

Edwin Aiwarzian (SBN 232943)  
Arby Aiwarzian (SBN 269827)  
Joanna Ghosh (SBN 272479)  
Brian J. St. John (SBN 304112)  
**LAWYERS for JUSTICE, PC**  
410 West Arden Avenue, Suite 203  
Glendale, California 91203  
Tel: (818) 265-1020 / Fax: (818) 265-1021

*Attorneys for Plaintiff*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

DOMINIQUE DAVIS, individually, and on  
behalf of other members of the general public  
similarly situated;

Plaintiff,

v.

BARKER MANAGEMENT, INC., an  
unknown business entity; and DOES 1  
through 100, inclusive,

Defendants.

Case No.: BC722782

Honorable William F. Highberger  
Department SSC10

**CLASS ACTION**

**SUPPLEMENTAL DECLARATION OF  
BRIAN J. ST. JOHN IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

[[Revised Proposed] Order filed concurrently  
herewith]

Date: April 13, 2023  
Time: 10:30 a.m.  
Department: SSC10

Complaint Filed: February 4, 2021  
Trial Date: None Set

**SUPPLEMENTAL DECLARATION OF BRIAN J. ST. JOHN**

I, Brian J. St. John, hereby declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am a member of Lawyers *for* Justice, PC, attorneys of record for Plaintiff Dominique Davis (“Plaintiff”). The facts set forth in this declaration are within my personal knowledge or based on information and belief, and if called as a witness, I could and would competently testify thereto.

2. I am a member of Lawyers *for* Justice, PC. I received my Bachelors degree from the University of California, San Diego in 2010 and earned my Juris Doctor degree from the University of California, Berkeley, School of Law in 2013. I was admitted to practice law in California in 2015. I am admitted to practice before all courts of the State of California and all federal district courts in the State of California. I have worked on many wage and hour class action and PAGA representative matters, and my work has included, *inter alia*, researching and drafting pleadings, administrative notice exhaustion, drafting, negotiating, and finalizing stipulations and settlement agreements, engaging in motion practice, claims evaluation and analysis, and making court appearances. Prior to working at Lawyers *for* Justice, PC, I spent several years working for a boutique employment and labor law firm representing employers, and, in 2019 and 2020, I was employed as general counsel for a DMHC licensed discount dental plan.

3. On February 17, 2023, Plaintiff filed a Motion for Preliminary Approval of Class Action Settlement (“Motion for Preliminary Approval”) and supporting documents seeking approval of the settlement proposed class action settlement described herein and as set forth in the Joint Stipulation of Class Action and PAGA Settlement (“Original Agreement”), entered into by and between Plaintiff and Defendant Barker Management, Inc. (“Defendant”) (together, the “Parties”).

4. On March 15, 2023, a hearing was held on Plaintiff’s Motion for Preliminary Approval wherein the Court wherein the court raised certain points of inquiry regarding the settlement (“March 15, 2023 Hearing”).

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5. To address the Court's points of inquiry raised at the March 15, 2023 Hearing, Plaintiff's counsel submits this supplemental declaration in support of Plaintiff's Motion for Preliminary Approval.

#### AMENDMENT TO THE SETTLEMENT

6. Based on the Court's guidance, the Parties negotiated and executed Amendment No. 1 to Joint Stipulation of Class Action and PAGA Settlement ("Amendment No. 1"), a true and correct copy of which is attached hereto as "EXHIBIT 1." A redline version of Amendment No. 1 showing how the terms of the Original Agreement have been revised, is attached hereto as "EXHIBIT 2."

7. Amendment No. 1 modifies the Original Agreement to provide that the funds associated with cancelled settlement checks will be transmitted to the State Controller's Office Unclaimed Property Division in the names of the Settlement Class Members and/or PAGA Employees whose checks are cancelled.

#### ESTIMATE OF THE VALUE OF THE CLAIM(S)

8. At the March 15, 2023 Hearing, the Court requested Plaintiff provide a description of the value of claims pursuant to *Kullar v. Foot Locker*, 168 Cal.App.4th 116.

9. Plaintiff's action alleges that Defendant has violated the California Labor Code and Industrial Welfare Commission Wage Orders by engaging in a uniform policy and systematic scheme of wage abuse against Plaintiff and the putative class members, including *inter alia*, failing to properly compensate overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment, failing to timely pay wages upon termination and associated waiting-time penalties, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses. Plaintiff further contends that Defendant's aforementioned conduct constitutes unfair business practices (under the California Business and Professions Code ("UCL")) and gives rise to civil penalties recoverable under PAGA.

10. Based on data provided by Defendant, the total number of putative class members during the period from February 4, 2017 to November 12, 2021 ("relevant time period") was

1 estimated to be approximately six hundred fifty-five (655) individuals who worked a total of fifty-  
2 eight thousand eight hundred three (58,803) workweeks with an average hourly rate of pay of  
3 sixteen dollars and ninety-four cents (\$16.94).

4 11. Plaintiff contended that Defendant required putative class members to perform work  
5 before clocking-in and after clocking-out of their scheduled shifts and during meal and rest  
6 periods. Plaintiff contended that Defendant discouraged the recordation of overtime hours,  
7 required putative class members to perform work off-the-clock, and automatically deducted time  
8 for meal periods (even if compliant meal periods were not provided). Plaintiff contended that  
9 Defendant failed to include non-discretionary bonuses and incentives in the calculation of the  
10 regular rate when paying overtime wages. Plaintiff also contended that meal and rest periods were  
11 often missed, later, shortened, and/or interrupted, that putative class members were encouraged to  
12 remain on premises during rest breaks and readily available to perform work during rest breaks,  
13 answer questions from both supervisors and coworkers, and assist clients, and that Defendant  
14 failed to properly pay premiums for all non-compliant meal and rest periods. Additionally,  
15 Plaintiff alleged that Defendant intentionally and willfully failed to pay Plaintiff and putative class  
16 members all wages due to them while they were employed by Defendant, within the time period  
17 permissible under California law, and that Defendant failed to pay all wages due upon termination,  
18 within the time period permissible under California law, thereby triggering waiting-time penalties  
19 under California Labor Code section 203. Plaintiff contended that, based on the violations  
20 described herein, the wage statements provided by Defendant and the payroll records kept by  
21 Defendant were inaccurate. Finally, Plaintiff contended that Defendant failed to reimburse  
22 Plaintiff and the other putative class members for necessary business expenses, including, but not  
23 limited to, the costs associated with the purchase and/or use of personal cell phones, equipment,  
24 and costs associated with Defendant's dress code, to perform their work duties.

25 12. Plaintiff's Counsel considered defense arguments, e.g., that the employer's  
26 practices, policies, and procedures complied with the law, that Defendant paid putative class  
27 members over the California minimum wage for all hours worked, that Defendant correctly paid  
28 overtime for all overtime hours worked, that no waiting-time penalties were due because waiting-

1 time penalties only arise from “willful” failure to pay wages due and owing at the time of  
2 termination or resignation, that Plaintiff and putative class members suffered no actual injury from  
3 the alleged wage statement violations and that this alleged violation and the alleged recordkeeping  
4 violation are entirely derivative of the other causes of action, and that a policy and practice of  
5 reimbursing employees for necessary business-related expenses exists. Plaintiff’s Counsel also  
6 considered the likelihood of Plaintiff’s success in establishing that any of provisions of the  
7 California Labor Code, on which the civil penalties under PAGA and the UCL claim are  
8 predicated, were violated and that such violations were injurious and/or warranted imposition of  
9 civil penalties. Plaintiff’s Counsel also considered that trial courts have wide discretion when  
10 assessing penalties under PAGA, and that it could be determined that individual liability issues  
11 predominate (e.g. due to purported variation in shifts, locations, job duties, and other  
12 circumstances which could raise individualized questions of fact) and could pose challenges to  
13 certification, manageability, and the merits of Plaintiff’s claims.

14 13. Plaintiff’s Counsel considered information obtained through investigations and from  
15 Plaintiff, as well as class data and information obtained from Defendant and other sources, and  
16 created violation, damages, and penalties valuations and models prior to reaching the Settlement.  
17 Based thereon, Plaintiff calculated the potential value of the claims. However, the potential value  
18 of each claim assumed an exposure based on the case having been certified and Plaintiff having  
19 proven all elements of the claims and entitlement to monetary recovery, despite risks associated  
20 with obtaining and maintaining certification, demonstrating manageability, and establishing  
21 liability and any underlying California Labor Code violations and damages, and significant  
22 additional costs that would have to be incurred in order to certify the case and establish liability  
23 and damages. Plaintiff also faced the risk of the Court finding that individualized issues  
24 predominate, such that the action is not suitable for class treatment and representative adjudication.  
25 While Plaintiff’s Counsel disagreed with defense’s arguments and factual contentions, Plaintiff  
26 recognized the circumstances and realities of the case, applicable case law and regulations, the  
27 costs and expenses of further litigation and certification, and risks to recovery, and applied  
28 appropriate discounts for them. Plaintiff’s Counsel calculated the potential and realistic values of

the claim(s) as follows:

- a. Failure to Pay Overtime Wages: The potential value of this claim was estimated to be \$2,988,368.46 (58,803 workweeks x 2 hours of unpaid overtime wages x overtime hourly rate of \$25.41, which is based on the average hourly rate of \$16.94). At this juncture, a discount of 40% was applied to account for the risks associated with obtaining and maintaining class certification (bringing the value of this claim closer to \$1,793,021.08), a discount of 60% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to \$717,208.43), and a discount of 60% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to \$286,883.37).
- b. Failure to Pay Minimum Wages: The potential value of this claim was estimated to be \$996,122.82 (58,803 workweeks x 1 hour of unpaid minimum wages x average hourly rate of \$16.94). At this juncture, a discount of 40% was applied to account for the risks associated with obtaining and maintaining class certification (bringing the value of this claim closer to \$597,673.69), a discount of 60% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to \$239,069.48), and a discount of 60% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to \$95,627.79).
- c. Failure to Provide Compliant Meal Periods and Associated Premiums: The potential value of this claim was estimated to be \$2,988,368.46 (58,803 workweeks x 3 meal period premium x average hourly rate of \$16.94). At this juncture, a discount of 30% was applied to account for the risks associated with obtaining and maintaining class certification (bringing the value of this claim closer to \$2,091,857.92), a discount of 60% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to

\$836,743.17), and a discount of 60% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to \$334,697.27).

d. Failure to Provide Compliant Rest Periods and Associated Premiums: The potential value of this claim was estimated to be \$2,988,368.46 (58,803 workweeks x 3 rest period premium x average hourly rate of \$16.94). At this juncture, a discount of 30% was applied to account for the risks associated with obtaining and maintaining class certification (bringing the value of this claim closer to \$2,091,857.92), a discount of 50% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to \$1,045,928.96), and a discount of 70% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to \$313,778.69).

e. Failure to Timely Pay Wages During Employment: The value of this claim is considered as a part of the valuation of the PAGA claim contained *infra*.

f. Failure to Timely Pay Wages After Termination (and Waiting-Time Penalties): Based on information and data provided by Defendant, it was estimated that approximately three hundred forty-five (345) putative class members had been terminated during the three-year statute of limitations (i.e., from February 4, 2018). Assuming that these individuals were not timely paid all wages due to them upon termination, the potential value of waiting-time penalties was estimated to be \$1,402,632.00 collectively (345 individuals x [30 days x hourly rate of \$16.94 x 8 hours]), or approximately \$4,065.80 per individual. At this juncture, a discount of 45% was applied to account for the risks associated with obtaining and maintaining class certification (bringing the value of this claim closer to \$771,447.60), a discount of 60% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to \$308,579.04), and a discount of 70% was applied to account for the risks associated with proving

the extent of damages and obtaining an award thereof (bringing the value of this claim closer to \$92,573.71).

- g. Failure to Provide Compliant Wage Statements: The potential value of this claim was calculated to be \$798,900.00 ([336 initial violations x \$50 statutory penalty] + [7,821 subsequent violations x \$100 statutory penalty]). At this juncture, a discount of 45% was applied to account for the risks associated with obtaining and maintaining class certification (bringing the value of this claim closer to \$439,395.00), a discount of 60% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to \$175,758.00), and a discount of 70% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to \$52,727.40).
- h. Failure to Maintain Payroll Records: Arguably, civil penalties would only be recoverable by the Labor Commissioner, therefore, the value of this claim is considered as a part of the valuation of the PAGA claim contained *infra*.
- i. Failure to Reimburse Necessary Business Expenses: The potential value of this claim was estimated to be \$117,606.00 (58,803 workweeks x \$3 unreimbursed business expenses). At this juncture, a discount of 50% was applied to account for the risks associated with obtaining and maintaining class certification (bringing the value of this claim closer to \$58,803.00), a discount of 50% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to \$29,401.50), and a discount of 70% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to \$8,820.45).
- j. PAGA Penalties: The amount of civil penalties at issue, which the Court could determine whether or not to assess and whether or not to reduce based on the facts and circumstances of the case (to avoid an award that is unjust, arbitrary and oppressive, or confiscatory, pursuant to California Labor Code section 2699(e)(2)),

1           were estimated to be approximately \$655,200.00 (336 aggrieved employees  
2           estimated to have worked during one-year statutory period x \$1,950.00 civil  
3           penalties). At this juncture, a discount of 20% was applied to account for the risks  
4           associated with demonstrating manageability (bringing the value of this claim closer  
5           to \$524,160.00), a discount of 60% was applied to account for the risks associated  
6           with succeeding on the merits and establishing liability (bringing the value of this  
7           claim closer to \$209,664.00), and a discount of 60% was applied to account for the  
8           risks associated with the Court's discretion to reduce civil penalties and obtaining  
9           an award of civil penalties (bringing the value of this claim closer to \$83,865.60).

10           14. The foregoing discussion confirms that the amount of the Settlement is adequate in  
11           light of Plaintiff's allegations and causes of action, the evidence at issue with respect to those  
12           allegations and causes of action, and legal and factual arguments and circumstances which pose  
13           challenges to certification, manageability, merits, and monetary recovery. The conclusion to be  
14           drawn from the foregoing analysis is that neither class certification, manageability, liability, nor  
15           the ability to adjudicate and/or recover monetary relief on a class-wide or representative basis is  
16           clear-cut, which is why the Parties elected to settle this matter. Plaintiff's Counsel also recognized  
17           that additional discounts could be made to the risk-adjusted value to account for the costs and  
18           expenses associated with further litigation and the present value of obtaining a settlement now as  
19           opposed to monetary recovery, if any, that may be obtained in the future after further litigation.  
20           Plaintiff's Counsel recognized the circumstances and realities of the case, applicable case law and  
21           regulations, and risks to recovery and applied appropriate discounts.

22           15. Plaintiff's Counsel submits that the Settlement is fair, reasonable, and adequate, and  
23           is in the best interest of the Class. Plaintiff's Counsel further submits that the Settlement is within  
24           an acceptable range of recovery for this type of litigation given the strengths and weaknesses of  
25           the case, the inherent costs and risks of further litigation, and the costs and risks associated with  
26           class certification, representative adjudication, trial, and/or appeals.

27           ///

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**LWDA SUBMISSION**

15. At the March 15, 2023 Hearing, the Court requested a copy of the written notice Plaintiff provided to the Labor and Workforce Development Agency and Defendant of the specific provisions of the California Labor Code that Defendant allegedly violated.

16. On July 6, 2021, Plaintiff provided written notice by certified mail (“PAGA Letter”) to the Labor and Workforce Development Agency and Defendant of the specific provisions of the California Labor Code that Defendant allegedly violated. A true and correct copy of the PAGA Letter is attached hereto as “**EXHIBIT 3.**”

**TRANSLATED CLASS NOTICE**

17. At the March 15, 2023 Hearing, the Court requested a copy of Notice of Class Action Settlement (“Class Notice”) translated into Spanish.

18. A copy of the Class Notice in both English and Spanish is attached to the [Revised Proposed] Order Granting Preliminary Approval of Class Action Settlement, submitted concurrently herewith, as Exhibit A and Exhibit B, respectively.

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

Executed on this twenty-ninth day of March 2023, at Glendale, California.



Brian J. St. John

# **EXHIBIT 1**

Edwin Aiwazian (SBN 232943)  
Arby Aiwazian (SBN 269827)  
Joanna Ghosh (SBN 272479)  
Brian J. St. John (SBN 304112)  
**LAWYERS for JUSTICE, PC**  
410 West Arden Avenue, Suite 203  
Glendale, California 91203  
Telephone: (818) 265-1020  
Facsimile: (818) 265-1021

*Attorneys for Plaintiff*

Lindley Fraley (SBN 223421)  
**FSG LAWYERS PC**  
19800 MacArthur Boulevard, Suite 1100  
Irvine, California 92612-2425  
Telephone: (949) 265-1100  
Facsimile: (949) 265-1199

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

DOMINIQUE DAVIS, individually, and on  
behalf of other members of the general public  
similarly situated;

Plaintiff,

vs.

BARKER MANAGMNT, INC., an unknown  
business entity; and DOES 1 through 100,  
inclusive,

Defendants.

Case No.: 21STCV04439

Honorable William F. Highberger  
Department SSC10

**AMENDMENT NO. 1 TO JOINT  
STIPULATION OF CLASS ACTION AND  
PAGA SETTLEMENT**

Complaint Filed: February 4, 2021  
Jury Trial Date: None Set

**TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF  
RECORD:**

Plaintiff Domonique Davis (“Plaintiff”), and Defendant Barker Management, Inc. (“Defendant”) (collectively the “Parties”), pursuant to Paragraph 45 of the Joint Stipulation of Class Action and PAGA Settlement (“Original Agreement”) entered into on or around February 8, 2023, hereby agree to amend the Original Agreement, as stated herein. The amendments stated herein are incorporated by this reference:

**A. Paragraph 23 of the Original Agreement is hereby amended to state as follows:**

23. Settlement Checks. The Settlement Administrator will be responsible for undertaking appropriate deductions, required tax reporting, and issuing the Individual Settlement Payments by way of check to the Settlement Class Members and the Individual PAGA Payments by way of check to the PAGA Employees in accordance with the Settlement Agreement. Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be canceled. All funds associated with such canceled checks will be transmitted to the State Controller’s Office Unclaimed Property Division in the names of the Settlement Class Members and/or PAGA Employees whose checks are canceled. The Settlement Administrator may, as necessary, undertake amended and/or supplemental tax filings and reporting, required under applicable local, state, and federal tax laws, that are necessitated due to the cancellation of any Individual Settlement Payment checks or Individual PAGA Payment checks. To the extent that the Settlement Administrator is able to obtain or receive the return or refund of the amounts that were transmitted to taxing authorities for the employer’s and employees’ share of taxes, contributions, and/or withholding associated with canceled Individual Settlement Payments, all such amounts shall also be transmitted to State Controller’s Office Unclaimed Property Division. Settlement Class Members whose Individual Settlement Payment checks are canceled shall, nevertheless, be bound

1 by the Class Settlement, and PAGA Employees whose Individual PAGA Payment checks  
2 are canceled shall, nevertheless, be bound by the PAGA Settlement.

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03/28/2023

Dated: March \_\_, 2023

**PLAINTIFF Dominique Davis**

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Dominique Davis, Plaintiff

**DEFENDANT Barker Management, Inc.**

Dated: March \_\_, 2023

Full Name: \_\_\_\_\_

Title: \_\_\_\_\_  
On behalf of Barker Management, Inc.

**APPROVED AS TO FORM**

Dated: March 28, 2023

**LAWYERS *for* JUSTICE, PC**

By:   
Brian J. St. John  
*Attorneys for Plaintiff*

Dated: March \_\_, 2023

**FSG LAWYERS PC**

By: \_\_\_\_\_  
Lindley Fraley  
*Attorneys for Defendant*

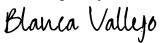
**PLAINTIFF Dominique Davis**

Dated: March \_\_, 2023

\_\_\_\_\_  
Dominique Davis, Plaintiff

**DEFENDANT Barker Management, Inc.**

Dated: March 29, 2023

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Full Name: Blanca Vallejo

Title: VP of Human Resources

On behalf of Barker Management, Inc.

**APPROVED AS TO FORM**

Dated: March \_\_, 2023

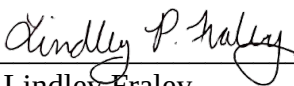
**LAWYERS *for* JUSTICE, PC**

By: \_\_\_\_\_  
Brian J. St. John

*Attorneys for Plaintiff*

Dated: March 29, 2023

**FSG LAWYERS PC**

By:   
Lindley Fraley

*Attorneys for Defendant*

## **EXHIBIT 2**

Edwin Aiwazian (SBN 232943)  
Arby Aiwazian (SBN 269827)  
Joanna Ghosh (SBN 272479)  
Brian J. St. John (SBN 304112)  
**LAWYERS for JUSTICE, PC**  
410 West Arden Avenue, Suite 203  
Glendale, California 91203  
Telephone: (818) 265-1020  
Facsimile: (818) 265-1021

*Attorneys for Plaintiff*

Lindley Fraley (SBN 223421)  
**FSG LAWYERS PC**  
19800 MacArthur Boulevard, Suite 1100  
Irvine, California 92612-2425  
Telephone: (949) 265-1100  
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

DOMINIQUE DAVIS, individually, and on  
behalf of other members of the general public  
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Plaintiff,

vs.

BARKER MANAGMNT, INC., an unknown  
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Defendants.

Case No.: 21STCV04439

Honorable William F. Highberger  
Department SSC10

**AMENDMENT NO. 1 TO JOINT  
STIPULATION OF CLASS ACTION AND  
PAGA SETTLEMENT**

Complaint Filed: February 4, 2021  
Jury Trial Date: None Set

1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF**  
2 **RECORD:**

3 Plaintiff Domonique Davis (“Plaintiff”), and Defendant Barker Management, Inc.  
4 (“Defendant”) (collectively the “Parties”), pursuant to Paragraph 45 of the Joint Stipulation of  
5 Class Action and PAGA Settlement (“Original Agreement”) entered into on or around  
6 February 8, 2023, hereby agree to amend the Original Agreement, as stated herein. The  
7 amendments stated herein are incorporated by this reference:

8 **A. Paragraph 23 of the Original Agreement is hereby amended to state as**  
9 **follows:**

10 23. Settlement Checks. The Settlement Administrator will be responsible for  
11 undertaking appropriate deductions, required tax reporting, and issuing the Individual  
12 Settlement Payments by way of check to the Settlement Class Members and the  
13 Individual PAGA Payments by way of check to the PAGA Employees in accordance  
14 with the Settlement Agreement. Each Individual Settlement Payment and Individual  
15 PAGA Payment check will be valid and negotiable for one hundred and eighty (180)  
16 calendar days from the date the checks are issued, and thereafter, shall be canceled. All  
17 funds associated with such cancelled checks will be transmitted to the State Controller’s  
18 Office Unclaimed Property Division in the names of the Settlement Class Members  
19 and/or PAGA Employees whose checks are cancelled~~Pursuant to California Code of~~  
20 ~~Civil Procedure Section 384, all funds associated with such cancelled checks will be~~  
21 ~~transmitted to Legal Aid at Work. After funds from the canceled checks are transferred~~  
22 ~~to Legal Aid at Work, Class Counsel will submit to the Court an amended judgment~~  
23 ~~specifying the amount of such funds to be transferred in compliance with California Code~~  
24 ~~of Civil Procedure § 384 and 384.5 and Government Code § 68520. The Parties each~~  
25 ~~represent that they do not have any significant financial interest, affiliation, or~~  
26 ~~involvement with the proposed cy pres recipient.~~ The Settlement Administrator may, as  
27 necessary, undertake amended and/or supplemental tax filings and reporting, required  
28 under applicable local, state, and federal tax laws, that are necessitated due to the

cancellation of any Individual Settlement Payment checks or Individual PAGA Payment checks. To the extent that the Settlement Administrator is able to obtain or receive the return or refund of the amounts that were transmitted to taxing authorities for the employer's and employees' share of taxes, contributions, and/or withholding associated with canceled Individual Settlement Payments, all such amounts shall also be transmitted to State Controller's Office Unclaimed Property Division~~Legal Aid at Work~~. Settlement Class Members whose Individual Settlement Payment checks are canceled shall, nevertheless, be bound by the Class Settlement, and PAGA Employees whose Individual PAGA Payment checks are canceled shall, nevertheless, be bound by the PAGA Settlement.

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**PLAINTIFF Dominique Davis**

Dated: March \_\_, 2023

\_\_\_\_\_  
Dominique Davis, Plaintiff

**DEFENDANT Barker Management, Inc.**

Dated: March \_\_, 2023

\_\_\_\_\_  
Full Name: \_\_\_\_\_

Title: \_\_\_\_\_  
On behalf of Barker Management, Inc.

**APPROVED AS TO FORM**

Dated: March \_\_, 2023

**LAWYERS *for* JUSTICE, PC**

By: \_\_\_\_\_  
Brian J. St. John  
*Attorneys for Plaintiff*

Dated: March \_\_, 2023

**FSG LAWYERS PC**

By: \_\_\_\_\_  
Lindley Fraley  
*Attorneys for Defendant*

# **EXHIBIT 3**

# LAWYERS FOR JUSTICE<sup>®</sup>

July 6, 2021

**BY ONLINE SUBMISSION**

California Labor & Workforce Development Agency  
PAGAfilings@dir.ca.gov

**Re: BARKER MANAGEMENT, INC.**

Dear Representative:

We have been retained to represent Dominique Davis against Barker Management, inc. (including any and all affiliates, subsidiaries, parents, directors, officers, and employees) (collectively referred to as “Barker Management”) for violations of California wage-and-hour laws. Ms. Davis seeks penalties for violations of the California Labor Code, which are recoverable under California Labor Code section 2698, et seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”) and all other remedies available under PAGA.

Ms. Davis seeks these remedies on behalf of the State of California and “aggrieved employees,” as defined herein. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Barker Management employed Ms. Davis as an hourly-paid, non-exempt employee from approximately September 2018 to approximately August 2020, in the State of California.

The “aggrieved employees” that Ms. Davis may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees who worked for any of the above-referenced entities within the State of California, including, but not limited to all current and former hourly-paid or non-exempt employees who worked for any of the above-referenced entities within the State of California who earned shift differentials/non-discretionary bonuses/non-discretionary performance pay which was not used to calculate the correct regular rate of pay used to calculate the overtime rate.

Based on the following facts and theories, Barker Management has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and IWC Wage Orders including *inter alia*, Wage Orders 4-2001, and 5-2001.

Barker Management required aggrieved employees to perform work before their scheduled shifts, after their scheduled shifts, during off-the-clock meal breaks, and/or during rest breaks and failed to compensate aggrieved employees for this time.

California Labor Code sections 510 and 1198 require employers to pay time-and-a-half or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates at one-and-one-half times or double the regular rate of pay, including additional remuneration. During the relevant time period, Ms. Davis and other aggrieved employees worked in excess of 8 hours in a day and 40 hours in a week. Therefore, Ms. Davis and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each meal or rest period that is not provided. During the relevant time period, Barker Management required Ms. Davis and other aggrieved employees to work during meal and rest periods and failed to compensate them properly for non-compliant meal and rest periods including, *inter alia*, short, late, interrupted, and missed meal and rest periods. Barker Management also required aggrieved employees to stay on work premises.

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' 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. During the relevant time period, Barker Management failed to pay Ms. Davis and other aggrieved employees all wages due to them within any time period specified by California Labor Code sections 201 and 202, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that 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. During the relevant time period, Barker Management failed to pay Ms. Davis and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, Barker Management did not provide Ms. Davis and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from Barker Management were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include the total hours worked by Ms. Davis and other aggrieved

employees, including time spent working off-the-clock and during meal and rest periods as discussed above.

California Labor Code sections 551 and 552 require that every person employed in any occupation of labor is entitled to one day's rest in a seven-day workweek, that no employer of labor shall cause his employees to work more than six days in a workweek, and that an employer shall pay a civil penalty in the amounts of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation. During the relevant time period, Ms. Davis and the aggrieved employees were required to regularly and/or consistently work in excess of six (6) days in a workweek. During the relevant time period, Ms. Davis and the aggrieved employees were required to work in excess of thirty (30) hours in a week and/or six (6) hours in any one (1) day thereof, during workweeks in which they were required to work in excess of six (6) days. During the relevant time period, Ms. Davis and the aggrieved employees were required to work in excess of six (6) days in a workweek without accumulating or being provided the opportunity to take at least one (1) day of rest, and when Ms. Davis and the aggrieved employees accumulated days of rest, they were not actually provided the opportunity to take the equivalent of one (1) day's rest in seven (7) during each calendar month.

California Labor Code sections 1174(d) requires an employer to 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 with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years. During the relevant time period, Barker Management failed to keep accurate and complete payroll records showing the actual hours worked daily and the wages earned by Ms. Davis and other aggrieved employees, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code sections 1194, 1197, and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, Barker Management did not provide Ms. Davis and other aggrieved employees with the minimum wages to which they were entitled for work performed "off-the-clock."

California Labor Code section 1198 provides that "The employment of any employee ... under conditions of labor prohibited by the [Industrial Wage Orders] is unlawful." The applicable Industrial Wage Orders, including *inter alia*, Wage Orders 4-2001, and 5-2001, require that for each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay. Further, if an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay. During the relevant time period, Barker Management failed to pay Ms. Davis and other aggrieved employees half the usual or scheduled day's work in an amount no less than two (2) hours nor more than four (4) hours at the employee's regular rate of pay for workdays in

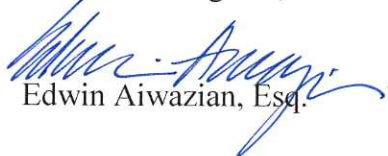
which Ms. Davis and the other aggrieved employees reported to work and were furnished less than half the usual or scheduled day's work. During the relevant time period, Barker Management failed to pay Ms. Davis and other aggrieved employees for two (2) hours at the employee's regular rate of pay on days in which Ms. Davis and the other aggrieved employees were required to report for work a second time in one workday and were furnished less than two (2) hours of work upon the second reporting.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During the relevant time period, Ms. Davis and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by Barker Management.

Therefore, on behalf of all aggrieved employees, Ms. Davis seeks all applicable penalties arising out of the above-referenced wage, hour, and payroll practices, or which could be assessed and collected by the Labor and Workforce Development Agency, for violation of the California Labor Code pursuant to PAGA, including civil penalties pursuant to Labor Code section 558.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

With kind regards,

  
Edwin Aiwanian, Esq.

Cc: (By U.S. Certified Mail / Return Receipt Requested)

Barker Management, Inc.  
c/o Ann S. Barker  
Agent for Service of Process  
1101 E Orangewood Ave., Suite 103  
Anaheim, CA 92805

Barker Management, Inc.  
c/o Sally S. Costanzo  
FSG LAWYERS PC  
Attorney  
19800 MacArthur Blvd., Suite 1100  
Irvine, CA 92612