both the client and the firm, we will not take any action to protect your rights.

----- Forwarded message -----

From: **Mike Sutherland** <msutherland@simpluris.com>
Date: Tue, Jun 14, 2022 at 9:38 AM
Subject: RE: Massey v. Children Of The Night: Settlement Administration Bid Request to Simpluris, Inc.
To: David Spivak <david@spivaklaw.com>
Cc: Maya Cheaitani <Maya@spivaklaw.com>, masseychildrenofthenightz8180247@projects.filevine.com <masseychildrenofthenightz8180247@projects.filevine.com>, Steven Amundson <sca@manningllp.com>

Dear David,

We enjoy working with you and your Team. We are sought out for so many larger cases I can no longer service these smallish settlements for under \$5,000. While our reputation and value makes this a solid price, it may not be the lowest. I believe our value makes the difference.

\$5K includes all bells and whistles like reminder PC, posting online, escheat management and translation.

Thank you for your support.

Always available,

MICHAEL SUTHERLAND
321.223.5067

-----Original Message-----

From: David Spivak <david@spivaklaw.com>

Sent: Monday, June 13, 2022 5:46 PM

To: Mike Sutherland <msutherland@simpluris.com>

Cc: David Spivak <david@spivaklaw.com>; Maya Cheaitani <Maya@spivaklaw.com>; masseychildrenofthenightz8180247@projects.filevine.com; Steven Amundson <sca@manningllp.com>

Subject: Massey v. Children Of The Night: Settlement Administration Bid Request to Simpluris, Inc.

Dear Mr. Sutherland:

Please provide me with Simpluris, Inc.'s written bid for administration of a Private Attorneys General Act ("PAGA") settlement with the following terms:

1. Settlement type: PAGA Only
2. Population size: 49 aggrieved employees (addressees)
3. Population outside California: No
4. Share division unit: pay periods
5. Establish settlement fund account: Yes
6. Share calculations: Yes
7. Claim form: No
8. Address change form: No
9. Dispute form: No
10. Opt-out (exclusion) form: No
11. Objection form: No
12. Spanish or other translation: No
13. Notice packet page length: 2 pages
14. Notice by publication (newspaper ad): No
15. Reminder postcard: No
16. Reversionary settlement: No
17. Cy pres recipient of unclaimed funds: No
18. Government recipient of unclaimed funds: Yes
19. Skip trace: Yes
20. Remail notice packet: Yes
21. Weekly reporting: No
22. Website to host settlement agreement, notice and/or approval order: Yes
23. Tax reporting: Yes
24. Number of distributions (per installment payment plan): 1

- 25. Administration insurance: Yes
- 26. Remote appearance procedures (e.g., CourtCall, Zoom): No

I look forward to hearing from you. Please do not hesitate to call me at if you wish to discuss.

Privileged And Confidential Communication Disclaimer

This electronic transmission, and any documents attached hereto, (a) are protected by the Electronic Communications Privacy Act (18 USC §§ 2510-2521), (b) may contain confidential and/or legally privileged information, and (c) are for the sole use of the intended recipient named above. If you have received this electronic message in error, please notify the sender and delete the electronic message. Any disclosure, copying, distribution, or use of the contents of the information received in error is strictly prohibited.