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

13 BRANDY RUIZ, on behalf of herself and as an
14 "aggrieved employee" on behalf of other
15 "aggrieved employees" under the Labor Code
Private Attorneys General Act of 2004,

16 *Plaintiff(s),*

17 vs.
18

19 PRO CUSTOM SOLAR LLC DBA
20 MOMENTUM SOLAR, a New Jersey limited
liability company; and DOES 1-50, inclusive,

21 *Defendant(s).*
22

Case No. 37-2021-00040509-CU-OE-CTL

**DECLARATION OF DAVID SPIVAK
IN SUPPORT OF PLAINTIFF
BRANDY RUIZ'S MOTION FOR
APPROVAL OF PAGA SETTLEMENT**

Hearing Date: February 9, 2024
Hearing Time: 9:00 a.m.
Hearing Dept.: C-67, The Honorable
Eddie C. Sturgeon

Action filed: September 22, 2021
Trial Date: Not Set



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

3 I, DAVID SPIVAK, declare as follows:

4 1. I am an attorney duly licensed to practice law in the State of California and am an
5 attorney of record for Plaintiff Brandy Ruiz ("Plaintiff" or "Ruiz") in this action against
6 Defendant Pro Custom Solar LLC dba Momentum Solar ("Defendant"). I am a member in good
7 standing of the State Bar of California. Except as otherwise indicated, I have personal knowledge
8 of all matters set forth herein and, if called as a witness, could and would competently testify
9 thereto under oath.

10 2. A true and correct copy of the PAGA SETTLEMENT AGREEMENT (the
11 "Agreement" or "PAGA Settlement" or "Settlement") is attached hereto as **Exhibit 1**. A true and
12 correct copy of the parties agreed upon notice to the PAGA Employees (the "PAGA Notice") is
13 attached hereto as **Exhibit 2**.

14 ***Factual and Procedural Background***

15 3. Defendant is one of the fastest-growing companies in the nation that provides
16 renewable energy services. Defendant specializes in designing, installation, and activation of
17 solar systems in 11 states. Defendant employed Plaintiff as a call center representative and remote
18 phone agent from about January 01, 2020 until December 15, 2020.

19 4. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit
20 under PAGA. By letters dated August 9, 2021, Plaintiff, on behalf of herself and other aggrieved
21 hourly employees gave written notice by certified mail to the Labor and Workforce Development
22 Agency ("LWDA") and Defendant of the specific provisions of the California Labor Code alleged
23 to have been violated, including the facts and theories to support the alleged violations. A true
24 and correct copy of Plaintiff's notice letter to the LWDA and Defendant is attached as **Exhibit 3**.

25 5. Plaintiff and the PAGA Employees are potentially subject to arbitration
26 agreements with Defendant. Plaintiff filed her lawsuit in San Diego County Superior Court on
27 September 22, 2021. A true and correct copy of Plaintiff's Class Action Complaint is attached as
28 **Exhibit 4**. On December 13, 2021, Plaintiff filed a First Amended Complaint ("1AC"). A true
and correct copy of Plaintiff's First Amended Complaint is attached as **Exhibit 5**. Plaintiff's 1AC
presents one cause of action for civil penalties under PAGA. Shortly after Plaintiff served her first
set of discovery requests, the Parties agreed to stay formal discovery and participate in mediation.



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1 On March 16, 2022, Defendant filed an answer to Plaintiff's First Amended Complaint. A true
2 and correct copy of Defendant's Answer to Plaintiff's First Amended Complaint is attached as
3 **Exhibit 6**. Defendant denies all of Plaintiff's allegations and strongly contends that its wage and
4 hour policies, practices and procedures are fully compliant with all applicable laws.

5 6. On March 24, 2022, the Parties participated in mediation with mediator Tripper
6 Ortman in an attempt to resolve the PAGA claim. The Parties engaged in arm's-length
7 negotiations and ultimately reached a resolution of the PAGA claims asserted in the Action. The
8 PAGA SETTLEMENT AGREEMENT was reached after exchanges of data, information and
9 documents, and is a result of extensive arms-length negotiations. The Parties conducted informal
10 discovery for purposes of potential resolution through which they ascertained the size of the
11 aggrieved employee group and the number of pay periods worked by them during the PAGA
12 Period to ascertain the total value of Plaintiff's PAGA claim. Now that the parties have finalized
13 the PAGA SETTLEMENT AGREEMENT, 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 Here, notice is being given to the LWDA concurrently with the filing of this motion. A true and
16 correct copy of Plaintiff's submission with the LWDA and a confirmation email is attached as
17 **Exhibit 7**.

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

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



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1 Plaintiff maintains that the number of PAGA Employees is ascertainable because they may be
2 identified by reference to Defendant's records and Defendant has agreed to share the relevant
3 information from its records to facilitate the process. Therefore, the number of PAGA Employees
4 and their whereabouts are ascertainable.

5 ***Background of Counsel***

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

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

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

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

28 C. *Dr. Perry Crouch v. SHIELDS*, Los Angeles Superior Court, Compton (the



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

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

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

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

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

12. I have been involved in the prosecution of numerous wage and hour class and
representative actions at various stages of litigation. A small sampling of the representative wage



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1 and hour cases in which I have been counsel of record is as follows:

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

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

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

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

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

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

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

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

27 I. *La Fleur v. Medical Management International, Inc.*, United States District
28 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).

J. *Linder, et al. v. Warehouse Services, Inc.*, San Bernardino Superior Court,
Case No. CIVDS1500146 (appointed Class Counsel and granted final approval of class action



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1 settlement on behalf of non-exempt hourly employees excluding truck drivers).

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

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

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

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

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

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

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

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

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

T. *Valdez v. Healthcare Services Group, Inc.*, Los Angeles Sup.Ct., Case No.



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1 BC462917 (appointed Class Counsel and granted final approval by this Court of class action
2 settlement on behalf of service account manager employees).

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

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

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

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

17 ***Exposure & Risk Analysis***

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

- 21 • Defendant produced and Plaintiff reviewed her personnel file.
- 22 • Defendant produced and Plaintiff reviewed and analyzed time and payroll
23 records for over 137 PAGA Employees.
- 24 • Plaintiff requested that Defendant produce any and all relevant policies
25 regarding Plaintiff's claims and Defendant produced those policies in effect during the relevant
26 time period.
- 27 • Plaintiff interviewed other employees about the claims at issue.
- 28 • Plaintiff analyzed the state of caselaw on PAGA claims, claims for unpaid
overtime and unreimbursed expenses, and related claims.
- Plaintiff surveyed the outcomes of PAGA cases that went to trial or
otherwise concluded before trial.



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14. Defendant has posed valid defenses to the Labor Code claims underlying Plaintiff's PAGA allegations. Thus, the PAGA claims likewise face significant uncertainty. There is a risk that the Court would consider the maximum civil penalty available to be confiscatory. This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and required a significant discount for settlement purposes. For mediation purposes, Plaintiff's counsel estimated a maximum exposure of approximately \$431,000.00 in civil penalties. This estimate did not take into account any of the risks discussed above and assumed a violation for all applicable pay period. Plaintiff's counsel also assessed multiple penalties for the same pay period for the same alleged violations of different Labor Code provisions and derivative violations. Although two federal district court decisions held that "stacking" PAGA penalties in this fashion may be appropriate to determine the amount in controversy for purposes of removal jurisdiction, Plaintiff's counsel is not aware of any California state courts awarding plaintiffs multiple PAGA penalties for the same violation for the same pay period under different Labor Code provisions. This may be because the PAGA does not provide for what many employers characterize as claim splitting and not merely stacking.

15. In preparation for mediation and during the settlement negotiations that followed, Defendant disclosed that there were approximately 157 potentially aggrieved employees and 1,685 pay periods. The maximum possible civil penalties under the PAGA is the total number of pay periods with one or more violations multiplied by the maximum possible civil penalty amount per pay period. Unfortunately for the employees concerned, the potential for recovery of the maximum possible civil penalties depends on circumstances that are extremely unlikely independently and in combination. It would depend on the Court stacking the maximum recoverable civil penalties per pay period for all 1,685 pay periods for all 157 potentially aggrieved employees during the PAGA Period. Plaintiff's counsel is not aware of any California State court decision awarding a plaintiff and the other aggrieved employees she represents multiple civil penalties for the same pay period under different Labor Code provisions. Plaintiff's counsel had to substantially discount the value of these claims in the settlement negotiations for this and a variety of other reasons (outlined below).

16. **Risks Associated with Regular Rate of Pay Claims.** Labor Code section 510 states employees are entitled to overtime pay for work in excess of eight hours in one day or 40 hours in one week. "[A]n employee is entitled to overtime pay at one and one-half times the



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1 ‘regular rate’ for work in excess of eight hours in one day and twice the ‘regular rate’ for work in
2 excess of 12 hours in one day.” *Huntington Mein Hosp. v. Superior Court* (2005) 131 Cal. App.
3 4th 893, 902. Plaintiff claims Defendant improperly calculated PAGA Members’ regular rates of
4 pay by failing to include the value of nondiscretionary monetary bonuses and commission.
5 Defendant contends that all forms of incentive pay at issue were discretionary and they properly
6 excluded such payments from the regular rate of pay on that basis. Bonuses were based on salary.
7 Defendant also argued that only a portion of the pay periods had both overtime and
8 bonus/commission pay and even if Plaintiff is able to prove that the forms of payment in question
9 were non-discretionary and should have been included in the regular rate of pay, the alleged civil
penalties would be extremely limited.

10 17. **Risks Associated with Plaintiff’s Claim That Defendant Failed To Indemnify**
11 **for Expenses.** Plaintiff alleges that Defendant failed to reimburse Plaintiff and the PAGA
12 Employees for their reasonable expenses such mobile phones, telecom, tools, equipment,
13 supplies, home office and storage, computers/laptops, and repair expenses that Defendant
14 required Plaintiff and all the other Aggrieved Employees to supply to perform their job duties.
15 There is a risk that the Court may consider Plaintiff’s claim that Defendant failed to indemnify
16 for business expenses to be individual in nature and thus decline to allow a trial on behalf of all
aggrieved employees and the State.

17 18. **Risks Associated with Plaintiff’s Claim That Defendant Failed To Issue**
18 **Accurate and Complete Wage Statements.**

19 Plaintiff also asserts claims for wage statement violations, untimely wage violations, and
20 PAGA penalties. Under Labor Code section 226, wage statements must include various
21 information, including the applicable rates of pay, corresponding hours worked, and gross pay.
22 Here, Plaintiff’s wage statement claim has the same underlying risks as the above claims, as it is
23 derivative of them. On their face, the wage statements issued by Defendant comply with the
requirements of Labor Code § 226.

24 19. **Risks Associated with Plaintiff’s Claim That Defendant Failed To Timely Pay**
25 **All Wages.** Plaintiff’s claim for untimely wages is predicated on Labor Code section 201 to 203.
26 Like the claim under Labor Code sec. 226, Plaintiff must establish that the late payments were
27 willful. The evidence of good faith Defendant put forth will defeat this claim.

28 20. **The Absence of Large Civil Penalty Awards under PAGA.** The sole source of



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1 money recoverable for the PAGA Employees and the State is civil penalties available under
2 PAGA. It allows employees to seek civil penalties for certain violations of the Labor Code so
3 long as the penalties are not unjust, arbitrary, oppressive, or confiscatory. As discussed above,
4 Plaintiff's maximum estimated liability exposure is based on the theories that: (1) which every
5 aggrieved employee suffered an overtime wage violation; and (2) Every paycheck that Defendant
6 issued to employees during the PAGA Period represents a pay period in which every aggrieved
7 employee suffered an unreimbursed expense violation. There are no California state court
8 decisions under the PAGA to date with substantial awards of civil penalties. Plaintiff's counsel is
9 aware of only two significant awards under the PAGA in a contested proceeding, both issued by
10 federal district courts, one of which was overturned on May 28, 2021.¹

11 21. Additionally, PAGA states a court has discretion to award a lesser amount than
12 the maximum penalty. Labor Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.*

13 ¹ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil
14 penalties under the PAGA of \$12,277,500.00 where total adjusted damages were
15 \$18,695,692.58. In this regard, the district court stated,

16 The plain language of PAGA provides that “a court may award a lesser amount than the
17 maximum civil penalty amount specified by this part if, *based on the facts and*
18 *circumstances of the particular case*, to do otherwise would result in an award that is
19 unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code s 2699(e)(2) (emphasis
20 added). The relationship between the amount of total damages and the amount of
21 maximum PAGA penalties is certainly a “circumstance” of the case under the term's
22 ordinary meaning. The weight given to that circumstance is greater in this case because
23 Plaintiffs' PAGA penalties are based on PAGA claims that are all derivative of Plaintiffs'
24 individual claims except for one. As a general matter, it would be excessively punitive
25 for the penalty imposed as a consequence of a discrete injury or set of injuries to exceed
26 the damages caused by that injury or set of injuries.

27 *Id.*, fnnt. 9. The district court further stated, “Virgin “has not presented any evidence that the full
28 penalty would be excessive in relation to its ability to pay,” the weight of this factor is lessened.”
29 *Id.*

30 In *Robert Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d. 1058, the court
31 awarded approximately \$102 million in damages, primarily based on the Defendant's failures to
32 comply with the requirements of California Labor Code section 226. On May 28, 2021, the
33 United States Court of appeals for the Ninth Circuit overturned the decision finding that there is
34 no technical wage statement violation for a failure to list the rates and hours of pay associated
35 with adjustments to overtime pay. *Magadia v. Wal-Mart Assocs.*, No. 19-16184, 2021 U.S. App.
36 LEXIS 16070 (9th Cir. May 28, 2021).



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1 (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that the
2 Court could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff's
3 evidence of willful and intentional conduct. *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504
4 ("Carrington") illustrates this. In that case, the Court of Appeal affirmed a trial court's heavily
5 discounted award of only \$5 per violation because it was within the Court's discretion to
6 significantly reduce PAGA penalties even when there is a finding that a violation of the California
7 Labor Code occurred. Under *Carrington*, assuming 14 violations for each pay period (a violation
8 for each calendar day of a bi-weekly pay period), for all PAGA Employees, will result in a
9 recovery of \$117,950 (1,685 x 14 x \$5 = \$117,950) which is significantly less than the GSA here.

10 22. Moreover, judges have awarded extremely small sums to PAGA claimants in the
11 past. In *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court, case number BC430633 in
12 which I represented the Plaintiffs, the employer underpaid commission overtime wages. The
13 plaintiffs sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial,
14 the Honorable Judge Ronald M. Sohigian awarded approximately \$325,000 in civil penalties
15 under the PAGA. A true and correct copy of the amended judgment in *Ghrdilyan* is attached as
16 **Exhibit 8**. A true and correct copy of the first amended complaint in *Ghrdilyan* is attached as
17 **Exhibit 9**. A true and correct copy of the judgment transcript in *Ghrdilyan* is attached as **Exhibit**
18 **10**, 19:8-20:19. In a similar PAGA case before the Los Angeles Superior Court, *Shields v. Security*
19 *Paving Company, Inc.*, LA Superior Court case no. BC492828, on October 24, 2017, the court
20 awarded the prevailing PAGA plaintiff civil penalties totaling only \$50.00. A similar result could
21 occur here. A true and correct copy of the judgment in *Shields* is attached as **Exhibit 11**.

22 23. Defendant could also convince the Court to dismiss the claims due to
23 unmanageability because determining whether each PAGA Employee worked overtime or
24 incurred business expenses would require separate mini-trials. *See, Mendiola v. CPS Sec.*
25 *Solutions, Inc.* (2015) 60 Cal.4th 833. In *Ortiz v. CVS Caremark Corp.*, the court dismissed a
26 PAGA claim because it was unmanageable. 2014 WL 1117614, at *3-4 (N.D. Cal. 2014). The
27 *Ortiz* court cited the "multitude of individualized assessments" that case would have required in
28 ordering dismissal. *Id.* at *4. Several other courts have adopted *Ortiz*, and dismissed PAGA claims
where there are a large number of allegedly aggrieved individuals whose claims require
individual assessments. *See, e.g., Litty v. Merrill Lynch & Co.*, 2014 WL 5904904, at *3 (C.D.
Cal. 2014); *Bowers v. First Student, Inc.*, 2015 WL 1862914, at *4 (C.D. Cal. 2015); *see also*



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1 *Stafford v. Dollar Tree Stores, Inc.*, 2014 WL 6633396, at *2–4 (E.D. Cal. 2014) (bifurcating trial
2 of plaintiff’s claim from representative claims: “in light of the number of potential aggrieved
3 employees, judicial economy favors deferring the representative portion of the PAGA claim”);
4 *Amey v. Cinemark USA Inc.*, 2015 WL 2251504, at *16 (N.D. Cal. May 13, 2015). Further, on
5 September 9, 2021, the California Court of Appeal issued a decision in *Wesson v. Staples The*
6 *Office Superstore, LLC*, 68 Cal. App. 5th 746 (2021), reh’g denied (Sept. 27, 2021) holding that
7 trial courts have authority to ensure that claims under PAGA are manageable, and that courts may
8 limit or strike unmanageable PAGA claims.

9 24. While the evidence gathered through Plaintiff’s discovery supports the merits of
10 the claims asserted in this lawsuit, the settlement is fair, reasonable, and adequate in light of the
11 risks associated with the merits of Plaintiff’s claims, the uncertainties of complex litigation, the
12 cost of pretrial and trial proceedings, the Court’s discretion to lower the amount of penalties
13 ultimately awarded, and the secured benefit to the PAGA Employees and the LWDA promoting
14 compliance with the Labor Code.

15 25. **The Risk That PAGA Claims Are Subject To Arbitration Agreements.** The
16 arbitration agreements entered into between Defendant on the one hand, and the Plaintiff and
17 comparable workers, on the other, present a significant risk to the success of Plaintiff’s
18 representative litigation. According to Defendant, all PAGA Employees entered into arbitration
19 agreements with Defendant, which include class action and representative waivers that bring these
20 agreements in line with the recent holding of *Viking River Cruises, Inc. v. Moriana* (2022) 142
21 S.Ct. 1906. As the arbitration agreements in question restrict potential litigants from bringing
22 PAGA representative actions against Defendant, Plaintiff would be effectively barred from
23 pursuing claims on behalf of the PAGA Employees in Court. As such, by continuing to trial on
24 representative claims, Plaintiff would run the high risk of suffering defeat due to the existence of
25 the arbitration agreements. Also, because different defenses would apply to some workers and
26 not others – i.e., the existence of signed arbitration agreements – there is a risk that the Court
27 could determine that Plaintiff’s claims present too many individualized inquiries to allow for
28 manageable PAGA trial.

26 26. **Expense Associated with Taking the Case to Trial.** I estimate that the cost of
27 taking this case to trial will exceed \$500,000 in attorney fees and costs alone.

28 27. As stated above, Defendant offers \$273,600.00 to resolve this controversy. The



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1 Parties have also agreed to a separate payment to Plaintiff of \$10,000 for a general release of her
2 individual (non-PAGA) claims pursuant to a separate confidential settlement agreement. Plaintiff
3 will present the confidential agreement to the Court if requested.

4 28. Each Aggrieved Employee will receive a portion of the civil penalties on a pro-
5 rata basis depending on the number of pay periods Defendant employed them for during the
6 PAGA Period. Agreement, ¶ 3. With a total of approximately 157 PAGA Employees, the average
7 estimated individual Settlement Payment for each Aggrieved Employee is approximately \$249.04
8 (\$39,100.00 / 157 PAGA Employees). Although an average payment of \$249.04 per Aggrieved
9 Employee is not an enormous sum of money, it is an excellent result given the uncertainties this
10 lawsuit entails. It is also reasonable given the structure and purpose of the PAGA. The PAGA is
11 not a restitution statute with a traditional damages provision designed to restore victims to the
12 position they would have been in had the Labor Code violations not taken place. Rather, it is at
13 best a punishment statute designed to reduce future Labor Code violations. It provides for civil
14 penalties only.

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

23 *Attorneys' Fees and Costs*

24 30. My co-counsel and I intend to request attorneys' fees of \$91,200.00 (1/3 of the
25 Gross Settlement Amount) and up to \$20,000.00 in litigation expenses. The written retainer
26 agreement I entered into with Plaintiff provides that I may elect to recover either (a) statutorily
27 awarded attorney fees or (b) up to 40% of any recovery.

28 31. Should the Court elect to use Plaintiff's Counsel's lodestar as the method for
awarding fees, notwithstanding courts' clear preference for the percentage method, Plaintiff's
Counsel's fee request of \$91,200.00 (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



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1 case, Plaintiff's Counsel have a total lodestar of approximately \$70,968.00 without the use of any
2 multiplier, which results in a multiplier of 1.29 when compared against the \$91,200.00 fee
3 request. A true and correct summary of the time records of my firm is attached as **Exhibit 12** to
4 this declaration. I will make the detailed copies of such records available to the Court for in
5 camera inspection upon its request. I will have waited for a lengthy period to be awarded
6 attorneys' fees for work performed since Plaintiff first contacted my office, compared to
7 Defendant's counsel who have been paid as they performed work during this case. Moreover, my
8 co-counsel and I have expended time, effort, and money that we could have expended on less
9 risky cases instead.

10 32. My firm's current litigation costs total approximately \$19,380.10. A true and
11 correct summary of my firm's costs and expense is attached as **Exhibit 13** to this declaration. I
12 will make detailed copies of such records available to the Court for in camera inspection upon its
13 request. I anticipate that I will incur an additional \$146.90 in costs, which consist of filing fees
14 and attorney service fees for filing this motion and notice of entry of order. Thus, I anticipate my
15 firm's litigations costs will total approximately \$19,527.00 through final accounting of the
16 Settlement. Including the out-of-pocket expenses incurred by my co-counsel², Plaintiff's Counsel
17 request a total of \$19,535.50 in reasonable litigation costs.³

18 33. In addition, based on my experience in wage and hour class action and PAGA
19 matters, fee awards of approximately one-third of the settlement fund are routinely approved as
20 reasonable. I have been awarded attorneys' fees equaling approximately one-third of the fund in
21 several wage and hour class actions, including: *Alvarez v. Gary Grace Enterprises, LP*, Marin
22 County Superior Court, Case No. CIV1002553 (one-third of fund); *Calderon v. Greatcall, Inc.*,
23 San Diego Superior Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of fund); *Butler*
24 *v. Lexxiom, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1001579 (one-third of
25 fund); *Perez v. Southwest Dealer Services, Inc.*, Los Angeles County Superior Court, Case No.
26 BC439253 (one-third of fund); *O'Brien v. Optima Network Services, Inc.*, San Bernardino County



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² My co-counsel's current out of pocket expenses total approximately \$8.50. See Haines Decl. ¶ 11.

³ My co-counsel and I do not seek reimbursement for the wages I paid to the attorneys, paralegals, and legal assistants to aid in the representation of the Class. We bore these expenses over the time since this lawsuit began without expectation of reimbursement.

Superior Court, Case No. CIVRS1107056 (one-third of fund); *Noyd v. The Cristcat Group, et al.*, Los Angeles County Superior Court, Case No. BC439558 (one-third of fund); *Huynh v. Carefusion Resources, LLC, et al*, San Diego Sup.Ct., Case No. 37-2009-00103277-CU-OE-CTL (one-third of fund); *Cunningham v. DPI Specialty Foods West, Inc.*, Los Angeles Sup.Ct., Case No. BC465017 (one-third of fund); *Stucker v. L'Oreal USA S/D, Inc.*, Los Angeles Sup. Ct., Case No. BC456080 (one-third of fund); *Valdez v. Healthcare Services Group, Inc.*, Los Angeles Sup.Ct., Case No. BC462917 (one-third of fund); *Hernandez, et al v. HSBC*, U.S. District Court, Central District of California, Case No. 10-CV-4753 (one-third of fund); *Sandoval, et al. v. Thrifty Payless, Inc.*, et al. Los Angeles Sup.Ct., Case No. BC431249 (one-third of fund); *Alafa v. Custom Built Personal Training, Inc.*, Tulare County Superior Court, Case No. VCU-245496 (one-third of fund); *Nardone v. Sequoia Beverage Company, LP*, Tulare Sup.Ct., Case No. VCU-248370 (one-third of fund); *Rosen v. Image Transfer*, Los Angeles Sup.Ct., Case No. BC511702 (one-third of fund); *Tucker v. Maly's West, Inc.*, Los Angeles Sup.Ct., Case No. BC483920 (one-third of fund); *King v. Build.com*, Butte Sup.Ct., Case No. 159985 (one-third of fund); *Clifford v. Anderson Hay & Grain*, Los Angeles Sup.Ct., Case No. BC517625 (one-third of fund); *Nichols, et al. v. Vitamin Shoppe*, Contra Costa Sup.Ct., Case No. CIVMSC13-01136 (one-third of fund); *Clarke v. Insight Global*, U.S. District Court, Southern District of California, Case No. 13-CV-0357 (one-third of fund); *Fischer, et al. v. National Distribution Centers LP, et al.*, Riverside Sup.Ct., Case No. RIC1114952 (one-third of fund); *Shaw, et al. v. Interthinx, Inc.*, United States District Court for the District of Colorado, Case No. 13-CV-01229-REB-BNB (one-third of fund); *Ogbuehi v. Comcast of California/ Colorado/ Florida/ Oregon, Inc.*, United States District Court, Eastern District of California, Case No. EDCV13-00672-KJM-KJN (one-third of fund); *Lynch, et al. v. American Guard Services*, Los Angeles Superior Court, Case No. BC462681 (one-third of fund); *Volney-Parris v. Southern California Edison Company*, Los Angeles Superior Court, Case No. BC493038 (one-third of fund); *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior Court, Case No. BC480808 (one-third of fund); *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-1500-CV-282679 (one-third of fund); *Linder, et al. v. Warehouse Services, Inc.*, San Bernardino Superior Court, Case No. CIVDS1500146 (one-third of fund).

34. My previous experience in litigating wage and hour class and representative actions supports the reasonableness of the fee request, as does the caliber of opposing counsel. My previous experience in similar matters was integral in evaluating the strengths and weaknesses



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1 of the case against Defendant and the reasonableness of the Settlement. Practice in the narrow
2 field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving
3 substantive law, state and federal, as well as the procedural law of class action litigation. Because
4 it is reasonable to compensate me commensurate with my skill, reputation, and experience,
5 attorneys' fees of approximately one-third of the Gross Settlement Amount is reasonable.
6 Likewise, the caliber and experience of opposing counsel in labor and employment litigation
support the fairness and reasonableness of the requested fee award.

7 ***Settlement Administration Duties***

8 35. The duties of the Administrator are spelled out in the in the bid by Phoenix Class
9 Action Administration Solutions ("Phoenix Class Action Administration Solutions"), a true and
10 correct copy of which is attached as **Exhibit 14**.

11 36. With regard to the Administration Expenses Payment provision, it is reasonable.
12 Before agreeing to Phoenix Class Action Administration Solutions, the Parties sought and
13 reviewed bids from other reputable third-party administrators which provided higher bids:

14 A. CPT Group, Inc. = \$6000.00; and

15 B. ILYM = \$5850.00.

16 A true and correct copy of the bid from CPT Group, Inc. is attached hereto as **Exhibit 15**. A true
17 and correct copy of the bid from ILYM is attached hereto as **Exhibit 16**. Thus, the Administration
Expenses Payment provision should be given approval.

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

20 Executed on Thursday, August 17, 2023 at Los Angeles, California.

21 

22 DAVID SPIVAK,
23 Declarant



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EXHIBIT 1

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13 Attorneys for Plaintiff(s),
14 BRANDY RUIZ, and all others similarly situated
15 (Additional attorneys for parties on following page)

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **FOR THE COUNTY OF SAN DIEGO**

18 **(UNLIMITED JURISDICTION)**

19 BRANDY RUIZ, on behalf of herself and all
20 others similarly situated, and as an “aggrieved
21 employee” on behalf of other “aggrieved
22 employees” under the Labor Code Private
23 Attorneys General Act of 2004,

24 *Plaintiff(s),*

25 vs.

26 PRO CUSTOM SOLAR LLC DBA
27 MOMENTUM SOLAR, a New Jersey limited
28 liability company; and DOES 1–50, inclusive,

Defendant(s).

Case No. 37-2021-00040509-CU-OE-CTL

PAGA SETTLEMENT AGREEMENT

Action filed: September 22, 2021
Dept: C-67, The Honorable Eddie
C. Sturgeon

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ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

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BRANDY RUIZ, and all others similarly situated

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Attorneys for Defendant(s),
PRO CUSTOM SOLAR LLC DBA MOMENTUM SOLAR

1 This PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff
2 Brandy Ruiz (“Plaintiff”) and defendant Pro Custom Solar LLC dba Momentum Solar (“Pro
3 Custom Solar LLC dba Momentum Solar”). The Agreement refers to Plaintiff and Defendant
4 collectively as “Parties,” or individually as “Party.”

5 **1. DEFINITIONS.**

6 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against
7 Pro Custom Solar LLC dba Momentum Solar captioned “Brandy Ruiz, on behalf of herself, and
8 all others similarly situated, and as an ‘aggrieved employee’ on behalf of other ‘aggrieved
9 employees’ under the Labor Code Private Attorneys General Act of 2004, *Plaintiff(s)*, vs. Pro
10 Custom Solar LLC dba Momentum Solar, a New Jersey limited liability company; and DOES 1
11 through 50, inclusive, *Defendant(s)*,” Case No. 37-2021-00040509-CU-OE-CTL initiated on
12 September 22, 2021 and pending in Superior Court of the State of California, County of San
13 Diego.

14 1.2. “Administrator” means Phoenix Class Action Administration Solutions, the
15 neutral entity the Parties have agreed to appoint to administer the Settlement.

16 1.3. “Administration Expenses Payment” means the amount the Administrator will be
17 paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
18 accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection
19 with approval of the Settlement.

20 1.4. “PAGA Employee” means a non-exempt call center representative and/or
21 canvassing employee of Defendant in the State of California during the period from October 9,
22 2020 through the date upon which this Agreement is fully executed by the Parties.

23 1.5. “PAGA Employee Data” means PAGA Employee identifying information in
24 Defendant’s possession including the PAGA Employee’s name, last-known mailing address,
25 Social Security number, and number of PAGA Pay Periods.

26 1.6. “PAGA Employee Address Search” means the Administrator’s investigation and
27 search for current PAGA Employee mailing addresses using all reasonably available sources,
28 methods and means including, but not limited to, the National Change of Address database, skip
traces, and direct contact by the Administrator with PAGA Employees.

1.7. “Court” means the Superior Court of California, County of San Diego.

1.8. “Defense Counsel” means Eric M. Steinert and Christopher A. Crosman of Seyfarth Shaw LLP.

1.9. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day the Court enters Judgment, and the period for filing of an appeal to the Judgment has passed.

1.10. “Gross Settlement Amount” means \$273,600.00 which is the total amount Defendant agrees to pay under the Settlement. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator’s Expenses Payment.

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

1.12. “Judgment” means the judgment entered by the Court based upon the Court’s approval of the Settlement.

1.13. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled to obtain distribution of 75% of the PAGA Penalties under Labor Code section 2699, subd. (i).

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

1.15. “PAGA Counsel” means David G. Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law Group, the attorneys representing the Plaintiff in the Action.

1.16. “PAGA Counsel Fees Payment” and “PAGA Counsel Litigation Expenses Payment” mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

1.17. “PAGA Pay Period” means any Pay Period during which a PAGA Employee worked for Defendant for at least one day during the PAGA Period.

1.18. “PAGA Period” means the period from October 09, 2020 to the date upon which this Agreement is fully executed by the Parties.

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

1.20. "PAGA Notice" means Plaintiff's August 09, 2021 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.21. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the PAGA Employees (\$39,100.00) and 75% to LWDA (\$117,300.00) in settlement of PAGA claims. The PAGA Penalties is the Gross Settlement Amount, less the following payments in the amounts approved by the Court: PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment.

1.22. "Plaintiff" means Brandy Ruiz, the named plaintiff in the Action.

1.23. "Approval Order" means the proposed Court Order Granting Approval of PAGA Settlement.

1.24. "Released PAGA Claims" means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.

1.25. "Released Parties" means: Defendant and each of its former and present directors, officers, shareholders, legal and equitable owners, employees, supervisors, partners, agents, designees, associates, representatives, consultants, administrators, members, attorneys, insurers, predecessors, successors, assigns subsidiaries, and affiliates.

1.26. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

1.27. "Defendant" means named Defendant Pro Custom Solar LLC dba Momentum Solar.

2. RECITALS.

2.1. On September 22, 2021, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for unpaid wages, unreimbursed expenses, and related claims. On December 13, 2021, Plaintiff filed a First Amended Complaint alleging a single cause of action under PAGA against Defendant for unpaid wages, unreimbursed expenses, and related allegations. The First Amended Complaint is the operative complaint in the Action (the "Operative Complaint.") Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.

2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.

2.3. On March 24, 2022, the Parties participated in an all-day mediation presided over by Mr. Tripper Ortman Esq. which led to this Agreement to settle the Action.

2.4. Prior to mediation, Plaintiff obtained, through informal discovery, the number of comparable employees, the number of pay periods, average rates of pay, sample time records, sample payroll records, written policies, and related information.

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

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Defendant promises to pay \$273,600.00 and no more as the Gross Settlement Amount. Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring PAGA Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Court's Approval order:

3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 33.33%, which is currently estimated to be \$91,200.00 and a PAGA Counsel Litigation Expenses Payment of not more than \$20,000.00. Defendant will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the PAGA Penalties. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel

1 Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA
2 Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees
3 Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendant harmless,
4 and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of
any of these Payments.

5 3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed
6 \$6,000.00 except for a showing of good cause and as approved by the Court. To the extent the
7 Administration Expenses are less or the Court approves payment less than \$6,000.00, the
8 Administrator will retain the remainder in the PAGA Penalties. The Parties and their counsel
9 represent that they do not have any involvement in the governance or work of the Administrator.

10 3.2.3. To the LWDA and PAGA Employees: PAGA Penalties in the
11 amount of \$156,400.00 to be paid from the Gross Settlement Amount, with 75% (\$117,300.00)
12 allocated to the LWDA PAGA Payment and 25% (\$39,100.00) allocated to the Individual PAGA
13 Payments. The PAGA Employees' Individual PAGA Payments will be treated as non-wage
14 income and reported by the Administrator on IRS Form 1099 (if applicable) to the respective
PAGA Employee and applicable governmental authorities.

15 3.2.3.1. The Administrator will calculate each Individual PAGA Payment
16 by (a) dividing the amount of the PAGA Employees' 25% share of PAGA Penalties (\$39,100.00)
17 by the total number of PAGA Period Pay Periods worked by all PAGA Employees during the
18 PAGA Period and (b) multiplying the result by each PAGA Employee's PAGA Period Pay
19 Periods. PAGA Employees assume full responsibility and liability for any taxes owed on their
Individual PAGA Payment.

20 3.2.3.2. If the Court approves PAGA Penalties of less than the amount
21 requested, the Administrator will allocate the remainder to the PAGA Penalties. The
22 Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

23 **4. SETTLEMENT FUNDING AND PAYMENTS.**

24 4.1. PAGA Employee Pay Periods. Based on a review of its records to date,
25 Defendant estimates there are 157 PAGA Employees who worked a total of 1,685 PAGA Pay
26 Periods.

1 4.2. PAGA Employee Data. Within 14 days following Judgment being entered by the
2 Court, Defendant will deliver the PAGA Employee Data to the Administrator in the form of a
3 Microsoft Excel spreadsheet. To protect PAGA Employee' privacy rights, the Administrator must
4 maintain the PAGA Employee Data in confidence, use the PAGA Employee Data only for
5 purposes of this Settlement and for no other purpose, and restrict access to the PAGA Employee
6 Data to Administrator employees who need access to the PAGA Employee Data to effect and
7 perform under this Agreement. Defendant has a continuing duty to immediately notify PAGA
8 Counsel if it discovers that the PAGA Employee Data omitted employee identifying information
9 and to provide corrected or updated PAGA Employee Data as soon as reasonably feasible.
10 Without any extension of the deadline by which Defendant must send the PAGA Employee Data
11 to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good
12 faith, to reconstruct or otherwise resolve any issues related to missing or omitted PAGA
13 Employee Data.

14 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross
15 Settlement Amount by transmitting the funds to the Administrator no later than 15 business days
16 after the Effective Date.

17 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant
18 funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA
19 Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA
20 Counsel Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment
21 shall not precede disbursement of Individual PAGA Payments.

22 4.4.1. The Administrator will issue checks for the Individual PAGA Payments
23 and send them to the PAGA Employees via First Class U.S. Mail, postage prepaid. The face of
24 each check shall prominently state the date (not less than 180 days after the date of mailing) when
25 the check will be voided. The Administrator will cancel all checks not cashed by the void date.
26 Before mailing any checks, the Administrator must update the recipients' mailing addresses using
27 the National Change of Address Database.

28 4.4.2. The Administrator must conduct an PAGA Employee Address Search for
all other PAGA Employees whose checks are returned undelivered without USPS forwarding
address. Within 7 days of receiving a returned check the Administrator must re-mail checks to
the USPS forwarding address provided or to an address ascertained through the PAGA Employee

1 Address Search. The Administrator need not take further steps to deliver checks to PAGA
2 Employees whose re-mailed checks are returned as undelivered. The Administrator shall
3 promptly send a replacement check to any PAGA Employee whose original check was lost or
4 misplaced, requested by the PAGA Employee prior to the void date.

5 4.4.3. For any PAGA Employee whose Individual PAGA Payment check is
6 uncashed and cancelled after the void date, the Administrator shall transmit the funds represented
7 by such check to the California Controller's Unclaimed Property Fund in the name of the PAGA
8 Employee. Neither Defendant, Defendant's Counsel, Plaintiff's Counsel, nor Plaintiff will have
9 any liability for lost or stolen settlement checks, forged signatures on settlement checks,
10 unauthorized negotiation of settlement checks or failure to timely cash a settlement check within
11 the 180-day period.

12 4.4.4. The payment of Individual PAGA Payments shall not obligate Defendant
13 to confer any additional benefits or make any additional payments to PAGA Employees (such as
14 401(k) contributions or bonuses) beyond those specified in this Agreement. In this regard,
15 amounts paid as Individual PAGA Payments pursuant to this Agreement shall be deemed not to
16 be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any
17 of the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) for Plaintiff or
18 PAGA Employees.

19 **5. RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire
20 Gross Settlement Amount, Plaintiff, PAGA Employees, and PAGA Counsel will release claims
21 against all Released Parties as follows:

22 5.1. Release by PAGA Employees: All PAGA Employees are deemed to release, on
23 behalf of themselves and their respective former and present representatives, agents, attorneys,
24 heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA
25 penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period
26 facts stated in the Operative Complaint and the PAGA Notice.

27 5.2. Release by PAGA Counsel: PAGA Counsel release on behalf of their present and
28 former attorneys, employees, agents, successors and assigns the Released Parties from all claims
for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts
stated in the Operative Complaint and the PAGA Notice.

1 **6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.** The Parties
2 agree to jointly prepare and file an application or motion for approval of this Settlement.

3 6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel
4 all documents necessary for obtaining approval of this Settlement under Labor Code Section
5 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement;
6 (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering
7 the Settlement and attesting to its willingness to serve; competency; operative procedures for
8 protecting the security of PAGA Employee Data; amounts of insurance coverage for any data
9 breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential
10 conflicts of interest with PAGA Employees or the LWDA; and the nature and extent of any
11 financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration
12 from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary
13 PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative
14 Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699,
15 subd. (l)(2)); and (iv) all facts relevant to any actual or potential conflict of interest with PAGA
16 Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA Counsel shall
17 aver that they are not aware of any other pending matter or action asserting claims that will be
18 extinguished or adversely affected by the Settlement.

19 6.2 Responsibilities of Counsel. PAGA Counsel and Defense Counsel are jointly
20 responsible for expeditiously finalizing and filing the application or motion for approval of this
21 Settlement no later than 30 days after the full execution of this Agreement and, if necessary,
22 obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the
23 motion. PAGA Counsel is responsible for delivering the Court's Approval to the Administrator.

24 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed
25 application or motion for approval of this Settlement and/or the supporting declarations and
26 documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of
27 the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement.
28 If the Court does not grant the motion for approval of this Settlement or conditions its approval
on any material change to this Agreement, PAGA Counsel and Defense Counsel will
expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in
good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

1 **7. SETTLEMENT ADMINISTRATION.**

2 7.1 Selection of Administrator. The Parties have jointly selected Phoenix Class
3 Action Administration Solutions to serve as the Administrator and verified that, as a condition of
4 appointment, Phoenix Class Action Administration Solutions agrees to be bound by this
5 Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for
6 payment of Administration Expenses. The Parties and their Counsel represent that they have no
7 interest or relationship, financial or otherwise, with the Administrator other than a professional
relationship arising out of prior experiences administering settlements.

8 7.2 Employer Identification Number. The Administrator shall have and use its own
9 Employer Identification Number for purposes of calculating payroll tax withholdings and
10 providing reports state and federal tax authorities if needed.

11 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund
12 that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury
Regulation section 468B-1.

13 7.4 Administrator Duties. The Administrator has a duty to perform or observe all
14 tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

15 **8. CONTINUING JURISDICTION OF THE COURT.** The Parties agree that, after entry
16 of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely
17 for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
18 administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

19 8.1 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms
20 and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and
21 PAGA Counsel Litigation Expenses Payment, the Parties and their respective counsel waive all
22 rights to appeal from the Judgment, including all rights to post-judgment and appellate
23 proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary
24 writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such
25 motions, writs or appeals. If another party appeals the Judgment, the Parties’ obligations to
26 perform under this Agreement will be suspended until such time as the appeal is finally resolved
27 and the Judgment becomes final, except as to matters that do not affect the amount of the Net
Settlement Amount.

1 **9. ADDITIONAL PROVISIONS.**

2 9.1 No Admission of Liability or Representative Manageability for Other Purposes.

3 This Agreement represents a compromise and settlement of highly disputed claims. Nothing in
4 this Agreement is intended or should be construed as an admission by Defendant that any of the
5 allegations in the Operative Complaint have merit or that Defendant has any liability for any
6 claims asserted; nor should it be intended or construed as an admission by Plaintiff that
7 Defendant's defenses in the Action have merit. The Parties agree that representative treatment is
8 for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement,
9 Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the
10 right to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to
11 settle the Action will have no bearing on, and will not be admissible in connection with, any
12 litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

13 9.2 Integrated Agreement. Upon execution by all Parties and their counsel, this
14 Agreement together with its attached exhibits shall constitute the entire agreement between the
15 Parties relating to the Settlement, superseding any and all oral representations, warranties,
16 covenants, or inducements made to or by any Party.

17 9.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant
18 and represent that they are authorized by Plaintiff and Defendant, respectively, to take all
19 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
20 to effectuate its terms, and to execute any other documents reasonably required to effectuate the
21 terms of this Agreement including any amendments to this Agreement.

22 9.4 Cooperation. The Parties and their counsel will cooperate with each other and
23 use their best efforts, in good faith, to implement the Settlement by, among other things,
24 modifying the Settlement Agreement, submitting supplemental evidence and supplementing
25 points and authorities as requested by the Court. In the event the Parties are unable to agree upon
26 the form or content of any document necessary to implement the Settlement, or on any
27 modification of the Agreement that may become necessary to implement the Settlement, the
28 Parties will seek the assistance of a mediator and/or the Court for resolution.

1 9.5 No Prior Assignments. The Parties separately represent and warrant that they
2 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
3 or encumber to any person or entity any portion of any liability, claim, demand, action, cause of
4 action, or right released and discharged by the Party in this Settlement.

5 9.6 No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendant nor Defense
6 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
7 Settlement be relied upon as such within the meaning of United States Treasury Department
8 Circular 230 (31 CFR Part 10, as amended) or otherwise.

9 9.7 Modification of Agreement. This Agreement, and all parts of it, may be
10 amended, modified, changed, or waived only by an express written instrument signed by all
11 Parties or their representatives, and approved by the Court.

12 9.8 Agreement Binding on Successors. This Agreement will be binding upon, and
13 inure to the benefit of, the successors of each of the Parties.

14 9.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will
15 be governed by and interpreted according to the internal laws of the state of California, without
16 regard to conflict of law principles.

17 9.10 Cooperation in Drafting. The Parties have cooperated in the drafting and
18 preparation of this Agreement. This Agreement will not be construed against any Party on the
19 basis that the Party was the drafter or participated in the drafting.

20 9.11 Confidentiality. To the extent permitted by law, all agreements made, and orders
21 entered during Action and in this Agreement relating to the confidentiality of information shall
22 survive the execution of this Agreement.

23 9.12 Use and Return of PAGA Employee Data. Information provided to PAGA
24 Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data
25 provided to PAGA Counsel by Defendant in connection with the mediation, other settlement
26 negotiations, or in connection with the Settlement, may be used only with respect to this
27 Settlement, and no other purpose, and may not be used in any way that violates any existing
28 contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator
discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and
electronic versions of PAGA Employee Data received from Defendant unless, prior to the
Administrator's payment of all Settlement Funds, Defendant makes a written request to PAGA

Counsel for the return, rather than the destructions, of PAGA Employee Data.

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

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

9.15 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:
David G. Spivak, Esq.
The Spivak Law Firm
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
david@spivaklaw.com

To Defendant:
Eric M. Steinert, Esq.
Seyfarth Shaw LLP
560 Mission Street
31st Floor
San Francisco, CA 94105
esteinert@seyfarth.com

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

9.17 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further

1 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
2 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
3 process.

4 9.18 Nullification of Settlement Agreement. In the event: (a) the Court does not
5 approve the Settlement; (b) the Court does not enter an order approving the Settlement and
6 Judgment as provided herein; or (c) the Settlement does not become final for any other reason,
7 this Settlement Agreement shall be null and void and any order or judgment entered by the
8 Court in furtherance of this Settlement shall be treated as void from the beginning. In such
9 cases, the Parties and any funds to be awarded under this Settlement shall be returned to their
10 respective statuses as of the date and time immediately prior to the execution of this Agreement,
11 and the Parties shall proceed in all respects as if this Agreement had not been executed. In the
12 event an appeal is filed from the Court's Approval Order and Judgment, or any other appellate
13 review is sought, administration of the Settlement shall be stayed pending final resolution of the
14 appeal or other appellate review, and any fees incurred by the Administrator prior to it being
15 notified of the filing of an appeal from the Court's Approval Order and Judgment, or any other
16 appellate review, shall be paid to the Administrator by the party or person that filed the appeal,
17 within thirty (30) calendar days of said notification.

18 9.19 Invalidity of Any Provision. Before declaring any provision of this Settlement
19 Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest
20 extent possible consistent with applicable precedents so as to define all provisions of this
21 Agreement valid and enforceable.

22 Dated: July 31, 2023

By: 

BRANDY RUIZ

23 Dated: July _____, 2023

By: _____

Pro Custom Solar LLC dba Momentum
Solar

1 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
2 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
3 process.

4 9.18 Nullification of Settlement Agreement. In the event: (a) the Court does not
5 approve the Settlement; (b) the Court does not enter an order approving the Settlement and
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8 Court in furtherance of this Settlement shall be treated as void from the beginning. In such
9 cases, the Parties and any funds to be awarded under this Settlement shall be returned to their
10 respective statuses as of the date and time immediately prior to the execution of this Agreement,
11 and the Parties shall proceed in all respects as if this Agreement had not been executed. In the
12 event an appeal is filed from the Court's Approval Order and Judgment, or any other appellate
13 review is sought, administration of the Settlement shall be stayed pending final resolution of the
14 appeal or other appellate review, and any fees incurred by the Administrator prior to it being
15 notified of the filing of an appeal from the Court's Approval Order and Judgment, or any other
16 appellate review, shall be paid to the Administrator by the party or person that filed the appeal,
17 within thirty (30) calendar days of said notification.

18 9.19 Invalidity of Any Provision. Before declaring any provision of this Settlement
19 Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest
20 extent possible consistent with applicable precedents so as to define all provisions of this
21 Agreement valid and enforceable.

22 Dated: July 31, 2023

By:


BRANDY RUIZ

23 Dated: August 3, 2023

By:


Pro Custom Solar LLC dba Momentum
Solar

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By: DAVID G. SPIVAK, Attorneys for
Plaintiff, BRANDY RUIZ, and all
others similarly situated

By: 
WALTER L. HAINES, Attorneys for
Plaintiff, BRANDY RUIZ, and all
others similarly situated

By: 
CHRISTOPHER A. CROSMAN,
Attorneys for Defendant, PRO
CUSTOM SOLAR LLC DBA
MOMENTUM SOLAR

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EXHIBIT A

1 **NOTICE OF PAGA SETTLEMENT**

2 *Brandy Ruiz v. Pro Custom Solar LLC dba Momentum Solar*

3 *(Superior Court of California, San Diego County*

4 *Case No. 37-2021-00040509-CU-OE-CTL*

5 <<Phoenix Class Action Administration Solutions>>

6 []

7 []

8 Telephone: []

9 «Barcode» «BarcodeString»

10 SIMID «SIMID»

11 «FirstName»

12 «LastName»

13 «Address1» «Address2»

14 «City» «State» «Zip»

15 You are receiving this notice as a result of a lawsuit brought on a representative basis
16 under the Private Attorneys General Act, Labor Code §§ 2698, *et seq.* (“PAGA”) (“the Action”).
17 The plaintiff in the Action is Brandy Ruiz (“Plaintiff”) and the defendant is Pro Custom Solar
18 LLC dba Momentum Solar (“Defendant”). The Action seeks civil penalties for purported
19 violations of the California Labor Code on behalf of all a non-exempt call center representatives
20 and/or canvassing employees of Defendant in the State of California during the PAGA Period of
21 October 9, 2020 through <<April __, 2023>> (“PAGA Employees”). Defendant denies all
22 claims and allegations in the Action, denies that it owes any penalties, and asserts that it has fully
23 complied with all applicable Labor Code provisions. Nevertheless, to avoid further costs and
24 time in defending the Action, Defendant has settled the case and the Court has approved the
25 settlement and release of claims. By settling the Action, Defendant is not admitting that it has
26 done anything wrong. As of and subject to the occurrence of the Effective Date of the Settlement,
the Settlement resolves all claims for PAGA penalties that were alleged, or reasonably could have
been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA
Notice (“Released PAGA Claims”). The “Released Parties” are Defendant and each of its former
and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors,
successors, assigns subsidiaries, and affiliates.

27 By Order dated <<court approval order date>>, the Superior Court of the State of
28 California, San Diego County approved the Settlement of the PAGA claims.

29 According to the Defendant’s records, you are a PAGA Employee and therefore entitled
30 to an Individual PAGA Payment, a share of the settlement based upon the Court approved
31 allocation. Enclosed with this Notice is your check for your Individual PAGA Payment. The
32 settlement check shall remain valid for 180 days. Thereafter, all uncashed checks shall be
33 distributed to California State Controller’s Office Unclaimed Property Fund with an
34 identification of the amount of unclaimed funds attributable to each PAGA Employee.

35 Please Note: One hundred percent (100%) of your individual PAGA payment under this
36 Settlement will be considered penalties and may be subject to local, state, or federal tax

1 withholdings and will be reported to the IRS and state tax authorities. You should rely on your
2 own tax advisors as to the tax consequences of your individual PAGA payment. Neither Plaintiff
3 nor Defendant have made any representations or warranties regarding the taxation of your
4 individual PAGA payment. Nothing within this notice or any other communication shall
5 constitute or be construed or relied upon as tax advice within the meaning of United States
6 Treasury Department Circular 230 (31 C.F.R. Part 10, as amended). Enclosed are the appropriate
7 tax forms pertaining to your payment.

8 Do not call or write the Court or Office of the Clerk to ask questions about the settlement
9 or to ask questions about the claims process. If you have any questions, you may call or write to
10 Phoenix Class Action Administration Solutions (the Administrator) using the contact information
11 at the top of this correspondence.
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EXHIBIT B

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

BRANDY RUIZ, on behalf of herself and all others similarly situated, and as an “aggrieved employee” on behalf of other “aggrieved employees” under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

PRO CUSTOM SOLAR LLC DBA
MOMENTUM SOLAR, a New Jersey limited liability company; and DOES 1–50, inclusive,

Defendant(s).

Case No. 37-2021-00040509-CU-OE-CTL

**[PROPOSED] ORDER AND
JUDGMENT APPROVING PAGA
SETTLEMENT AGREEMENT**

Action filed: September 22, 2021
Dept: C-67, The Honorable Eddie
C. Sturgeon

1 **[PROPOSED] ORDER AND JUDGMENT**

2 The Court has before it the Motion for Approval of PAGA Settlement, submitted by
3 Plaintiff Brandy Ruiz (“Plaintiff”) and Defendant Pro Custom Solar LLC DBA Momentum Solar
4 (“Defendant”) (collectively, the “Parties”), indicating that they have reached a settlement that
5 will resolve this matter in its entirety.

6 **TERMS OF THE ORDER AND JUDGMENT**

7 The Court has determined that the Settlement provides genuine and meaningful relief that
8 benefits the public, is fair, adequate, reasonable, and otherwise being fully informed and good
9 cause appearing therefor, it is hereby ORDERED, ADJUDGED, AND DECREED AS
10 FOLLOWS:

11 1. Unless otherwise provided herein, all capitalized terms used herein shall have the
12 same meaning as defined in the PAGA Settlement Agreement (“Settlement Agreement” or
13 “Settlement” or “Agreement”). The Court has jurisdiction over the subject matter of this lawsuit
14 and all matters relating thereto, and over all parties to the action.

15 2. The Court finds that the Settlement has been reached as a result of serious and
16 non-collusive, arm’s-length negotiations. The Court has considered the nature of the claims, the
17 procedural history of this case, the amounts to be paid under the Settlement, the involvement of
18 an experienced private mediator to facilitate the Settlement, the risks of continued litigation that
19 Plaintiff would face, the civil penalties recoverable if Plaintiff was to prevail at trial on her
20 theories of liability under her PAGA claim, the allocation of settlement proceeds among the
21 PAGA Employees, and the fact that a settlement represents a compromise of the Parties’
22 respective positions rather than the result of a finding of liability at trial.

23 3. The Court hereby finds the Settlement involves the resolution of a bona fide
24 dispute, was entered into in good faith, and is fair, reasonable, and adequate. The Court also finds
25 that the Settlement provides genuine and meaningful relief that benefits the public consistent
26 with the purpose of the Private Attorneys General Act of 2004, California Labor Code § 2699 *et*
27 *seq.*

1 4. The Court therefore approves the Settlement as set forth in the Settlement
2 Agreement and directs the Parties to effectuate the Settlement according to the terms set forth in
3 the Settlement Agreement.

4 5. Neither the Settlement nor any of the terms set forth in the Settlement Agreement
5 are admissions by Defendant, or any of the other Released Parties, of liability on any of the
6 allegations alleged in the Action, nor is this Order a finding of the validity of any claims in the
7 Action, or of any wrong doing by the Defendant, or any of the other Released Parties.

8 6. The Court finds that Plaintiff's Counsel has adequately represented the Plaintiff,
9 the PAGA Employees, and the LWDA for purposes of entering into and implementing the
10 Settlement.

11 7. The Court finds that the Settlement, and in particular the Gross Settlement
12 Amount ("GSA") of \$273,600.00 total to be distributed as set forth herein and in the Settlement
13 Agreement, is in all respects fair, reasonable, and adequate and is hereby approved. *See* California
14 Labor Code § 2699(1)(2).

15 8. Pursuant to the terms of the Settlement, administration costs in the amount of
16 \$6,000, which is necessary to administer the Settlement, is hereby granted and shall be paid to
17 Phoenix Class Action Administration Solutions, the designated third-party Administrator.

18 9. Pursuant to the terms of the Settlement, the requested attorneys' fees in the
19 amount of \$91,200.00 are reasonable under the common fund method and the lodestar method.
20 The GSA of a total of \$273,600.00 represents a true and common fund, as Defendant must pay
21 the full GSA and no amount of the GSA will return to Defendant under any circumstances. It is
22 recognized that attorneys who recover a common fund are entitled to a reasonable fee award from
23 the fund. *See, e.g., Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 ("a litigant or a lawyer
24 who recovers a common fund for the benefit of persons other than himself or his client is entitled
25 to a reasonable attorney's fee from the fund as a whole."); *In re Washington Public Power Supply*
26 *Sys. Sec. Litig.* (9th Cir. 1994) 19 F.3d 1291, 1300 ("[T]hose who benefit from the creation of
27 the fund should share the wealth with the lawyers whose skill and effort helped create it.");
28

Moreover, one-third of the common fund is standard in settlements similar to this one. *See, e.g., Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480, 506 (approving fees of one-third of the common fund); *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558 n.13 (“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”). The Court also finds that the requested attorneys’ fees are reasonable under the lodestar method, or as a crosscheck on the percentage fee. *See Laffitte*, 1 Cal.5th at 506.

10. The Court further finds that Plaintiff’s counsel’s requested actual litigation costs of up to \$20,000 (which is currently estimated to be \$_____) are reasonable and were necessary to prosecute the action.

11. Accordingly, and consistent with California Labor Code § 2699(g)(1), which authorizes an award of attorneys’ fees in the amount of \$91,200.00 and litigation costs in the amount of up to \$20,000 are hereby granted and shall be paid to Plaintiff’s counsel.

12. After deducting Settlement Administration Costs and Attorneys’ Fees and Costs, the remainder of \$156,400, consistent with California Labor Code § 2699(i), shall be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to PAGA Employees. Accordingly, \$117,300 shall be paid to the LWDA, and \$39,100 shall be paid to PAGA Employees. The payments to the PAGA Employees will be paid proportionally based on the number of pay periods that each individual employee worked for Defendant during the PAGA Period.

13. As of the Effective Date, Plaintiff, as the representative for the State of California, and on behalf of all PAGA Employees, will forever completely release and discharge the Released Parties from any claim for the recovery of civil penalties under the California Private Attorneys General Act, California Labor Code § 2698, *et. seq.* only that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice and or the PAGA Period. It is expressly understood and agreed that this settlement includes a release of all PAGA Representative Claims based on violations of Labor Code §§ 201,

1 202, 203, 204, 210, 221, 226, 226.2, 226.7, 510, 512, 1174, 1174.5, 1194, 1197, 1198, and 2802
2 and all accompanying and relevant IWC Wage Order provisions cited in Plaintiff's PAGA Notice
3 and/or the Operative Complaint. The release shall be effective as of the Effective Date, and it
4 shall apply to claims within the above scope impacting the PAGA Employees arising within the
5 PAGA Period. This settlement agreement shall not impact any PAGA Employee's ability to
6 assert Labor Code claims other than PAGA claims (i.e., a claim brought under California Labor
7 Code § 2698, *et. seq.*).

8 14. In accordance with California law as stated in *inter alia* *Arias v. Superior Court*
9 (2009) 46 Cal. 4th 969, 985, a judgment in "a representative action brought by an aggrieved
10 employee under the Labor Code Private Attorneys General Act of 2004 . . . is binding not only
11 on the named employee plaintiff but also on government agencies and any aggrieved employee
12 not a party to the proceeding." Thus, both the named employee Plaintiff and nonparty aggrieved
13 employees (i.e. all PAGA Employees) are bound by this Order and Judgment. *Id.* at 986.
14 However, the Parties' Settlement Agreement shall not impact any PAGA Employee's ability to
15 assert Labor Code claims other than the PAGA claims (i.e., a claim brought under California
16 Labor Code § 2698, *et. seq.*) unless such claim is subject to res judicata, issue preclusion, or
17 claim estoppel.

18 15. Neither this Order nor the Settlement Agreement (nor any other document referred
19 to herein, nor any action taken to carry out this Approval Order) is, may be construed as, or may
20 be used as, an admission or concession by or against Defendant or the Released Parties of the
21 validity of any claim or actual or potential fault, wrongdoing, or liability. Entering into or
22 carrying out the Settlement Agreement, and any negotiations or proceedings related to it, shall
23 not be considered as, or deemed evidence of, an admission or concession as to Defendant's
24 denials or defenses and shall not be offered or received in evidence in any action or proceeding
25 against any party hereto in any court, administrative agency or other tribunal for any purpose
26 whatsoever, except as evidence of the Settlement or to enforce the provisions of this Order and
27 the Settlement Agreement; provided, however, that this Order and the Settlement Agreement

1 may be filed in any action against or by Defendant or the Released Parties to support a defense
2 of res judicata, collateral estoppel, release, waiver, good-faith settlement, judgment bar or
3 reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar
4 defense or counterclaim.

5 16. Judgment in this matter is entered in accordance with the terms of the Settlement
6 Agreement and Approval Order. This judgment is intended to be a final disposition of the above
7 captioned action in its entirety, and is intended to be immediately appealable.

8 17. The Court reserves exclusive and continuing jurisdiction over the lawsuit for the
9 purposes of supervising the implementation, enforcement, construction, administration, and
10 interpretation of the Settlement Agreement and this Approval Order.

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

13
14
15 **DATE**

15 **THE HONORABLE EDDIE C.**
16 **STURGEON**
17 **SUPERIOR COURT JUDGE**

EXHIBIT 2

1 **NOTICE OF PAGA SETTLEMENT**

2 *Brandy Ruiz v. Pro Custom Solar LLC dba Momentum Solar*

3 *(Superior Court of California, San Diego County*

4 *Case No. 37-2021-00040509-CU-OE-CTL*

5 <<Phoenix Class Action Administration Solutions>>

6 []

7 []

8 Telephone: []

9 «Barcode» «BarcodeString»

10 SIMID «SIMID»

11 «FirstName»

12 «LastName»

13 «Address1» «Address2»

14 «City» «State» «Zip»

15 You are receiving this notice as a result of a lawsuit brought on a representative basis
16 under the Private Attorneys General Act, Labor Code §§ 2698, *et seq.* (“PAGA”) (“the Action”).
17 The plaintiff in the Action is Brandy Ruiz (“Plaintiff”) and the defendant is Pro Custom Solar
18 LLC dba Momentum Solar (“Defendant”). The Action seeks civil penalties for purported
19 violations of the California Labor Code on behalf of all a non-exempt call center representatives
20 and/or canvassing employees of Defendant in the State of California during the PAGA Period of
21 October 9, 2020 through <<April __, 2023>> (“PAGA Employees”). Defendant denies all
22 claims and allegations in the Action, denies that it owes any penalties, and asserts that it has fully
23 complied with all applicable Labor Code provisions. Nevertheless, to avoid further costs and
24 time in defending the Action, Defendant has settled the case and the Court has approved the
25 settlement and release of claims. By settling the Action, Defendant is not admitting that it has
26 done anything wrong. As of and subject to the occurrence of the Effective Date of the Settlement,
the Settlement resolves all claims for PAGA penalties that were alleged, or reasonably could have
been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA
Notice (“Released PAGA Claims”). The “Released Parties” are Defendant and each of its former
and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors,
successors, assigns subsidiaries, and affiliates.

27 By Order dated <<court approval order date>>, the Superior Court of the State of
28 California, San Diego County approved the Settlement of the PAGA claims.

29 According to the Defendant’s records, you are a PAGA Employee and therefore entitled
30 to an Individual PAGA Payment, a share of the settlement based upon the Court approved
31 allocation. Enclosed with this Notice is your check for your Individual PAGA Payment. The
32 settlement check shall remain valid for 180 days. Thereafter, all uncashed checks shall be
33 distributed to California State Controller’s Office Unclaimed Property Fund with an
34 identification of the amount of unclaimed funds attributable to each PAGA Employee.

35 Please Note: One hundred percent (100%) of your individual PAGA payment under this
36 Settlement will be considered penalties and may be subject to local, state, or federal tax

37 *Ruiz v. Pro Custom Solar LLC dba Momentum*
38 *Solar, et al.*

PAGA Settlement Agreement

1 withholdings and will be reported to the IRS and state tax authorities. You should rely on your
2 own tax advisors as to the tax consequences of your individual PAGA payment. Neither Plaintiff
3 nor Defendant have made any representations or warranties regarding the taxation of your
4 individual PAGA payment. Nothing within this notice or any other communication shall
5 constitute or be construed or relied upon as tax advice within the meaning of United States
6 Treasury Department Circular 230 (31 C.F.R. Part 10, as amended). Enclosed are the appropriate
7 tax forms pertaining to your payment.

8 Do not call or write the Court or Office of the Clerk to ask questions about the settlement
9 or to ask questions about the claims process. If you have any questions, you may call or write to
10 Phoenix Class Action Administration Solutions (the Administrator) using the contact information
11 at the top of this correspondence.
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EXHIBIT 3



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

August 9, 2021

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

Re: Brandy Ruiz / Momentum Solar

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Brandy Ruiz (hereafter “Ruiz” or “Complainant”) provides notice that Pro Custom Solar LLC dba Momentum Solar, a New Jersey limited liability company, and related entities (collectively “the Momentum Solar Employers” or “the Employers”) violated her rights and those of all other individuals the Momentum Solar Employers have employed or otherwise contracted with in California as non-exempt employees, including but not limited to remote phone agents paid by the hour and by commission, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 221, 226, 226.2, 226.7, 510, 1174, 1194, 1197, 1198, 2751, and 2802. On behalf of herself and all other Aggrieved Employees, Ruiz hereby provides this notice to the Labor & Workforce Development Agency and the Momentum Solar Employers and their agents and representatives.

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// /

At all relevant times, the Momentum Solar Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Ruiz and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 7-2001 (hereafter “the Wage Order”) section 2, subdivision (E) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately January 1, 2020, the Momentum Solar Employers began to employ Ruiz in Fallbrook, San Diego County in the position of remote phone agent. The Momentum Solar Employers continuously employed her in that capacity until on or about December 15, 2020 when her employment ended.

At all relevant times, the Momentum Solar Employers issued wages to Ruiz and all of the other Aggrieved Employees on a biweekly (26 paychecks/year) basis and paid them by the hour, bonus, commission, and piece rate. At all relevant times, the Momentum Solar Employers classified Ruiz and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Momentum Solar Employers failed to compensate Ruiz and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The Momentum Solar Employers failed to include commissions and bonuses Ruiz and the Aggrieved Employees earned in the regular rate of pay for purposes of calculations the overtime wages Ruiz and the Aggrieved Employees earned when they worked in excess of 40 hours per week, and in excess of eight hours per day.

The Momentum Solar Employers failed to separately compensate Ruiz and all of the other Aggrieved Employees for rest and recovery periods and other nonproductive time. The Momentum Solar Employers failed to pay for rest and recovery time calculated based on both hourly pay and commissions Ruiz and the Aggrieved Employees earned.

At all relevant times, the Momentum Solar Employers required Ruiz and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Momentum Solar Employers required Ruiz and all of the other Aggrieved Employees to supply mobile phones, telecom, tools, equipment, supplies, home office and storage, and computers/laptops to perform their job duties. However, the Momentum Solar Employers did not provide these items and did not reimburse Ruiz and the other Aggrieved Employees for these items. The Momentum Solar Employers required Ruiz and the Aggrieved Employees to purchase or use computers, phones, telecom services, and work spaces that they owned or otherwise paid for to perform their job duties from home.

At all relevant times, the Momentum Solar Employers failed to issue to Ruiz and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Momentum Solar Employers knowingly and intentionally failed to state on the wage statements they issued to Ruiz and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all hours worked at the correct rates of pay, all overtime wages earned, all doubletime wages earned, all rest and recovery time, and all rest and recovery time wages earned.

The Momentum Solar Employers failed to provide Ruiz and all of the other Aggrieved Employees with statements of the total hours of compensable rest and recovery periods, the rate of compensation, and the gross and net wages paid for those activities during the pay period. The Momentum Solar Employers failed to state on the wage statements they issued to Ruiz and the Aggrieved Employees the pay for rest and recovery time calculated based on both hourly pay and commissions and bonuses Ruiz and the Aggrieved Employees earned.

The Momentum Solar Employers failed to provide signed and complete commission agreements to Ruiz and all of the other Aggrieved Employees.

The Momentum Solar Employers also failed to timely pay Ruiz and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Momentum Solar Employers failed to maintain accurate employee records of Ruiz and all of the other Aggrieved Employees.

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

- (a) The Momentum Solar Employers failed to pay Ruiz and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including overtime and doubletime wages;
- (b) The Momentum Solar Employers failed to separately compensate Ruiz and all of the other Aggrieved Employees for rest and recovery periods and other nonproductive time;
- (c) The Momentum Solar Employers failed to indemnify Ruiz and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (d) The Momentum Solar Employers knowingly and intentionally failed to provide Ruiz and all of the other Aggrieved Employees with accurate wage statements;
- (e) The Momentum Solar Employers failed to provide Ruiz and all of the other Aggrieved Employees with statements of the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period;

- (f) The Momentum Solar Employers failed to provide signed and complete commission agreements to Ruiz and all of the other Aggrieved Employees;
- (g) The Momentum Solar Employers willfully failed to timely pay Ruiz and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Momentum Solar Employers and when their employment ended; and
- (h) The Momentum Solar Employers failed to maintain accurate employment records pertaining to Ruiz and all of the other Aggrieved Employees.

Accordingly, Ruiz now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees based on the Momentum Solar Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the mercantile industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Mercantile Industry" to mean, "any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods or commodities at wholesale or retail; or for the purpose of renting goods or commodities." Wage Order, § 2(H). At all relevant times during the applicable limitations period, the Momentum Solar "Employers, Ruiz, and all of the Aggrieved Employees were covered by the Wage Order because the Momentum Solar Employers operated, and Ruiz, and all of the Aggrieved Employees worked for, one or more establishments operated for solar power installations, devices, and equipment sales. Accordingly, Ruiz and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

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

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

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

In relevant part, 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;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

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

The Momentum Solar Employers failed to include commissions Ruiz and the Aggrieved Employees earned in the regular rate of pay for purposes of calculations the overtime wages Ruiz and the Aggrieved Employees earned when they worked in excess of 40 hours per week, and in excess of eight hours per day.

With respect to overtime wages, the regular rate of pay under California law must include "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses must be included in the regular rate

whether they are the sole source of the employee's compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Momentum Solar Employers, Ruiz and all of the other Aggrieved Employees earned bonuses, commissions, and monetary incentives during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Momentum Solar Employers failed to pay to Ruiz and all of the other Aggrieved Employees bonuses, commissions, monetary incentives overtime and double time premium pay on such bonuses, commissions, and monetary incentives.

At all relevant times during the applicable limitations period, the Momentum Solar Employers failed to compensate Ruiz and all of the other Aggrieved Employees for all hours worked, including, but not limited to overtime and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, Ruiz now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

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Failure to Pay for Rest and Recovery Periods and Other Nonproductive Time
(Lab. Code § 226.2)

In relevant part, Labor Code section 226.2 states,

- (a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:
 - (1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.
 - ...
 - (3) (A) Employees shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the higher of:
 - (i) An average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods.
 - (ii) The applicable minimum wage.

At all relevant times during the applicable limitations period, the Momentum Solar Employers failed to separately compensate Ruiz and all of the other Aggrieved Employees for rest and recovery periods and other nonproductive time, and related duties. The Momentum Solar Employers failed to pay for rest and recovery time calculated based on both hourly pay and commissions and bonuses Ruiz and the Aggrieved Employees earned. Accordingly, Ruiz seeks civil penalties on behalf of herself and all of the other Aggrieved Employees \$100 for each aggrieved employee for each initial violation of Labor Code section 226.2, subdivisions (a)(1) and (a)(4) and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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

In pertinent part, 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.”

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.
...
- (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, §§ 9(A) and (B).

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

As described above, the Momentum Solar Employers required Ruiz and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Momentum Solar Employers required Ruiz and all of the other Aggrieved Employees to supply mobile phones, telecom, tools, equipment, supplies, home office and storage, and personal computers or laptops to perform their job duties. However, the Momentum Solar Employers did not provide these items and did not reimburse Ruiz and the other Aggrieved Employees for these items. The Momentum Solar Employers required Ruiz and the Aggrieved Employees to purchase or use computers, phones, telecom services, and work spaces that they owned or otherwise paid for to perform their job duties from home. Accordingly, Ruiz seeks civil penalties for these Labor Code violations that the Momentum Solar Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by 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, the Momentum Solar Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Momentum Solar Employers failed to state in the wage

statements they issued to Ruiz and all of 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). The Momentum Solar Employers knowingly and intentionally failed to state on the wage statements they issued to Ruiz and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all hours worked at the correct rates of pay, all overtime wages earned, all doubletime wages earned, all rest and recovery time, and all rest and recovery time wages earned. Accordingly, Ruiz seeks civil penalties for the Labor Code violations that the Momentum Solar Employers have committed against her and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Provide Wage Statements with Rest and Recovery Time
(Lab. Code § 226.2)

Labor Code section 226.2 states,

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

...

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

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

Labor Code section 2699.3(c) allows employers the chance to “cure” violations of provisions not listed under 2699.5 within 33 days of the postmark date of the aggrieved employee’s written notice to the LWDA. Section 226.2 is not a provision listed under 2699.5.

Labor Code section 2699(d) states,

For purposes of this part, “cure” means that the employer abates each violation alleged by any aggrieved employee, the employer is in compliance with the underlying statutes as specified in the notice required by this part, and any aggrieved employee is made whole.

Labor Code section 2699.3(c)(B)(ii) limits this right to once in a 12-month period. After the employer cures the violation, it must give written notice, along with a description of actions taken, by certified mail to the aggrieved employee or representative and the agency within the 33-day period.

The Momentum Solar Employers failed to provide Ruiz and all of the other Aggrieved Employees with statements of the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those activities during the pay period. Accordingly, Ruiz now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees \$100 for each aggrieved employee for each initial violation of Labor Code section 226.2, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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

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.

The Momentum Solar Employers failed to compensate Ruiz and all of the other Aggrieved Employees for wages earned, including overtime wages, doubletime wages, and rest and recovery time, at the intervals stated above. As a result, the Momentum Solar Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Ruiz now seeks civil penalties for the Labor Code violations that the Momentum Solar Employers have committed against her and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of 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.

The Momentum Solar Employers failed to pay Ruiz and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Ruiz, including overtime wages, doubletime wages, rest and recovery time. Additionally, the Momentum Solar Employers failed to issue to Ruiz and all of the other Aggrieved Employees whose employment ended their final paychecks until the next regular pay day following the termination. By failing to pay Ruiz and all of the other Aggrieved Employees as set forth above at the end of employment, the Momentum Solar Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the other Aggrieved Employees, Ruiz seeks civil penalties from the Momentum Solar Employers 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 Provide Signed and Complete Commission Agreements
(Lab. Code § 2751)

Labor Code § 2751 states:

- (a) Whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid.
- (b) The employer shall give a signed copy of the contract to every employee who is a party thereto and shall obtain a signed receipt for the contract from each employee. In the case of a contract that expires and where the parties nevertheless continue to work under the terms of the expired contract, the contract terms are presumed to remain in full force and effect until the contract is superseded or employment is terminated by either party.
- (c) As used in this section, “commissions” has the meaning set forth in Section 204.1. For purposes of this section only, “commission” does not include any of the following:
 - (1) Short-term productivity bonuses such as are paid to retail clerks.
 - (2) (Temporary, variable incentive payments that increase, but do not decrease, payment under the written contract.
 - (3) Bonus and profit-sharing plans, unless there has been an

offer by the employer to pay a fixed percentage of sales or profits as compensation for work to be performed.

At all relevant times, the Momentum Solar Employers have failed to provide Ruiz and all of the other Aggrieved Employees with signed commission agreements,. As a result, the Momentum Solar Employers have violated Labor Code § 2751. Accordingly, Ruiz seeks civil penalties on behalf of herself and all of the other Aggrieved Employees for the violations of Labor Code § 2751 at \$100 per aggrieved employee for each of the pay periods in which initial violations of § 2751 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 2751 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.

The Momentum Solar Employers failed to compensate Ruiz and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all hours worked at the correct rates of pay, all overtime wages earned, all doubletime wages earned, all rest and recovery time, and all rest and recovery time wages earned. As a result, the Momentum Solar Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Ruiz and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Ruiz seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by 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 Brandy Ruiz will

seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

David@spivaklaw.com

cc: Brandy Ruiz
Walter L. Haines Esq.

Pro Custom Solar LLC dba Momentum Solar
c/o Agent for service of process
COGENCY GLOBAL INC. (C2003899)
122 E. 42ND ST., 18TH FL
NEW YORK, NY 10168

EXHIBIT 4

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8 Attorneys for Plaintiff,
9 BRANDY RUIZ, and all others similarly situated

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

13 BRANDY RUIZ, on behalf of herself, all others
14 similarly situated, and the general public,

15 *Plaintiff,*

16 vs.

17 PRO CUSTOM SOLAR LLC, a New Jersey
18 limited liability company dba Momentum Solar;
and DOES 1-50, inclusive,

19 *Defendants.*

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

09/22/2021 at 12:44:16 PM
Clerk of the Superior Court
By Kristin Sorianosos, Deputy Clerk

Case No.: 37-2021-00040509-CU-OE-CTL

CLASS ACTION

COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 226.2, 510, 1194, 1197, and 1198);
2. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
3. Wage Statement Penalties (Lab. Code §§ 226 and 226.2);
4. Waiting Time Penalties (Lab. Code §§ 201, 202, and 203); and
5. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.).

JURY TRIAL DEMANDED



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1 Plaintiff, BRANDY RUIZ (hereafter “Plaintiff”), on behalf of herself and all others
2 similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action against Defendant PRO CUSTOM SOLAR LLC,
5 a New Jersey limited liability company dba Momentum Solar, and DOES 1-50, inclusive
6 (collectively “Defendants”) for alleged violations of the California Labor Code, Industrial
7 Welfare Commission Order No. 7-2001 (hereafter “the Wage Order”), and the Business and
8 Professions Code.

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

17 **PARTIES**

18 3. Plaintiff BRANDY RUIZ is a resident of California.

19 4. Defendant PRO CUSTOM SOLAR LLC dba Momentum Solar, is a limited
20 liability company organized and existing under the laws of New Jersey and a citizen of California
21 based on Plaintiff’s information and belief.

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

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



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1 other Defendants.

2 7. At all relevant times, in perpetrating the acts and omissions alleged herein,
3 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
4 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
described class in accordance with applicable laws as alleged herein.

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

10 **CLASS ALLEGATIONS**

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

15 10. **Class Definition:** The Class is defined as follows: All individuals currently and
16 formerly employed in California as non-exempt employees by Defendants, including but not
17 limited to remote phone agents paid by the hour and by commission, individuals performing work
18 comparable to the aforementioned, and individuals in similar positions, at any time during the
19 period beginning four years prior to the filing of this action and ending on the date that final
20 judgment is entered in this action (“Class” or “Class Members”).

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

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

27 13. **Commonality and Predominance:** Common questions of law and fact exist as to
28 all Class Members and predominate over any questions which affect only individual Class



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Members. These questions include, but are not limited to:

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

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

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

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

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

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

14. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims. Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor Code, the Wage Order, and the Business and Professions Code.

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

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

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



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

STATEMENT OF FACTS

18. On approximately January 1, 2020, Defendants began to employ Plaintiff in Fallbrook, San Diego County in the position of remote phone agent. Defendants continuously employed her in that capacity until on or about December 15, 2020 when her employment ended.

19. At all relevant times, Defendants issued wages to Plaintiff and all of the other Class Members on a biweekly (26 paychecks/year) basis and paid them by the hour, bonus, commission, and piece rate. At all relevant times, Defendants classified Plaintiff and all of the other Class Members as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

20. Defendants failed to compensate Plaintiff and all of the other Class Members at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. Defendants failed to include commissions and bonuses Plaintiff and the Class Members earned in the regular rate of pay for purposes of calculations the overtime wages Plaintiff and the Class Members earned when they worked in excess of 40 hours per week, and in excess of eight hours per day.

21. Defendants failed to separately compensate Plaintiff and all of the other Class Members for rest and recovery periods and other nonproductive time. Defendants failed to pay for rest and recovery time calculated based on both hourly pay and commissions Plaintiff and the Class Members earned.

22. At all relevant times, Defendants required Plaintiff and all of the other Class Members to incur certain business expenses in the course of performing their duties. Defendants required Plaintiff and all of the other Class Members to supply mobile phones, telecom, tools, equipment, supplies, home office and storage, and computers/laptops to perform their job duties. However, Defendants did not provide these items and did not reimburse Plaintiff and the other Class Members for these items. Defendants required Plaintiff and the Class Members to purchase or use computers, phones, telecom services, and work spaces that they owned or otherwise paid



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1 for to perform their job duties from home.

2 23. At all relevant times, Defendants failed to issue to Plaintiff and all of the other
3 Class Members complete and accurate wage statements that state all hours worked at the correct
4 rates of pay, and all wages earned. Defendants knowingly and intentionally failed to state on the
5 wage statements they issued to Plaintiff and all of the other Class Members the unpaid wages
6 discussed above. The wage statements fail to state all hours worked at the correct rates of pay, all
7 overtime wages earned, all doubletime wages earned, all rest and recovery time, and all rest and
8 recovery time wages earned.

9 24. Defendants failed to provide Plaintiff and all of the other Class Members with
10 statements of the total hours of compensable rest and recovery periods, the rate of compensation,
11 and the gross and net wages paid for those activities during the pay period. Defendants failed to
12 state on the wage statements they issued to Plaintiff and the Class Members the pay for rest and
13 recovery time calculated based on both hourly pay and commissions and bonuses Plaintiff and
14 the Class Members earned.

15 25. Defendants also failed to timely pay Plaintiff and all of the other Class Members
16 all earned wages as described above during and at the conclusion of employment.

17 **FIRST CAUSE OF ACTION**

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

19 **(Lab. Code §§ 226.2, 510, 1194, 1197, and 1198)**

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

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

22 27. At all relevant times, Plaintiff and the other Class Members have been non-exempt
23 employees of Defendants and entitled to the benefits and protections of California Labor Code
24 §§ 510, 1194, 1197, and 1198 and the Wage Order.

25 28. § 2 of the Wage Order defines “hours worked” as “the time during which an
26 employee is subject to the control of an employer, and includes all the time the employee is
27 suffered or permitted to work, whether or not required to do so.”

28 29. § 3 of the Wage Order states:

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18
years of age or over and to employees 16 or 17 years of age who are not



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

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

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

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

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

19 31. Labor Code § 510 states:

20 Eight hours of labor constitutes a day's work. Any work in excess of eight
21 hours in one workday and any work in excess of 40 hours in any one
22 workweek and the first eight hours worked on the seventh day of work in
23 any one workweek shall be compensated at the rate of no less than one and
24 one-half times the regular rate of pay for an employee. Any work in excess
25 of 12 hours in one day shall be compensated at the rate of no less than
26 twice the regular rate of pay for an employee. In addition, any work in
27 excess of eight hours on any seventh day of a workweek shall be
28 compensated at the rate of no less than twice the regular rate of pay of an
employee. Nothing in this § 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.

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



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

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

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

11 36. At all relevant times during the applicable limitations period, Defendants failed to
12 compensate Plaintiff and the Class Members for all hours worked, including, but not limited to
13 overtime wages for all overtime hours they worked at the correct rates of pay, and for all off-the-
14 clock hours they worked at the correct rates of pay.

15 37. Labor Code § 226.2 states,

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

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

20 38. Pursuant to Labor Code § 226.2, the Wage Order and *Vaquero v. Stoneledge*
21 *Furniture LLC* (2017) 9 Cal.App.5th 98, Defendants were also required to separately
22 compensate Plaintiffs and the Class for rest periods of at least 10 minutes for each four-hour
23 period of work or major fraction thereof, whether or not rest periods were provided and for all
24 nonproductive time in addition to their commission. Defendants failed to compensate Plaintiffs
25 and the Class Members separately for their 10-minute rest and recovery time and for other
26 nonproductive time.

27 39. At all relevant times during the applicable limitations period, Defendants failed to
28 separately compensate Plaintiff and all of the other Class Members for rest and recovery periods
and other nonproductive time. Defendants failed to pay for rest and recovery time calculated
based on both hourly pay and commissions Plaintiff and the Class Members earned.

 40. With respect to overtime wages, the regular rate of pay under California law must



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1 include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14
2 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g.,*
3 *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses
4 must be included in the regular rate whether they are the sole source of the employee’s
5 compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117,
6 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379.

7 41. At all relevant times during their work for Defendants, Plaintiff and all of the other
8 Class Members earned bonuses, commissions, and monetary incentives during pay periods in
9 which they worked hours qualifying for overtime and/or double time premium pay rates.
10 However, Defendants failed to pay to Plaintiff and all of the other Class Members overtime and
11 double time premium pay on such bonuses, commissions, and monetary incentives.

12 42. 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 Class Members for all hours worked as required by
15 California law.

16 43. As a result of Defendants’ unlawful conduct, Plaintiff and the other Class
17 Members have suffered damages, in an amount subject to proof, to the extent they were not paid
18 the full amount of wages earned during each pay period during the applicable limitations period,
19 including minimum and overtime wages.

20 44. Pursuant to Labor Code § 1194, Plaintiff, on behalf of herself and Class Members,
21 seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid
22 wages, interest thereon, and awards of reasonable costs and attorneys’ fees, all in amounts subject
23 to proof.

24 **SECOND CAUSE OF ACTION**

25 **FAILURE TO INDEMNIFY**

26 **(Lab. Code §§ 1198 & 2802)**

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

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

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



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

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

6 49. At all relevant times during the applicable limitations period, Defendants required
7 Plaintiff and all of the other Class Members to incur certain business expenses in the course of
8 performing their duties. Defendants required Plaintiff and all of the other Class Members to
9 supply mobile phones, telecom, tools, equipment, supplies, home office and storage, and personal
10 computers or laptops to perform their job duties. However, Defendants did not provide these
11 items and did not reimburse Plaintiff and the other Class Members for these items. Defendants
12 required Plaintiff and the Class Members to purchase or use computers, phones, telecom services,
13 and work spaces that they owned or otherwise paid for to perform their job duties from home.

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

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

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

25 **THIRD CAUSE OF ACTION**

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

27 **(Lab. Code §§ 226 and 226.2)**

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

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

54. At all relevant times during the applicable limitations period, Plaintiff and the
other Class Members have been employees of Defendants and entitled to the benefits and



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1 protections of California Labor Code §§ 226 and 226.2.

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

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

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

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



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statement alone one or more of the following:

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

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

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

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

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

59. Labor Code § 226.2(a) states:

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

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

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

60. As alleged herein, at all relevant times during the applicable limitations period, Defendants violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee’s gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. Defendants failed to state in the wage statements they issued to Plaintiff and all of the other Class Members 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). Defendants knowingly and intentionally failed to state



1 on the wage statements they issued to Plaintiff and all of the other Class Members the earned but
2 unpaid wages described above. The wage statements do not state all hours worked at the correct
3 rates of pay, all overtime wages earned, all doubletime wages earned, all rest and recovery time,
4 and all rest and recovery time wages earned.

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

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

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

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

FOURTH CAUSE OF ACTION
WAITING TIME PENALTIES
(Lab. Code §§ 201, 202, and 203)



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(By Plaintiff and the Class against all Defendants)

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

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

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

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

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

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

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

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

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

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



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1 **FIFTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

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

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

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

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

9 77. The unlawful conduct of Defendants alleged herein amounts to and constitutes
10 unfair competition within the meaning of California Business & Professions Code §§ 17200, et
11 seq. Due to their unfair and unlawful business practices as alleged herein, Defendants have
12 unfairly gained a competitive advantage over other comparable companies doing business in
13 California that comply with their legal obligations to, among other things, reimburse their
14 employees for reasonable expenses incurred during the course of performing their duties, pay
15 them all earned wages for all regular and overtime hours worked, and pay them for rest and
16 recovery time.

17 78. As a result of Defendants' unfair competition as herein alleged, Plaintiff and the
18 other Class Members have suffered injuries in fact and lost money or property. Defendants
19 deprived Plaintiff and the other Class Members of minimum, overtime, off-the-clock, rest and
20 recovery time, and reimbursement for expenses that Plaintiff and the other Class Members
21 incurred during the course of performing their duties.

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

26 80. Plaintiff and the other Class Members are entitled to reasonable attorneys' fees in
27 connection with their unfair competition claims pursuant to California Code of Civil Procedure
28 § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

PRAYER FOR RELIEF

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



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- 1 A. An order that the action be certified as a class action;
2 B. An order that Plaintiff be appointed class representative;
3 C. An order that counsel for Plaintiff be appointed class counsel;
4 D. Unpaid Wages;
5 E. Actual Damages;
6 F. Statutory Damages;
7 G. Liquidated Damages;
8 H. Restitution;
9 I. Declaratory and injunctive relief;
10 J. Equitable relief;
11 K. Pre-judgment interest;
12 L. Statutory penalties;
13 M. Costs of suit;
14 N. Interest;
15 O. Reasonable attorneys' fees; and
16 P. Such other relief as the Court deems just and proper.

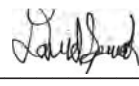
17 **DEMAND FOR JURY TRIAL**

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

20 Respectfully submitted,

21 THE SPIVAK LAW FIRM

22 Dated: September 21, 2021

23 By 
24 DAVID SPIVAK,
25 CAROLINE TAHMASSIAN,
26 MAYA CHEAITANI, Attorneys for Plaintiff,
27 BRANDY RUIZ, and all others similarly
28 situated



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EXHIBIT 5

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12 Attorneys for Plaintiff,
13 BRANDY RUIZ, and all others similarly situated

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

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

Plaintiff,

vs.

PRO CUSTOM SOLAR LLC, a New Jersey
limited liability company dba Momentum Solar;
and DOES 1-50, inclusive,

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

12/13/2021 at 05:45:00 PM

Clerk of the Superior Court
By Elizabeth Reyes, Deputy Clerk

Case No.: 37-2021-00040509-CU-OE-CTL

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

JURY TRIAL DEMANDED



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ADDITIONAL ATTORNEY FOR PLAINTIFF

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1 Plaintiff, BRANDY RUIZ (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. 7-2001 (hereafter "the
6 Wage Order"), against Defendants PRO CUSTOM SOLAR LLC, a New Jersey limited liability
7 company dba Momentum Solar, and DOES 1-50, inclusive (collectively "Defendants").

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

17 **II. THE PARTIES**

18 3. Plaintiff BRANDY RUIZ is a resident of California. On approximately January 1,
19 2020, Defendants began to employ Plaintiff in Fallbrook, San Diego County in the position of
20 remote phone agent. Defendants continuously employed her in that capacity until on or about
21 December 15, 2020, when her employment ended.

22 4. At all relevant times, Plaintiff was an "employee" within the meaning of Title 8
23 California Code of Regulations § 11070 and an "aggrieved employee" within the meaning of
24 Labor Code § 2699(c).

25 5. Defendant PRO CUSTOM SOLAR LLC dba Momentum Solar, is a limited
26 liability company organized and existing under the laws of New Jersey and a citizen of California
27 based on Plaintiff's information and belief.

28 6. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
is informed and believes and thereon alleges that said Defendants are legally responsible for the
wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.



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1 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
2 when ascertained.

3 **A. THE AGGRIEVED EMPLOYEES**

4 7. The “Aggrieved Employees” are all individuals currently and formerly employed
5 in California as non-exempt employees by Defendants, including but not limited to remote phone
6 agents paid by the hour and by commission, individuals performing work comparable to the
7 aforementioned, and individuals in similar positions, at any time during the period of August 9,
8 2020 and entry of judgment (“the PAGA Period”).

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

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

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

23 **III. FACTUAL ALLEGATIONS**

24 11. On approximately January 1, 2020, Defendants began to employ Plaintiff in
25 Fallbrook, San Diego County in the position of remote phone agent. Defendants continuously
26 employed her in that capacity until on or about December 15, 2020, when her employment ended.

27 12. At all relevant times, Defendants issued wages to Plaintiff and all the other
28 Aggrieved Employees on a biweekly (26 paychecks/year) basis and paid them by the hour, bonus,
commission, and piece rate. At all relevant times, Defendants classified Plaintiff and all the other
Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code
and the Wage Order.



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1 13. Defendants failed to compensate Plaintiff and the Aggrieved Employees at the
2 correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first
3 eight hours of the seventh day of the workweek. Defendants failed to include commissions and
4 bonuses Plaintiff and the Aggrieved Employees earned in the regular rate of pay for purposes of
5 calculations the overtime wages Plaintiff and the Aggrieved Employees earned when they worked
6 in excess of 40 hours per week, and in excess of eight hours per day.

7 14. Defendants failed to separately compensate Plaintiff and the Aggrieved
8 Employees for rest and recovery periods and other nonproductive time. Defendants failed to pay
9 for rest and recovery time calculated based on both hourly pay and commissions Plaintiff and the
10 Aggrieved Employees earned.

11 15. At all relevant times, Defendants required Plaintiff and all of the other Aggrieved
12 Employees to incur certain business expenses in the course of performing their duties. Defendants
13 required Plaintiff and all the other Aggrieved Employees to supply mobile phones, telecom, tools,
14 equipment, supplies, home office and storage, and computers/laptops to perform their job duties.
15 However, Defendants did not provide these items and did not reimburse Plaintiff and the other
16 Aggrieved Employees for these items. Defendants required Plaintiff and the Aggrieved
17 Employees to purchase or use computers, phones, telecom services, and work spaces that they
18 owned or otherwise paid for to perform their job duties from home.

19 16. At all relevant times, Defendants failed to issue to Plaintiff and all of the other
20 Aggrieved Employees complete and accurate wage statements that state all hours worked at the
21 correct rates of pay, and all wages earned. Defendants knowingly and intentionally failed to state
22 on the wage statements they issued to Plaintiff and all the other Aggrieved Employees the unpaid
23 wages discussed above. The wage statements fail to state all hours worked at the correct rates of
24 pay, all overtime wages earned, all doubletime wages earned, all rest and recovery time, and all
25 rest and recovery time wages earned.

26 17. Defendants failed to provide Plaintiff and all the other Aggrieved Employees with
27 statements of the total hours of compensable rest and recovery periods, the rate of compensation,
28 and the gross and net wages paid for those activities during the pay period. Defendants failed to
state on the wage statements they issued to Plaintiff and the Aggrieved Employees the pay for
rest and recovery time calculated based on both hourly pay and commissions and bonuses Plaintiff
and the Aggrieved Employees earned.



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1 18. Defendants failed to provide signed and complete commission agreements to
2 Plaintiff and the Aggrieved Employees.

3 19. Defendants also failed to timely pay Plaintiff and all the other Aggrieved
4 Employees all earned wages as described above during and at the conclusion of employment.

5 20. Defendants failed to maintain accurate employee records of Plaintiff and all of the
6 other Aggrieved Employees.

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

9 A. Not paid all wages earned, including, but not limited to, regular and
10 overtime wages for work performed while clocked out;

11 B. Not separately compensated for rest and recovery periods and other
12 nonproductive time;

13 C. Not indemnified for all necessary business expenditures incurred during
14 the discharge of their duties;

15 D. Not provided with accurate and complete wage statements;

16 E. Not provided with statements of the total hours for compensable rest and
17 recovery periods, the rate of compensation, and the gross wages paid for those periods during the
18 pay period;

19 F. Not provided with signed and complete commission agreements;

20 G. Not timely paid all earned and unpaid wages during their employment with
21 Defendants and at the time such employment ended.

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

23 **CIVIL PENALTIES**

24 **(Lab. Code §§ 2698, et seq.)**

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

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

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

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

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



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

3 25. Section 3 of the Wage Order states:

4 (A) Daily Overtime - General Provisions

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

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

19 (b) Double the employee’s regular rate of pay for all hours worked in excess of
20 12 hours in any workday and for all hours worked in excess of eight (8) hours on
21 the seventh (7th) consecutive day of work in a workweek.

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

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

28 27. Labor Code section 510 states:

Eight hours of labor constitutes a day’s work. Any work in excess of eight hours
in one workday and any work in excess of 40 hours in any one workweek and the
first eight hours worked on the seventh day of work in any one workweek shall
be compensated at the rate of no less than one and one-half times the regular rate
of pay for an employee. Any work in excess of 12 hours in one day shall be
compensated at the rate of no less than twice the regular rate of pay for an
employee. In addition, any work in excess of eight hours on any seventh day of a
workweek shall be compensated at the rate of no less than twice the regular rate
of pay of an employee. Nothing in this section requires an employer to combine



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1 more than one rate of overtime compensation in order to calculate the amount to
2 be paid to an employee for any hour of overtime work.

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

5 29. Labor Code section 1197 makes it unlawful for an employer to pay an employee
6 less than the minimum wage required under the applicable Wage Order for all hours worked
7 during a payroll period.

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

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

15 32. At all relevant times during the applicable limitations period, Defendants failed to
16 compensate Plaintiff and the Aggrieved Employees for all hours worked, including, but not
17 limited to overtime wages for all overtime hours they worked at the correct rates of pay, and for
18 all off-the-clock hours they worked at the correct rates of pay.

19 33. Labor Code § 226.2 states,

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

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

24 34. Pursuant to Labor Code § 226.2, the Wage Order and *Vaquero v. Stoneledge*
25 *Furniture LLC* (2017) 9 Cal.App.5th 98, Defendants were also required to separately
26 compensate Plaintiffs and the Aggrieved Employees for rest periods of at least 10 minutes for
27 each four-hour period of work or major fraction thereof, whether or not rest periods were
28 provided and for all nonproductive time in addition to their commission. Defendants failed to
compensate Plaintiffs and the Aggrieved Employees separately for their 10-minute rest and
recovery time and for other nonproductive time.

35. At all relevant times during the applicable limitations period, Defendants failed to



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1 separately compensate Plaintiff and all of the other Aggrieved Employees for rest and recovery
2 periods and other nonproductive time. Defendants failed to pay for rest and recovery time
3 calculated based on both hourly pay and commissions Plaintiff and the Aggrieved Employees
4 earned.

5 36. With respect to overtime wages, the regular rate of pay under California law must
6 include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14
7 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g.,*
8 *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses
9 must be included in the regular rate whether they are the sole source of the employee’s
10 compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117,
11 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379.

12 37. At all relevant times during their work for Defendants, Plaintiff and all of the other
13 Aggrieved Employees earned bonuses, commissions, and monetary incentives during pay periods
14 in which they worked hours qualifying for overtime and/or double time premium pay rates.
15 However, Defendants failed to pay to Plaintiff and all of the other Aggrieved Employees overtime
16 and double time premium pay on such bonuses, commissions, and monetary incentives.

17 38. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
18 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’
19 failure to compensate Plaintiff and the other Aggrieved Employees for all hours worked as
20 required by California law.

21 **B. FAILURE TO INDEMNIFY**

22 39. In pertinent part, California Labor Code § 2802(a) states:

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

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

28 41. At all relevant times during the applicable limitations period, Defendants required
Plaintiff and the other Aggrieved Employees to incur certain business expenses in the course of
performing their duties. Defendants required Plaintiff and all the other Aggrieved Employees to
supply mobile phones, telecom, tools, equipment, supplies, home office and storage, and personal



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1 computers or laptops to perform their job duties. However, Defendants did not provide these
2 items and did not reimburse Plaintiff and the other Aggrieved Employees for these items.
3 Defendants required Plaintiff and the Aggrieved Employees to purchase or use computers,
4 phones, telecom services, and workspaces that they owned or otherwise paid for to perform their
5 job duties from home.

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

10 **C. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE**
11 **STATEMENTS**

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

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

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

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

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

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



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

2 45. "Promptly and easily determine," as stated in California Labor Code § 226(e),

3 means a reasonable person would be able to readily ascertain the information without reference

4 to other documents or information.

5 46. Labor Code § 226.2(a) states:

6 (2) The itemized statement required by subdivision (a) of Section 226 shall, in

7 addition to the other items specified in that subdivision, separately state the

8 following, to which the provisions of Section 226 shall also be applicable:

9 (A) The total hours of compensable rest and recovery periods, the rate of

10 compensation, and the gross wages paid for those periods during the pay period.

11 (B) Except for employers paying compensation for other nonproductive time in

12 accordance with paragraph (7), the total hours of other nonproductive time, as

13 determined under paragraph (5), the rate of compensation, and the gross wages

14 paid for that time during the pay period.

15 47. As alleged herein, at all relevant times during the applicable limitations period,

16 Defendants violated Labor Code section 226 and 226.2 As alleged herein, at all relevant times

17 during the applicable limitations period, Defendants violated Labor Code section 226 because

18 they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net

19 wages earned, the total hours worked, the corresponding number of hours worked at each rate by

20 the Aggrieved Employee and other requirements of Labor Code section 226 and 226.2.

21 Defendants failed to state in the wage statements they issued to Plaintiff and all of the other

22 Aggrieved Employees all their hours worked and wages earned, including, but not limited to,

23 regular and overtime wages for work they performed off-the-clock after clocking-out (as

24 described above). Defendants knowingly and intentionally failed to state on the wage statements

25 they issued to Plaintiff and all of the other Aggrieved Employees the earned but unpaid wages

26 described above. The wage statements do not state all hours worked at the correct rates of pay,

27 all overtime wages earned, all doubletime wages earned, all rest and recovery time, and all rest

28 and recovery time wages earned.

48. Defendants' failure to provide Plaintiff and the other Aggrieved Employees with

accurate wage statements was knowing and intentional. Defendants had the ability to provide

Plaintiff and the other Aggrieved Employees with accurate wage statements but intentionally

provided wage statements that Defendants knew were not accurate.

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

12 **D. UNTIMELY WAGES DURING EMPLOYMENT**

13 50. Labor Code § 204 states

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

25 (b) (1) Notwithstanding any other provision of this
26 section, all wages earned for labor in excess of the normal
27 work period shall be paid no later than the payday for the
28 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.



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

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

10 51. Defendants paid wages to employees on regular intervals. However, Defendants
11 failed to compensate Plaintiff and the Aggrieved Employees for wages earned, including
12 minimum wages, regular wages, overtime wages, doubletime wages, at the intervals stated above.
13 As a result, Defendants failed to timely pay all earned wages due during employment within the
14 time periods set by Labor Code section 204.

15 **E. UNTIMELY FINAL WAGES**

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

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

22 54. By failing to pay earned minimum, regular, overtime, and premium wages to
23 Plaintiff and the Aggrieved Employees, Defendants failed to timely pay them all earned and
24 unpaid wages in violation of Labor Code § 201 or § 202.

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

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

F. FAILURE TO PROVIDE SIGNED AND COMPLETE COMMISSION



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1 **AGREEMENTS**

2 57. Labor Code § 2751 states:

- 3 a) Whenever an employer enters into a contract of employment with an employee
- 4 for services to be rendered within this state and the contemplated method of
- 5 payment of the employee involves commissions, the contract shall be in writing
- 6 and shall set forth the method by which the commissions shall be computed and
- 7 paid.
- 8 b) The employer shall give a signed copy of the contract to every employee who is
- 9 a party thereto and shall obtain a signed receipt for the contract from each
- 10 employee. In the case of a contract that expires and where the parties
- 11 nevertheless continue to work under the terms of the expired contract, the contract
- 12 terms are presumed to remain in full force and effect until the contract is
- 13 superseded or employment is terminated by either party.
- 14 c) As used in this section, “commissions” has the meaning set forth in Section 204.1.
- 15 For purposes of this section only, “commission” does not include any of the
- 16 following:
- 17 1. Short-term productivity bonuses such as are paid to retail clerks.
- 18 2. Temporary, variable incentive payments that increase, but do not decrease,
- 19 payment under the written contract.
- 20 3. Bonus and profit-sharing plans, unless there has been an offer by the
- 21 employer to pay a fixed percentage of sales or profits as compensation for
- 22 work to be performed.

23 58. At all relevant times, Defendants have failed to provide Plaintiff and the Aggrieved

24 Employees with signed commission agreements. As a result, the Defendants have violated Labor

25 Code § 2751.

26 59. On information and belief, Defendants have willfully failed to provide the

27 commission agreements required by § 2751.

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

 60. Labor Code § 1174 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



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employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

61. Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) 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).

62. Section 7 of the Wage Order states,

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

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

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

64. On information and belief, Defendants have willfully failed to maintain the records required by § 1174 and Wage Order, including, but not limited to, records pertaining to all unpaid hours worked by Plaintiff and the Aggrieved Employees.

H. CIVIL PENALTIES SOUGHT

65. Labor Code § 204 states

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



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1 the last day, inclusive, of any calendar month, shall be paid for between the 1st
2 and 10th day of the following month. ...

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

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

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

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

18 66. Defendants paid wages to employees on regular intervals. Defendants failed to pay
19 Plaintiff on such intervals for all wages earned and all hours worked. On information and belief,
20 Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for
21 all wages earned and all hours worked.

22 67. During the applicable time period, Defendants violated California Labor Code
23 §§ 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 1174, 1194, 1197, 1198, 2751, and 2802.

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

27 69. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved
28 Employees are entitled to recover civil penalties for each of the Defendants' violations of
California Labor Code §§ 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 1174, 1194, 1197,
1198, 2751, and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars
(\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
(\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation



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(penalty amounts established by California Labor Code § 210).

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

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

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

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

F. For violations of California Labor Code §§ 201, 202, 203, 226.2, 226.7, 1194, 1198, 2751, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

I. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS

70. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated August 9, 2021, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of Plaintiff’s letter to the LWDA dated August 9, 2021 is attached hereto as **Exhibit A**. The LWDA has not responded to Plaintiff’s letter.

71. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved



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1 Employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in
2 connection with their claims for civil penalties.

3 **VI. PRAYER FOR RELIEF**

4 72. WHEREFORE, Plaintiff, on behalf of herself and the Aggrieved Employees, prays
5 for relief and judgment against Defendants as follows:

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

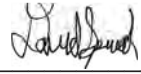
10 **VII. DEMAND FOR JURY TRIAL**

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

13 Respectfully submitted,

14 THE SPIVAK LAW FIRM

15 Dated: December 13, 2021

16 By 
17 DAVID SPIVAK,
18 CAROLINE TAHMASSIAN,
19 MAYA CHEAITANI, Attorneys for Plaintiff,
20 BRANDY RUIZ, and all others similarly
21 situated
22
23
24
25
26
27
28



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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

August 9, 2021

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

Re: Brandy Ruiz / Momentum Solar

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Brandy Ruiz (hereafter “Ruiz” or “Complainant”) provides notice that Pro Custom Solar LLC dba Momentum Solar, a New Jersey limited liability company, and related entities (collectively “the Momentum Solar Employers” or “the Employers”) violated her rights and those of all other individuals the Momentum Solar Employers have employed or otherwise contracted with in California as non-exempt employees, including but not limited to remote phone agents paid by the hour and by commission, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 221, 226, 226.2, 226.7, 510, 1174, 1194, 1197, 1198, 2751, and 2802. On behalf of herself and all other Aggrieved Employees, Ruiz hereby provides this notice to the Labor & Workforce Development Agency and the Momentum Solar Employers and their agents and representatives.

// /
// /

At all relevant times, the Momentum Solar Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Ruiz and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 7-2001 (hereafter “the Wage Order”) section 2, subdivision (E) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately January 1, 2020, the Momentum Solar Employers began to employ Ruiz in Fallbrook, San Diego County in the position of remote phone agent. The Momentum Solar Employers continuously employed her in that capacity until on or about December 15, 2020 when her employment ended.

At all relevant times, the Momentum Solar Employers issued wages to Ruiz and all of the other Aggrieved Employees on a biweekly (26 paychecks/year) basis and paid them by the hour, bonus, commission, and piece rate. At all relevant times, the Momentum Solar Employers classified Ruiz and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Momentum Solar Employers failed to compensate Ruiz and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The Momentum Solar Employers failed to include commissions and bonuses Ruiz and the Aggrieved Employees earned in the regular rate of pay for purposes of calculations the overtime wages Ruiz and the Aggrieved Employees earned when they worked in excess of 40 hours per week, and in excess of eight hours per day.

The Momentum Solar Employers failed to separately compensate Ruiz and all of the other Aggrieved Employees for rest and recovery periods and other nonproductive time. The Momentum Solar Employers failed to pay for rest and recovery time calculated based on both hourly pay and commissions Ruiz and the Aggrieved Employees earned.

At all relevant times, the Momentum Solar Employers required Ruiz and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Momentum Solar Employers required Ruiz and all of the other Aggrieved Employees to supply mobile phones, telecom, tools, equipment, supplies, home office and storage, and computers/laptops to perform their job duties. However, the Momentum Solar Employers did not provide these items and did not reimburse Ruiz and the other Aggrieved Employees for these items. The Momentum Solar Employers required Ruiz and the Aggrieved Employees to purchase or use computers, phones, telecom services, and work spaces that they owned or otherwise paid for to perform their job duties from home.

At all relevant times, the Momentum Solar Employers failed to issue to Ruiz and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Momentum Solar Employers knowingly and intentionally failed to state on the wage statements they issued to Ruiz and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all hours worked at the correct rates of pay, all overtime wages earned, all doubletime wages earned, all rest and recovery time, and all rest and recovery time wages earned.

The Momentum Solar Employers failed to provide Ruiz and all of the other Aggrieved Employees with statements of the total hours of compensable rest and recovery periods, the rate of compensation, and the gross and net wages paid for those activities during the pay period. The Momentum Solar Employers failed to state on the wage statements they issued to Ruiz and the Aggrieved Employees the pay for rest and recovery time calculated based on both hourly pay and commissions and bonuses Ruiz and the Aggrieved Employees earned.

The Momentum Solar Employers failed to provide signed and complete commission agreements to Ruiz and all of the other Aggrieved Employees.

The Momentum Solar Employers also failed to timely pay Ruiz and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Momentum Solar Employers failed to maintain accurate employee records of Ruiz and all of the other Aggrieved Employees.

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

- (a) The Momentum Solar Employers failed to pay Ruiz and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including overtime and doubletime wages;
- (b) The Momentum Solar Employers failed to separately compensate Ruiz and all of the other Aggrieved Employees for rest and recovery periods and other nonproductive time;
- (c) The Momentum Solar Employers failed to indemnify Ruiz and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (d) The Momentum Solar Employers knowingly and intentionally failed to provide Ruiz and all of the other Aggrieved Employees with accurate wage statements;
- (e) The Momentum Solar Employers failed to provide Ruiz and all of the other Aggrieved Employees with statements of the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period;

- (f) The Momentum Solar Employers failed to provide signed and complete commission agreements to Ruiz and all of the other Aggrieved Employees;
- (g) The Momentum Solar Employers willfully failed to timely pay Ruiz and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Momentum Solar Employers and when their employment ended; and
- (h) The Momentum Solar Employers failed to maintain accurate employment records pertaining to Ruiz and all of the other Aggrieved Employees.

Accordingly, Ruiz now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees based on the Momentum Solar Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the mercantile industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Mercantile Industry" to mean, "any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods or commodities at wholesale or retail; or for the purpose of renting goods or commodities." Wage Order, § 2(H). At all relevant times during the applicable limitations period, the Momentum Solar "Employers, Ruiz, and all of the Aggrieved Employees were covered by the Wage Order because the Momentum Solar Employers operated, and Ruiz, and all of the Aggrieved Employees worked for, one or more establishments operated for solar power installations, devices, and equipment sales. Accordingly, Ruiz and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

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

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

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

In relevant part, 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 ($1\frac{1}{2}$) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half ($1\frac{1}{2}$) 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;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth ($1/40$) of the employee's weekly salary.

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

The Momentum Solar Employers failed to include commissions Ruiz and the Aggrieved Employees earned in the regular rate of pay for purposes of calculations the overtime wages Ruiz and the Aggrieved Employees earned when they worked in excess of 40 hours per week, and in excess of eight hours per day.

With respect to overtime wages, the regular rate of pay under California law must include "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses must be included in the regular rate

whether they are the sole source of the employee's compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Momentum Solar Employers, Ruiz and all of the other Aggrieved Employees earned bonuses, commissions, and monetary incentives during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Momentum Solar Employers failed to pay to Ruiz and all of the other Aggrieved Employees bonuses, commissions, monetary incentives overtime and double time premium pay on such bonuses, commissions, and monetary incentives.

At all relevant times during the applicable limitations period, the Momentum Solar Employers failed to compensate Ruiz and all of the other Aggrieved Employees for all hours worked, including, but not limited to overtime and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, Ruiz now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

/ / /

/ / /

Failure to Pay for Rest and Recovery Periods and Other Nonproductive Time
(Lab. Code § 226.2)

In relevant part, Labor Code section 226.2 states,

- (a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:
 - (1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.
 - ...
 - (3) (A) Employees shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the higher of:
 - (i) An average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods.
 - (ii) The applicable minimum wage.

At all relevant times during the applicable limitations period, the Momentum Solar Employers failed to separately compensate Ruiz and all of the other Aggrieved Employees for rest and recovery periods and other nonproductive time, and related duties. The Momentum Solar Employers failed to pay for rest and recovery time calculated based on both hourly pay and commissions and bonuses Ruiz and the Aggrieved Employees earned. Accordingly, Ruiz seeks civil penalties on behalf of herself and all of the other Aggrieved Employees \$100 for each aggrieved employee for each initial violation of Labor Code section 226.2, subdivisions (a)(1) and (a)(4) and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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

In pertinent part, 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.”

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.
- ...
- (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, §§ 9(A) and (B).

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

As described above, the Momentum Solar Employers required Ruiz and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Momentum Solar Employers required Ruiz and all of the other Aggrieved Employees to supply mobile phones, telecom, tools, equipment, supplies, home office and storage, and personal computers or laptops to perform their job duties. However, the Momentum Solar Employers did not provide these items and did not reimburse Ruiz and the other Aggrieved Employees for these items. The Momentum Solar Employers required Ruiz and the Aggrieved Employees to purchase or use computers, phones, telecom services, and work spaces that they owned or otherwise paid for to perform their job duties from home. Accordingly, Ruiz seeks civil penalties for these Labor Code violations that the Momentum Solar Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by 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, the Momentum Solar Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Momentum Solar Employers failed to state in the wage

statements they issued to Ruiz and all of 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). The Momentum Solar Employers knowingly and intentionally failed to state on the wage statements they issued to Ruiz and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all hours worked at the correct rates of pay, all overtime wages earned, all doubletime wages earned, all rest and recovery time, and all rest and recovery time wages earned. Accordingly, Ruiz seeks civil penalties for the Labor Code violations that the Momentum Solar Employers have committed against her and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Provide Wage Statements with Rest and Recovery Time
(Lab. Code § 226.2)

Labor Code section 226.2 states,

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

...

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

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

Labor Code section 2699.3(c) allows employers the chance to “cure” violations of provisions not listed under 2699.5 within 33 days of the postmark date of the aggrieved employee’s written notice to the LWDA. Section 226.2 is not a provision listed under 2699.5.

Labor Code section 2699(d) states,

For purposes of this part, “cure” means that the employer abates each violation alleged by any aggrieved employee, the employer is in compliance with the underlying statutes as specified in the notice required by this part, and any aggrieved employee is made whole.

Labor Code section 2699.3(c)(B)(ii) limits this right to once in a 12-month period. After the employer cures the violation, it must give written notice, along with a description of actions taken, by certified mail to the aggrieved employee or representative and the agency within the 33-day period.

The Momentum Solar Employers failed to provide Ruiz and all of the other Aggrieved Employees with statements of the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those activities during the pay period. Accordingly, Ruiz now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees \$100 for each aggrieved employee for each initial violation of Labor Code section 226.2, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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

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.

The Momentum Solar Employers failed to compensate Ruiz and all of the other Aggrieved Employees for wages earned, including overtime wages, doubletime wages, and rest and recovery time, at the intervals stated above. As a result, the Momentum Solar Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Ruiz now seeks civil penalties for the Labor Code violations that the Momentum Solar Employers have committed against her and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of 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.

The Momentum Solar Employers failed to pay Ruiz and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Ruiz, including overtime wages, doubletime wages, rest and recovery time. Additionally, the Momentum Solar Employers failed to issue to Ruiz and all of the other Aggrieved Employees whose employment ended their final paychecks until the next regular pay day following the termination. By failing to pay Ruiz and all of the other Aggrieved Employees as set forth above at the end of employment, the Momentum Solar Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the other Aggrieved Employees, Ruiz seeks civil penalties from the Momentum Solar Employers 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 Provide Signed and Complete Commission Agreements
(Lab. Code § 2751)

Labor Code § 2751 states:

- (a) Whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid.
- (b) The employer shall give a signed copy of the contract to every employee who is a party thereto and shall obtain a signed receipt for the contract from each employee. In the case of a contract that expires and where the parties nevertheless continue to work under the terms of the expired contract, the contract terms are presumed to remain in full force and effect until the contract is superseded or employment is terminated by either party.
- (c) As used in this section, “commissions” has the meaning set forth in Section 204.1. For purposes of this section only, “commission” does not include any of the following:
 - (1) Short-term productivity bonuses such as are paid to retail clerks.
 - (2) (Temporary, variable incentive payments that increase, but do not decrease, payment under the written contract.
 - (3) Bonus and profit-sharing plans, unless there has been an

offer by the employer to pay a fixed percentage of sales or profits as compensation for work to be performed.

At all relevant times, the Momentum Solar Employers have failed to provide Ruiz and all of the other Aggrieved Employees with signed commission agreements,. As a result, the Momentum Solar Employers have violated Labor Code § 2751. Accordingly, Ruiz seeks civil penalties on behalf of herself and all of the other Aggrieved Employees for the violations of Labor Code § 2751 at \$100 per aggrieved employee for each of the pay periods in which initial violations of § 2751 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 2751 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.

The Momentum Solar Employers failed to compensate Ruiz and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all hours worked at the correct rates of pay, all overtime wages earned, all doubletime wages earned, all rest and recovery time, and all rest and recovery time wages earned. As a result, the Momentum Solar Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Ruiz and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Ruiz seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by 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 Brandy Ruiz will

seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

David@spivaklaw.com

cc: Brandy Ruiz
Walter L. Haines Esq.

Pro Custom Solar LLC dba Momentum Solar
c/o Agent for service of process
COGENCY GLOBAL INC. (C2003899)
122 E. 42ND ST., 18TH FL
NEW YORK, NY 10168

1 **PROOF OF SERVICE**

2
3 State of California,
4 County of Los Angeles

5 1. I am a citizen of the United States and am employed in the County
6 of Los Angeles, State of California. I am over the age of 18 years, and not a
party to the within action. My business address is 16530 Ventura Blvd., Suite
203, Encino, California 91436.

7 2. I am familiar with the practice of The Spivak Law Firm, for
8 collection and processing of correspondence for mailing with the United 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.

9 On Monday, December 13, 2021, I served the foregoing document described
10 as **FIRST AMENDED COMPLAINT** on interested parties by placing a true and correct
11 copy thereof enclosed in a sealed envelope, with postage fully prepaid,
addressed as follows:

12 **Doug Plazak**
13 **Reid & Hellyer**
14 **3685 Main Street, Suite 300**
15 **Riverside, CA 92502-1300**
dplazak@rhlaw.com

16 **Eric Steinert**
17 **Chris Crosman**
18 **Seyfarth Shaw**
19 **560 Mission Street, Suite 3100**
20 **San Francisco, CA 94105-2930**
Esteinert@seyfarth.com
Ccrosman@seyfarth.com

21 XXXX (BY EMAIL) I caused the documents to be sent to the persons at the
22 electronic service addresses listed above from my electronic service address
nora@spivaklaw.com.

23 EXECUTED on Monday, December 13, 2021, at Burbank, California.

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

26 
27 _____
NORA GREER

EXHIBIT 6

1 SEYFARTH SHAW LLP
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9 Attorneys for Defendant
PRO CUSTOM SOLAR LLC dba MOMENTUM SOLAR

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13 Facsimile: (951) 686-2415

14 Attorneys for Defendant
15 PRO CUSTOM SOLAR LLC dba MOMENTUM SOLAR

16
17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 FOR THE COUNTY OF SAN DIEGO
19

20 BRANDY RUIZ, as an "aggrieved employee" on
behalf of others similarly situated "aggrieved
21 employees" under the Labor Code Private
Attorney General Act of 2004,

22 Plaintiff,

23 v.

24 PRO CUSTOM SOLAR LLC, a New Jersey
25 limited liability company dba Momentum Solar;
and DOES 1-50, inclusive,

26 Defendants.
27
28

Case No. 37-2021-00040509-CU-OE-CTL

Assigned to the Hon. Judge Eddie C. Sturgeon;
Dept. C-67

**ANSWER BY DEFENDANT PRO CUSTOM
SOLAR LLC dba MOMENTUM SOLAR TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT**

Complaint Filed: September 22, 2021
First Amd Complaint Filed: December 13, 2021

1 Defendant Pro Custom Solar LLC dba Momentum Solar ("Defendant") hereby answers the
2 unverified First Amended Complaint ("Complaint") filed on behalf of Brandy Ruiz ("Plaintiff"),
3 individually, and purportedly on behalf of other "aggrieved employees" of Defendant as follows:

4 **GENERAL DENIAL**

5 Pursuant to California Code of Civil Procedure Sections 430.10(d)-(e) and 431.30(d), Defendant
6 denies, generally and specifically, each and every allegation, and each purported cause of action
7 contained in Plaintiff's Complaint. Defendant further denies, generally and specifically, that Plaintiff has
8 been damaged in any amount, or at all, by reason of any alleged act or omission of Defendant.
9 Defendant further denies, generally and specifically, that Plaintiff has suffered any loss of wages,
10 overtime, penalties, compensation, benefits or restitution, or any other legal or equitable relief within the
11 jurisdiction of this Court.

12 **AFFIRMATIVE AND ADDITIONAL DEFENSES**

13 In further answer to the Complaint, and as separate and distinct affirmative or additional
14 defenses, Defendant alleges as follows, without thereby assuming the burden of proof on any defense on
15 which it would not otherwise have the burden of proof by operation of law:

16 **FIRST AFFIRMATIVE AND ADDITIONAL DEFENSE**

17 **(Failure To State A Cause Of Action Upon Which Relief Can Be Granted)**

18 1. Plaintiff's Complaint, and each purported cause of action alleged therein, fails to state
19 any cause of action upon which relief can be granted.

20 **SECOND AFFIRMATIVE AND ADDITIONAL DEFENSE**

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

22 2. Plaintiff's Complaint, and each purported cause of action alleged therein, is barred
23 because Plaintiff and the "aggrieved employees" have failed to exhaust required administrative or
24 statutory remedies provided under California Labor Code Section 2698 *et seq.* (the "Labor Code Private
25 Attorneys General Act of 2004" or "PAGA"). Plaintiff failed to exhaust required administrative
26 remedies provided by various sections of PAGA, and thus lack standing to sue under PAGA.

1 **THIRD AFFIRMATIVE AND ADDITIONAL DEFENSE**

2 **(Waiver)**

3 3. Plaintiff and the "aggrieved employees" have waived their right to assert the purported
4 claims contained in the Complaint, and each purported cause of action therein, against Defendant.
5 Plaintiff, by her own conduct and actions, has waived the right, if any, to assert the claims alleged in the
6 Complaint.

7 **FOURTH AFFIRMATIVE AND ADDITIONAL DEFENSE**

8 **(Estoppel)**

9 4. Plaintiff and the "aggrieved employees" are barred by the doctrine of estoppel from
10 pursuing the Complaint, and each purported cause of action alleged therein. Plaintiff and the "aggrieved
11 employees," by their own conduct and actions, are estopped, as a matter of law, from pursuing the
12 claims alleged in the Complaint.

13 **FIFTH AFFIRMATIVE AND ADDITIONAL DEFENSE**

14 **(Release)**

15 5. As to Plaintiff and all "aggrieved employees" who have executed a release encompassing
16 claims alleged in the Complaint, their claims are barred by that release.

17 **SIXTH AFFIRMATIVE AND ADDITIONAL DEFENSE**

18 **(Accord and Satisfaction)**

19 6. As to Plaintiff and all "aggrieved employees" who have accepted payments and releases,
20 their underlying claims are barred by the doctrine of accord and satisfaction.

21 **SEVENTH AFFIRMATIVE AND ADDITIONAL DEFENSE**

22 **(Laches)**

23 7. Plaintiff and the "aggrieved employees" are barred by the doctrine of laches from
24 pursuing the Complaint, and each purported cause of action alleged therein, because they exercised
25 inexcusable delay in commencing this action.

26 **EIGHTH AFFIRMATIVE AND ADDITIONAL DEFENSE**

27 **(Unclean Hands)**

28 8. Plaintiff and the "aggrieved employees" are precluded from maintaining the Complaint,

1 and each purported cause of action alleged therein, because they engaged in conduct showing unclean
2 hands.

3 **NINTH AFFIRMATIVE AND ADDITIONAL DEFENSE**

4 **(Statutes Of Limitation)**

5 9. Plaintiff's Complaint, and each purported cause of action alleged therein, is barred by the
6 applicable statutes of limitation for each alleged cause of action, including but not limited to California
7 Labor Code Sections 201, 202, 203, 204, 226(a), 226.7, 340, 510, 512(a), 516, 558, 1174, 1182.12,
8 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, 2804, and 2698 *et seq.* (the "Labor Code Private
9 Attorneys General Act of 2004" or "PAGA").

10 **TENTH AFFIRMATIVE AND ADDITIONAL DEFENSE**

11 **(Premium Wages Paid For Alleged Failure To Take Meal Periods Or Rest Period)**

12 10. Plaintiff's Complaint, and each purported cause of action alleged therein, is barred as to
13 Plaintiff and "aggrieved employees" who were paid a "premium" of an additional hour of regular pay
14 for each day, if any, when not provided a meal period or authorized or permitted to take a rest period.
15 The payment of such "premiums" negate any additional liability for alleged meal or rest period
16 violations.

17 **ELEVENTH AFFIRMATIVE AND ADDITIONAL DEFENSE**

18 **(Offset)**

19 11. To the extent a court holds that Plaintiff or any "aggrieved employees" are entitled to
20 damages or penalties, which is specifically denied, Defendant is entitled to an offset for any settlement
21 payments, overpayment of wages, forgiveness of debt, and/or other consideration previously provided to
22 Plaintiff or other purported "aggrieved employees."

23 **TWELFTH AFFIRMATIVE AND ADDITIONAL DEFENSE**

24 **(Due Process/Excessive Fine)**

25 12. Although Defendant denies that it has committed or has responsibility for any act that
26 could support the recovery of civil penalties in this lawsuit, if and to the extent any such act or
27 responsibility is found, recovery of civil penalties against Defendant is unconstitutional under numerous
28 provisions of the United States Constitution and the California Constitution, including the excessive

1 fines clause of the Eighth Amendment, the due process clauses of the Fifth Amendment and Section 1 of
2 the Fourteenth Amendment, the self-incrimination clause of the Fifth Amendment, and other provisions
3 of the United States Constitution, and the excessive fines clause of Section 17 of Article I, the due
4 process clause of Section 7 of Article I, the self-incrimination clause of Section 15 of Article I, and other
5 provisions of the California Constitution. The penalties Plaintiff seeks are disproportionate to any
6 damage or loss incurred as a result of Defendant's conduct, and therefore are unconstitutional.

7 **THIRTEENTH AFFIRMATIVE AND ADDITIONAL DEFENSE**

8 ***(De Minimis Doctrine)***

9 13. Plaintiff's Complaint, and each cause of action alleged therein, fails to the extent that,
10 even if Plaintiff or any "aggrieved employees" were not paid for all work performed, such work is not
11 compensable pursuant to the *de minimis* doctrine. Pursuant to the *de minimis* doctrine, an employer is
12 not required to pay for insubstantial or insignificant periods of purported off-the-clock work.

13 **FOURTEENTH AFFIRMATIVE AND ADDITIONAL DEFENSE**

14 ***(Unlawful Delegation of Executive Authority)***

15 14. Plaintiff's Complaint, and each purported claim alleged therein, is barred to the extent
16 private actions seeking PAGA penalties manifest an unlawful delegation of executive authority.

17 **FIFTEENTH AFFIRMATIVE AND ADDITIONAL DEFENSE**

18 ***(Unjust, Arbitrary, And Oppressive, Or Confiscatory Penalties)***

19 15. Plaintiff is not entitled to recover any civil penalties because, under the circumstances of
20 this case, any such recovery would be unjust, arbitrary, and oppressive, or confiscatory.

21 **SIXTEENTH AFFIRMATIVE AND ADDITIONAL DEFENSE**

22 ***(PAGA Action Unmanageable)***

23 16. Plaintiff's allegations do not contain any factual or legal theory to show a representative
24 PAGA action is manageable. The alleged violations under PAGA cannot be maintained because they
25 require numerous individualized assessments to identify the "aggrieved employees" and to determine
26 PAGA violations, if any, for which a PAGA trial will abridge Defendant's due process right to present
27 its defenses as to every claim by each "aggrieved employee."
28

1 **SEVENTEENTH AFFIRMATIVE AND ADDITIONAL DEFENSE**

2 **(Good Faith)**

3 17. Plaintiff and the "aggrieved employees" are not entitled to any penalty award under the
4 California Labor Code because, at all times relevant and material herein, Defendant did not willfully, or
5 knowingly and intentionally, fail to comply with the provisions of the California Labor Code, but rather
6 acted in good faith and had reasonable grounds for believing that it did not violate the California Labor
7 Code.

8 **EIGHTEENTH AFFIRMATIVE AND ADDITIONAL DEFENSE**

9 **(Dispute Resolution Agreement)**

10 18. Plaintiff signed a Dispute Resolution Agreement with Defendant, agreeing to resolve any
11 disputes via arbitration, which covers the claims set forth in this lawsuit.

12 **NINETEENTH AFFIRMATIVE AND ADDITIONAL DEFENSE**

13 **(Avoidance of Payment)**

14 19. To the extent that Defendant was unable to timely pay the wages due to Plaintiff and the
15 "aggrieved employees," it was because Plaintiff and the "aggrieved employees" absented themselves to
16 avoid payment of the wages.

17 **TWENTIETH AFFIRMATIVE AND ADDITIONAL DEFENSE**

18 **(Labor Code Section 2856)**

19 20. Plaintiff's Complaint fails to state a claim for which relief may be granted because
20 Plaintiff and the "aggrieved employees" were required to substantially comply with all the directions of
21 Defendant concerning the service in which Plaintiff and the "aggrieved employees" were engaged,
22 particularly with respect to Defendant's procedures for the reimbursement of reasonable and necessary
23 business expense, and such obedience was neither impossible nor unlawful, and did not impose new and
24 unreasonable burdens upon Plaintiff and the "aggrieved employees," but Plaintiff and the "aggrieved
25 employees" did not substantially comply, in violation of Labor Code section 2856.

26 **RESERVATION OF RIGHTS**

27 Defendant presently has insufficient knowledge or information upon which to form a belief
28 whether there may be additional, as yet unstated, defenses. Defendant reserves the right to assert

1 additional defenses in the event that discovery or investigation indicates that such defenses would be
2 appropriate.

3 To the extent that Defendant has not expressly admitted an allegation of the Complaint or denied
4 an allegation of the Complaint based on a lack of knowledge and information, Defendant denies all
5 further and remaining allegations of the Complaint, and no response contained herein is intended to
6 constitute a waiver of such denial.

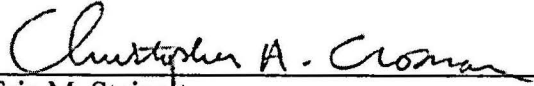
7 PRAYER

8 Wherefore, Defendant prays for judgment as follows:

- 9 1. That Plaintiff take nothing by this Complaint;
10 2. That judgment be entered in favor of Defendant and against Plaintiff on all causes of action;
11 3. That Defendant be awarded reasonable attorneys' fees according to proof;
12 4. That Defendant be awarded the costs of suit incurred herein; and
13 5. That Defendant be awarded such other and further relief as the Court may deem appropriate.

14 DATED: March 16, 2022

SEYFARTH SHAW LLP

15
16 By: 

Eric M. Steinert

Christopher A. Crosman

Attorneys for Defendant

PRO CUSTOM SOLAR LLC dba MOMENTUM
19 SOLAR

20 DATED: March 16, 2021

REID & HELLYER

21
22
23 By: _____

Douglas Allen Plazak

Attorneys for Defendant

24 PRO CUSTOM SOLAR LLC dba MOMENTUM
25 SOLAR
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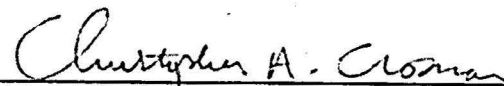
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- 9 1. That Plaintiff take nothing by this Complaint;
10 2. That judgment be entered in favor of Defendant and against Plaintiff on all causes of action;
11 3. That Defendant be awarded reasonable attorneys' fees according to proof;
12 4. That Defendant be awarded the costs of suit incurred herein; and
13 5. That Defendant be awarded such other and further relief as the Court may deem appropriate.

14 DATED: March 16, 2022

SEYFARTH SHAW LLP

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16 By: 

Eric M. Steinert

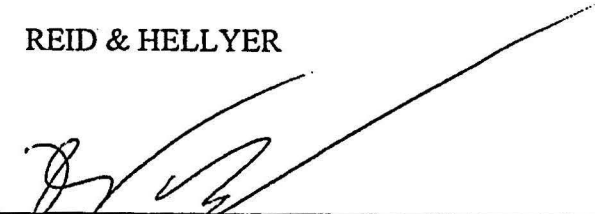
Christopher A. Crosman

Attorneys for Defendant

PRO CUSTOM SOLAR LLC dba MOMENTUM
SOLAR

20 DATED: March 16, 2021

REID & HELLYER

21
22
23 By: 

Douglas Allen Plazak

Attorneys for Defendant

PRO CUSTOM SOLAR LLC dba MOMENTUM
SOLAR

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

)
) SS
)

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 2029 Century Park East, Suite 3500, Los Angeles, California 90067-3021. On March 16, 2022, I served the within document(s):

**ANSWER BY DEFENDANT PRO CUSTOM SOLAR LLC dba MOMENTUM SOLAR
TO PLAINTIFF'S FIRST AMENDED COMPLAINT**

- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by placing the document(s) listed above in a sealed envelope or package provided by an overnight delivery carrier with postage paid on account and deposited for collection with the overnight carrier at Los Angeles, California, addressed as set forth below.
- ☐ by transmitting the document(s) listed above, electronically, via the e-mail addresses set forth below.
- ☐ electronically by using the Court's ECF/CM System.

David Spivak
Caroline Tahmassian
The Spivak Law Firm
15303 Ventura Blvd., Ste. 900
Sherman Oaks CA 91403

Attorneys for PLAINTIFF BRANDY RUIZ

Tel. (213) 725-9094; Fax (213) 634-2485
Email(s): david@spivaklaw.com;

MAILING ADDRESS:
8605 Santa Monica Blvd.
PMB 42554
West Hollywood CA 90069

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

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

Executed on March 16, 2022, at Los Angeles, California.



Laura Tixton

EXHIBIT 7

EXHIBIT 8

41
FILED

Superior Court Of California
County Of Los Angeles

JUN 21 2012

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

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 **43** 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** and costs in the amount
9 of **\$21,272.88**.

10 The total amount awarded against Defendant Ramil Abalkhad, inclusive of attorneys'
11 fees and costs, is **\$969,116.95**, 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
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PROOF OF SERVICE

State of California,
County of Los Angeles

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

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

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

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

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

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

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

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

____ (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.


BROCK OYAMA

**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



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

9021232904 C077

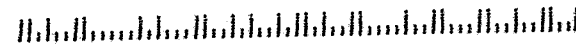


EXHIBIT 9

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, Executive Officer/Clerk
BY MARY GARCIA, Deputy

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

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

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

Case No.: BC430633

CLASS ACTION

13 *Plaintiffs,*

14 vs.

FIRST AMENDED COMPLAINT FOR:

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

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

19 *Defendants.*

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

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

THE
SPIVAK
LAW FIRM

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

4 INTRODUCTION

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

12 PARTIES AND CONDUCT

13 A. Plaintiffs and Class Members

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

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

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

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

3 **B. Defendants**

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

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

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

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

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

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

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

8 CLASS ACTION ALLEGATIONS

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

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

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

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

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

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

1 date that final judgment is entered in this action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 O. Are class members entitled to prejudgment interest?

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

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

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

1 action cases.

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

12 **FIRST CLAIM FOR RELIEF**

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

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

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

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

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

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

1 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;

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- M. Reasonable attorney's fees; and
- N. Such other relief as the Court deems just and proper.

Respectfully submitted,

THE SPIVAK LAW FIRM

Date: February 23, 2010

By:



DAVID G. SPIVAK, Attorney for
Plaintiff, ALINA GHRDILYAN,
EVGENIA SULTANIAN, and all others
similarly situated

EXHIBIT 10

1 CASE NUMBER: BC430633
2 CASE NAME: ALINA GHRDILYAN, ET AL., VERSUS
3 RJ FINANCIAL, ET AL.,
4 LOS ANGELES, CALIFORNIA MONDAY, APRIL 23, 2012
5 DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE
6 APPEARANCES: (SEE TITLE PAGE.)
7 REPORTER: ANGELA Z. PARADELA, CSR NO. 9659
8 TIME: A.M. SESSION
9

10 (THE FOLLOWING PROCEEDINGS WERE HELD IN
11 OPEN COURT:)

12
13 THE COURT: OKAY. THANK YOU VERY MUCH. I'M GOING
14 TO ASK YOU LAWYERS TO WAIT FOR JUST A MOMENT.

15 AS YOU CAN PROBABLY TELL, FROM THE QUESTIONS
16 AND THE WAY I'VE BEEN TAKING NOTES, SO FORTH, I HAVE A CASE
17 IN MIND AND I HAVE BEEN WORKING ON IT BOTH WHILE YOU'VE BEEN
18 WITH ME AND DURING THE RECESSES LIKE WEEKENDS AND NIGHTS.
19 JUST A SECOND. I HAVE TWO MORE THINGS I HAVE TO BRING OUT.
20 I WILL DO SOME MORE WORK WITH YOU.

21 (A PAUSE IN THE PROCEEDINGS.)

22 THE COURT: OKAY. YOU PROBABLY ALREADY GOT THE
23 IMPRESSION THAT I AM A JUDGE WHO TRIES TO DOCUMENT AND SHOW
24 THE LEGAL PREMISES FOR PROCEDURAL STEPS WE TAKE, AND I INTEND
25 TO DO THAT. I JUST WANT TO TELL YOU WHAT I'M GOING TO DO
26 HERE AND I GUESS I WILL START THIS WAY.

27 I SAID I AM GOING TO BRING OUT TWO THINGS. I
28 BROUGHT OUT ONLY ONE.

1 (A PAUSE IN THE PROCEEDINGS.)

2 THE COURT: THE -- I'M GOING TO CALL YOUR ATTENTION
3 TO SOME CASES THAT HAVEN'T BEEN CITED. I'M GOING TO DEAL
4 WITH THE MERITS OF YOUR CLIENTS'S CASE. SO HERE WE GO.

5 UNDER CALIFORNIA CONSTITUTION ARTICLE VI,
6 SECTION 6 AND GOVERNMENT CODE 68070(B) AND 68603(A), THE
7 CALIFORNIA JUDICIAL COUNCIL HAS CONSTITUTIONALLY GRANTED AND
8 LEGISLATIVELY AFFIRMED POWER TO ADOPT RULES, REPORT
9 ADMINISTRATION PRACTICE AND PROCEDURE THAT ARE CONSISTENT
10 WITH STATUTES. THE CALIFORNIA RULES OF COURT HAVE THE FORCE
11 OF LAW AND BINDING AS PROCEDURAL STATUTES AS LONG AS THEY ARE
12 CONSISTENT WITH LEGISLATIVE ENACTMENTS AND CONSTITUTIONAL
13 GUARANTEES.

14 I WILL CITE YOU THREE CASES WHERE THAT POINT
15 IS MADE. THEY ARE IN RE JUAN -- THAT'S J-U-A-N -- C.,
16 (1993), 20 CALIFORNIA APPELLATE 4TH, 748, PARTICULARLY AT
17 PAGES 752 TO 753; ALICIA T. VERSUS COUNTY OF LOS ANGELES,
18 (1990), 222 CALIFORNIA APPELLATE 3D 869 AT 884, AND OATS
19 VERSUS OATS. OATS IS SPELLED O-A-T-S, (1983) 14 CALIFORNIA
20 APPELLATE 3D 416 AT 420. THIS IS HOW THE OATS VERSUS OATS
21 COURT EXPRESSED THIS VIEW.

22 RULES OF COURT HAVE THE FORCE OF POSITIVE LAW.
23 THEY ARE AS BINDING ON THIS COURT AS PROCEDURAL STATUTES
24 UNLESS THEY TRANSCEND LEGISLATIVE ENACTMENTS OR
25 CONSTITUTIONAL GUARANTEES.

26 SO THE HIERARCHY THEN WOULD BE CONSTITUTION,
27 STATUTES AND CALIFORNIA RULES OF COURT, AND THEN CASE LAW.

28 I SAY THAT BECAUSE THE CASE OF WHITTINGTON

1 VERSUS MCKINNEY -- WHITTINGTON IS SPELLED

2 W-H-I-T-I-N-G-T-O-N, VERSUS MCKINNEY, CAPITAL M, C, CAPITAL
3 K, I-N-N-E-Y, (1991), 234 CALIFORNIA APPELLATE 3D 123 --
4 CRITICIZED THE CONDUCT OF A NOW FORMER JUDGE, I BELIEVE, AT
5 THE ORANGE COUNTY SUPERIOR COURT, WHO ANNOUNCED A DECISION,
6 GAVE A STATEMENT OF DECISION ORALLY AND SAID IF YOU WANTED A
7 WRITTEN STATEMENT OF DECISION, YOU COULD MAKE REFERENCE TO
8 THE COURT TRANSCRIPT. THAT CASE, WHITTINGTON VERSUS MCKINNEY
9 WAS, AS I SAY, DECIDED IN 1991.

10 IN 2010, EFFECTIVE JANUARY 1, 2010, THE
11 CALIFORNIA RULES OF COURT WERE AMENDED WITH RESPECT TO, AMONG
12 OTHER PROVISIONS OF THE CALIFORNIA RULES OF COURT, RULE
13 3.1590 HAVING TO DO WITH ANNOUNCEMENT OF TENTATIVE DECISION
14 AND STATEMENT DECISION AND JUDGMENT.

15 THE (C) SUBSECTION OF RULE 15 -- RULE 3.1590
16 WAS AMENDED BY THE ELIMINATION OF SOME PROVISIONS AND BY
17 BEING INSERTION OF OTHER PROVISIONS. I'M GOING TO REFER TO
18 THE (C) SUBSECTION.

19 IT READS NOW, (READING:)

20 THE COURT IN ITS TENTATIVE DECISION MAY:
21 STATE THAT IT IS THE COURT'S PROPOSED
22 STATEMENT OF DECISION, SUBJECT TO A PARTY'S
23 OBJECTION UNDER SUBSECTION (G);

24 (2) INDICATE THAT THE COURT WILL PREPARE
25 A STATEMENT OF DECISION;

26 (3) ORDER A PARTY TO PREPARE A STATEMENT
27 OF DECISION; OR

28 (4) DIRECT THAT THE TENTATIVE DECISION

1 WILL BECOME THE STATEMENT OF DECISION UNLESS,
2 WITHIN 10 DAYS AFTER ANNOUNCEMENT OR SERVICE
3 OF THE TENTATIVE DECISION, A PARTY SPECIFIES
4 THOSE PRINCIPAL CONTROVERTED ISSUES AS TO
5 WHICH THE PARTY IS REQUESTING A STATEMENT OF
6 DECISION OR MAKES PROPOSALS NOT INCLUDED IN
7 THE TENTATIVE DECISION.

8 NOW, I WILL NOT USE METHOD TWO. THAT'S THE
9 COURT WILL PREPARE A STATEMENT OF DECISION. I WILL USE
10 EITHER (1), (3), OR (4) EITHER SAYING THAT THIS IS A PROPOSED
11 STATEMENT OF DECISION SUBJECT TO OBJECTIONS UNDER SUBSECTION
12 (G), OR ORDER A PARTY TO PREPARE A STATEMENT OF DECISION, OR
13 DIRECT THAT THE TENTATIVE DECISION WILL BECOME THE STATEMENT
14 OF DECISION UNLESS WITHIN TEN DAYS A PARTY SPECIFIES
15 PRINCIPAL CONTROVERTED ISSUES AS TO WHICH THE PARTY IS
16 REQUESTING A STATEMENT OF DECISION OR MAKES PROPOSALS NOT
17 INCLUDED IN THE TENTATIVE DECISION.

18 I WOULD LIKE TO HEAR FROM BOTH SIDES NOW
19 CONCERNING WHICH OF THREE ALTERNATIVES WHICH I PROPOSED THEY
20 PREFER, AND THEN I WILL MAKE THE DECISION CONCERNING THAT
21 THAT IS PROPER. LET'S START WITH THE DEFENSE. DEFENDANT?

22 MR. SABZEVAR: YOUR HONOR, I PREFER THAT THE COURT
23 ISSUES A STATEMENT OF DECISION ITSELF AND NOT LEAVE IT TO THE
24 PARTIES OR TEN DAYS.

25 THE COURT: I TOLD YOU I'M NOT GOING TO PREPARE A
26 STATEMENT OF DECISION. I'M GOING TO USE EITHER METHOD (1),
27 (3), OR (4). (1) IS THIS IS THE PROPOSED STATEMENT OF
28 DECISION SUBJECT TO OBJECTIONS UNDER (D). (3) IS ORDER A

1 PARTY TO PREPARE A STATEMENT OF DECISION; OR (4), DIRECT THAT
2 THE TENTATIVE DECISION WILL BECOME THE STATEMENT OF DECISION
3 UNLESS WITHIN TEN DAYS AFTER ANNOUNCEMENT OR SERVICE OF THE
4 TENTATIVE DECISION, THE PARTY SPECIFIES THOSE PRINCIPAL
5 CONTROVERTED ISSUES AS TO WHICH THE PARTY IS REQUESTING A
6 STATEMENT OF DECISION OR MAKES PROPOSALS NOT INCLUDED IN THE
7 TENTATIVE DECISION.

8 MR. SABZEVAR: DEFENSE PREFERENCE IS NUMBER ONE.

9 THE COURT: STATE THAT THIS IS THE COURT'S
10 STATEMENT OF DECISION SUBJECT TO A PARTY'S OBJECTION UNDER
11 (G)?

12 MR. SABZEVAR: YES, YOUR HONOR.

13 THE COURT: PLAINTIFF?

14 MR. SPIVAK: WE PREFER TO WRITE THE DECISION, YOUR
15 HONOR, ONCE THE COURT HAS MADE ITS POSITION KNOWN.

16 THE COURT: ALL RIGHT.

17 MR. SPIVAK: BY "WE" I MEAN WE BELIEVE IT SHOULD BE
18 PREVAILING PARTY.

19 THE COURT: UH-HUH. I'M GOING TO USE -- I
20 APPRECIATE -- I'M GOING TO USE METHOD (4). THIS TENTATIVE
21 DECISION WILL BECOME THE STATEMENT OF DECISION UNLESS WITHIN
22 TEN DAYS AFTER ANNOUNCEMENT, AND SO FORTH. THAT'S
23 3.1590(C)(4).

24 SO WHAT I'M GOING TO DO NOW IS ANNOUNCE A
25 TENTATIVE WHICH, AS YOU CAN SEE, IS ALSO A CONDITIONAL
26 STATEMENT OF DECISION.

27 THIS CASE CAME BEFORE ME PRESIDING IN THIS
28 DEPARTMENT 41 ON THE 10TH OF APRIL, 2012, FOR TRIAL WITHOUT

1 JURY. DAVID G. SPIVAK, STATE BAR 179684, APPEARED AS
2 ATTORNEY FOR PLAINTIFFS ALINA GHRDILYAN AND EVGENIA
3 SULTANIAN, AND F. MICHAEL SABZEVAR, STATE BAR 172312 APPEARED
4 AS ATTORNEY FOR DEFENDANT, RAMIL ABALKHAD.

5 THE CASE WAS SUBMITTED FOR DECISION TODAY, THE
6 23RD OF APRIL, 2012.

7 IN THIS CASE, TWO PLAINTIFFS CLAIM THAT
8 DEFENDANT ABALKHAD IS LIABLE TO THEM ON VARIOUS
9 EMPLOYMENT-DERIVED THEORIES INCLUDING AND ESPECIALLY FOR
10 PENALTIES AND THAT THEY CAN ENFORCE VARIOUS REMEDIES AGAINST
11 THEM UNDER THE LABOR CODE PRIVATE ATTORNEY GENERAL ACT, WHICH
12 IS AT LABOR CODE 2698, AND FOLLOWING.

13 IN OPEN COURT ON THE 10TH OF APRIL, 2012, THE
14 ATTORNEYS CONFIRMED THAT THE OPERATIVE PLEADINGS ARE THE
15 PLAINTIFFS'S FIRST AMENDED COMPLAINT, ET CETERA, FILED
16 FEBRUARY 24, 2010, AND THE DEFENDANT'S ANSWER TO THEIR FIRST
17 AMENDED COMPLAINT FILED SEPTEMBER 13, 2010. I WILL MAKE A
18 COUPLE OF QUICK COMMENTS ABOUT THOSE TWO DOCUMENTS NOW.

19 THE FULL NAME OF THE PLAINTIFFS'S OPERATIVE
20 PLEADING IS FIRST AMENDED COMPLAINT FOR -- AND THEN THERE ARE
21 NINE THEORIES LISTED: FAILURE TO COMPENSATE EMPLOYEES FOR
22 ALL HOURS WORKED; NUMBER TWO IS FAILURE TO PROVIDE BOTH REST
23 AND MEAL PERIODS; NUMBER THREE IS FORFEITURE OF VESTED
24 VACATION BENEFITS; NUMBER FOUR IS FAILURE TO PROVIDE ACCURATE
25 WRITTEN WAGE STATEMENTS; NUMBER FIVE IS FAILURE TO TIMELY PAY
26 ALL FINAL WAGES; NUMBER SIX IS UNAUTHORIZED DEDUCTIONS;
27 NUMBER SEVEN IS FAILURE TO INDEMNIFY; NUMBER EIGHT IS UNFAIR
28 COMPETITION; AND NUMBER NINE IS CIVIL PENALTIES.

1 THE DEFENDANT'S ANSWER TO THE FIRST AMENDED
2 COMPLAINT WAS ON A JUDICIAL COUNCIL FORM PLEADING.

3 INSOFAR AS IT'S PERTINENT TO THIS PORTION OF
4 MY ANALYSIS, LABOR CODE 2699 READS, (READING:)

5 SUBSECTION (A), NOTWITHSTANDING ANY OTHER
6 PROVISION OF LAW, ANY PROVISION OF THIS CODE
7 THAT PROVIDES FOR A CIVIL PENALTY TO BE
8 ASSESSED AND COLLECTED BY THE LABOR AND
9 WORKFORCE DEVELOPMENT AGENCY OR ANY OF ITS
10 DEPARTMENTS, DIVISIONS, COMMISSIONS, BOARDS,
11 AGENCIES, OR EMPLOYEES FOR A VIOLATION OF THIS
12 CODE MAY, AS AN ALTERNATIVE, BE RECOVERED
13 THROUGH A CIVIL ACTION BROUGHT BY AN AGGRIEVED
14 EMPLOYEE ON BEHALF OF HIMSELF OR HERSELF AND
15 OTHER CURRENT OR FORMER EMPLOYEES PURSUANT TO
16 THE PROCEDURES SPECIFIED IN SECTION 2699.3.

17 THE PLAINTIFFS HAD ORIGINALLY DENOMINATED THIS
18 CASE AS A CLASS ACTION AND THEY CONTINUED THAT DESIGNATION
19 THROUGH VARIOUS OTHER FILINGS, BUT THEY HAVE NEVER OBTAINED
20 AN ORDER CERTIFYING THE CLASS. THEY CLAIM, THOUGH, THAT THEY
21 ARE ENTITLED TO PROCEED ON BEHALF OF OTHERS PURSUANT TO THE
22 CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL ACT AS TO
23 DEFENDANT ABALKHAD.

24 THE PLAINTIFFS HAD TRIED THIS CASE BEFORE ME
25 SOLELY AS TO CAUSE OF ACTION NINE. THEY CONCEDE THAT THIS
26 CASE IS STAYED IN THIS COURT IN PART BECAUSE OF THE FACT THAT
27 DEFENDANT RJ FINANCIAL, INC., ORIGINALLY THE ONLY NAMED
28 DEFENDANT, BUT BY VIRTUE OF THE FIRST AMENDED PLEADING, A

1 CODEFENDANT, THAT CORPORATION IS A DEBTOR IN CHAPTER 11
2 PROCEEDING, WHICH IS STILL PENDING.

3 PURSUANT TO 11 U.S.C. 362, THIS CASE WOULD BE
4 STAYED AS TO THAT PARTY. BUT MR. ABALKHAD HAS NOT BEEN SHOWN
5 TO BE A DEBTOR IN A BANKRUPTCY PROCEEDING AND DURING CLOSING
6 ARGUMENT OF THE 17TH OF APRIL, 2012, MR. SPIVAK CONFIRMED HIS
7 CLIENTS HAVE CLAIMS PENDING IN THE BANKRUPTCY CASE. THAT
8 WILL MEAN THAT THE CASE CAN PROCEED AND HAS PROCEEDED ON THE
9 BASIS PLEADED AGAINST MR. ABALKHAD AS AN INDIVIDUAL.

10 ALTHOUGH BECAUSE OF 11 U.S.C. 362, IT IS STAYED AS TO THE
11 CORPORATION.

12 THE PERSONS WHO GAVE TESTIMONY AT THE TRIAL
13 WERE JOSEPH HARSANY, H-A-R-S-A-N-Y, AN EMPLOYEE OF PAYROLL
14 CHECK WRITING SERVICE USED BY THE DEFENDANTS; BREK OYAMA --
15 BREK IS SPELLED B-R-E-K; AND OYAMA IS O-Y-A-M-A, MR. SPIVAK'S
16 PARALEGAL; RAMIL ABALKHAD, ONE OF THE DEFENDANTS, THE
17 PRESIDENT AND CHIEF EXECUTIVE OFFICER OF DEFENDANT RJ
18 FINANCIAL AND, INDEED, THAT -- APPARENTLY THAT COMPANY'S ONLY
19 OFFICER AND ONLY DIRECTOR. THE FOURTH WITNESS WAS ALINA
20 GHRDILYAN, ONE OF THE PLAINTIFFS, AND THE FIFTH WAS EVGENIA
21 SULTANIAN, ONE OF THE PLAINTIFFS, THE OTHER PLAINTIFF.

22 I'M GOING TO REFER TO THE LABOR CODE PRIVATE
23 ATTORNEY GENERAL ACT IN THE WAY THE ATTORNEYS HAVE -- IT
24 SEEMS TO ME TO BE SERVICEABLE -- AND I'M GOING TO REFER --
25 I'M GOING TO USE THE ACRONYM PAGA, P-A-G-A.

26 PAGA ACTIONS DO NOT HAVE BEEN MAINTAINED AS
27 CLASS ACTIONS. THEY CAN BE, BUT THEY ARE NOT REQUIRED TO BE.
28 THE AUTHORITY ON THAT IS ARIAS VERSUS SUPERIOR COURT, (2009),

1 46 CALIFORNIA 4TH, 969, 981 TO 982.

2 WE WILL GO INTO RECESS NOW. COME BACK AT
3 1:30, PLEASE.

4 (AT 11:58 A.M., A LUNCH RECESS WAS TAKEN.)

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1 (THE FOLLOWING PROCEEDINGS WERE HELD AT 1:47 P.M.)
2 THE COURT: NOW, WE WILL GO BACK TO THE GHRDILYAN
3 AGAINST RJ CASE.

4 OKAY. WHEN WE LEFT, I HAD, I THINK, TALKED
5 ABOUT SOME GENERAL POINTS OF LAW HAVING TO DO WITH PAGA
6 ACTIONS, AND I WILL JUST OVERLAP SLIGHTLY.

7 I WAS SAYING THAT PAGA ACTIONS DO NOT HAVE TO
8 BE HAVE MAINTAINED AS CLASS ACTIONS. THEY CAN BE, BUT ARE
9 NOT REQUIRED TO BE. AND ONE OF AUTHORITIES ON THAT IS ARIAS,
10 A-R-I-A-S, VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH
11 969 FROM PAGES 981 TO 982. PAGA IS NOT THE EMPLOYEE'S
12 EXCLUSIVE REMEDY. THEY MAY SEPARATELY OR CONCURRENTLY SEEK
13 OTHER REMEDIES. LABOR CODE 2699(G) AND CALIBER BODY WORKS
14 VERSUS SUPERIOR COURT, (2005) 134 CALIFORNIA APPELLATE 4TH
15 365 AT 375.

16 THE KINDS OF PENALTIES THAT PAGA PLAINTIFFS
17 CAN SEEK TO RECOVER, ASSUMING THAT THE FACTS SUPPORT IT, ARE
18 THOSE FOR FAILURE TO PAY STATUTORILY PRESCRIBED WAGES --
19 THAT'S LABOR CODE 210 -- UNLAWFULLY WITHHELD WAGES -- THAT'S
20 LABOR CODE 225.5 -- OR FOR VIOLATING, FOR EXAMPLE, AN
21 INDUSTRIAL WELFARE COMMISSION ORDER -- THAT'S LABOR CODE 558.
22 AN AGGRIEVED EMPLOYEE -- THAT WOULD MEAN ANYONE EMPLOYED BY
23 THE ALLEGED VIOLATOR AND AGAINST WHOM ONE OR MORE VIOLATIONS
24 WAS COMMITTED -- AND I PICKED UP THAT DEFINITION FROM LABOR
25 CODE 2699(C) AND FROM THE COMMENTS IN AMALGAMATED TRANSIT
26 UNION VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH 993 AT
27 1004 TO 1005 -- AN AGGRIEVED EMPLOYEE CAN SUE TO RECOVER
28 CIVIL PENALTIES FOR VIOLATIONS OF THE LABOR CODE ON BEHALF OF

1 HIMSELF, OR HERSELF, AND OTHER CURRENT OR FORMER EMPLOYEES
2 AGAINST WHOM ONE OR MORE OF THE ALLEGED VIOLATIONS WAS
3 COMMITTED. THAT'S LABOR CODE 2699(G)(1).

4 THE ATTORNEYS HAVE FROM TIME TO TIME REFERRED
5 TO WHAT THEY HAVE CALLED THE BRINKER CASE.

6 NOW, WHAT THEY ARE REFERRING TO IS THE CASE
7 ENTITLED BRINKER RESTAURANT CORPORATION VERSUS SUPERIOR
8 COURT, REAL PARTY IN INTEREST, HOHNBAUM H-O-H-N-B-A-U-M. THE
9 VERSION OF THAT THAT I HAVE USED IN MY ANALYSIS AND
10 PREPARATION IS THE VERSION THAT WAS PRINTED AT 2012 DAILY
11 JOURNAL, DAILY APPELLATE REPORT, PAGE 4615, AND FOLLOWING.

12 I HAVE BEEN REQUIRED TO EVALUATE THE TESTIMONY
13 OF THE PARTY WITNESSES IN THIS CASE, THAT IS, MS. GHRDILYAN,
14 MS. SULTANIAN, AND MR. ABALKHAD WITH SOME CAUTION AND
15 RESERVATIONS. THOSE THREE PERSONS IN THEIR CAPACITIES AS
16 WITNESSES ARGUED AND WRANGLLED WITH THE QUESTIONERS DURING
17 TRIAL, AND SOME OF THAT WAS PROVOKED BY THE QUESTIONERS; SOME
18 OF IT WAS NOT. THAT BECOMES AN IMPORTANT FACTOR IN
19 EVALUATING RELATIVE CREDIBILITIES UNDER EVIDENCE CODE 780(A).
20 THOSE THREE PARTIES ALL HAVE AN INTEREST, BIAS, AND OTHER
21 MOTIVE FOR SLANTING THEIR TESTIMONY, OBVIOUSLY, AND THAT
22 BECOMES SIGNIFICANT UNDER EVIDENCE CODE 780(F) AND EVIDENCE
23 CODE 780(J).

24 MR. ABALKHAD HAS SUFFERED FELONY CONVICTIONS
25 ON HIS PLEA OF NOLO CONTENDERE AS TO PERJURY AND TAX EVASION
26 AND DID NOT OWN UP TO THAT COMPLETELY IN DISCOVERY. THAT'S
27 EVIDENCE -- THAT BECOMES PERTINENT UNDER EVIDENCE CODE 780(E)
28 AND EVIDENCE CODE 780(H), AND EVIDENCE CODE 780(I) AND IS

1 COMMENTED ON IN THE CASE OF RUSHEEN, R-U-S-H-E-E-N, VERSUS
2 DREWS, D-R-E-W-S, (2002) 99 CALIFORNIA APPELLATE 4TH 279 AT
3 PAGES 283 TO 284.

4 ASPECTS OF THE TESTIMONY OF THESE WITNESSES,
5 THESE THREE PEOPLE AS WITNESSES, WERE EXAGGERATED AND
6 OVERSTATED. THAT BECOMES PERTINENT UNDER EVIDENCE CODE
7 780(B).

8 FURTHERMORE, EVIDENCE CODE SECTION 412
9 PROVIDES THAT IF WEAKER AND LESS SATISFACTORY EVIDENCE IS
10 OFFERED WHEN IT WAS IN -- WHEN IT WAS WITHIN THE POWER OF THE
11 PARTY TO PRODUCE STRONGER AND MORE SATISFACTORY EVIDENCE, THE
12 EVIDENCE ACTUALLY OFFERED SHOULD BE VIEWED WITH DISTRUST.
13 THIS, OF COURSE, IS A PERMISSIBLE INFERENCE AND NOT A
14 MANDATORY ONE, BUT THIS COURT HAS, AS THE LAW INDICATES,
15 TAKEN THIS INTO CONSIDERATION.

16 BUT ALL THAT HAVING BEEN SAID, THE COURT DOES
17 NOT ACCEPT MR. SABZEVAR'S INVITATION TO REJECT THE ENTIRETY
18 OF THE PLAINTIFFS'S TESTIMONY. INSTEAD, THIS COURT HAS HAD
19 TO ACCEPT THE PART OF THE TESTIMONY OF THE WITNESSES WHICH
20 THIS COURT FOUND -- HAS FOUND TO BELIEVE TRUE AND -- AND WILL
21 REJECT THE REST. THIS IS PRECISELY WHAT THE COURT -- PARDON
22 ME -- IS AUTHORIZED TO DO OR ANY FINDER OF FACT WOULD BE
23 AUTHORIZED TO DO. ONE MODEL FOR THAT IS CACI INSTRUCTION
24 107, FOURTH PARAGRAPH.

25 THE DATES INVOLVED IN THIS CASE -- AND THE
26 DATES BECOME SIGNIFICANT -- ARE AS FOLLOWS. MS. SULTANIAN
27 WAS HIRED ON -- IN NOVEMBER, 2007, AND WAS FIRED ON NOVEMBER
28 19, 2009. MS. GHRDILYAN WAS HIRED IN AUGUST, 2008, AND WAS

1 FIRED ON DECEMBER 3, 2009. ONE OF THE QUESTIONS WHICH I HAVE
2 BEEN CALLED UPON TO ANSWER IS WHETHER MR. ABALKHAD AS AN
3 INDIVIDUAL WAS AN EMPLOYER OF PLAINTIFFS AND -- UNDER WAGE
4 ORDER 7. I FIND THAT HE WAS NOT. BUT I FIND THAT THE
5 THEORIES OF LIABILITY UNDER -- I SHOULD BACK OFF. BUT I FIND
6 THAT THE OTHER BASES FOR ASSERTING LIABILITY ON THE PART OF
7 MR. ABALKHAD DO HAVE MERIT, AND LIABILITY DOES ATTACH TO HIM
8 UNDER THOSE THEORIES.

9 THE THEORIES I'M REFERRING TO ARE LABOR CODE
10 558 TO WHICH LABOR CODE 510 AND 512 ARE APPENDED OR INCLUDED
11 SUBSTANTIVE PROVISIONS AND LABOR CODE 1197.1 TO WHICH THE
12 SUBSTANTIVE PROVISIONS OF LABOR CODE 1198 AND THE WAGE ORDER
13 ARE ASSOCIATED THEORIES OF LIABILITY.

14 IN OTHER WORDS, I AM FINDING THAT UNDER 558
15 LABOR CODE AND 1197.1 LABOR CODE FOR THE SUBSTANTIVE REASONS
16 REFERRED TO IN THE OTHER TWO SOURCES AS TO EACH OF THOSE
17 SECTIONS, THAT IS 510 AND 512 LABOR CODE, AND 1193 AND WAGE
18 ORDER, LIABILITY CAN ATTACH TO MR. ABALKHAD AND UNDER THE
19 CIRCUMSTANCES OF THIS CASE, WILL ATTACH.

20 I'M GOING TO MAKE A FINDING ON THAT, AS YOU
21 WILL SEE, IN FAVOR OF -- PARDON ME -- OF THE PLAINTIFFS'S
22 POSITION.

23 NOW, I SAY IN FAVOR OF THE PLAINTIFFS'S
24 POSITION BECAUSE THAT MEANS NOT JUST IN FAVOR OF THE
25 PLAINTIFFS BUT SINCE WE HAVE A PAGA ACTION, I AM REFERRING TO
26 THE PLAINTIFFS'S POSITION.

27 NOW -- PARDON ME. I WILL SAY THIS.

28 AS YOU CAN TELL, I AM AT SOME PAINS TO GO

1 THROUGH THE LEGAL REASONING AND STEPS PREPARATORY TO REACHING
2 A DECISION IN THIS CASE WITH SOME CARE BECAUSE IT MAY VERY
3 WELL BE THAT THIS CASE WILL REACH ITS WAY INTO THE APPELLATE
4 COURTS AND THAT IT IS ALSO POSSIBLE THAT THE APPELLATE COURTS
5 MAY DECIDE THIS CASE IN A PUBLISHED OPINION, AND I WILL SAY
6 THAT THE DETERMINATION I HAVE MADE ABOUT ABALKHAD AS AN
7 EMPLOYER -- I SAID THAT HE'S NOT -- OR ABALKHAD AS A
8 POTENTIALLY LIABLE PARTY UNDER LIABILITY-ENHANCING STATUTES
9 OTHER THAN LABOR CODE 558 AND LABOR CODE 1197.1, THAT IS, THE
10 ABALKHAD-FAVORING DETERMINATIONS I HAVE MADE ON THOSE POINTS,
11 ARE NOT BEYOND REASONABLE ARGUMENT.

12 MY DECISION IS, AS I HAVE EXPRESSED IT, AND I
13 BELIEVE THAT I AM CORRECT -- BUT I -- BUT I DO RECOGNIZE THAT
14 THERE ARE ARGUMENTS THAT CAN BE MADE -- AND THEY HAVE BEEN
15 MADE HERE IN THIS COURTROOM -- ON THOSE POINTS.

16 I HAVE COMPARED THE EMPLOYEE HANDBOOKS,
17 EXHIBIT 3 AND EXHIBIT D. IT APPEARS TO ME THAT EXHIBIT D
18 FROM THE EVIDENCE IN THIS CASE WAS NOT SUPPLIED BY ABALKHAD
19 DURING THE DISCOVERY PHASE OF THIS CASE. THE PARTICULAR
20 PROVISIONS THAT I AM DEALING WITH ARE THOSE HAVING TO DO WITH
21 OVERTIME AND LUNCH AND EXHIBIT 3 IS COMMENTED ON BY THE
22 PLAINTIFFS AS BEING DEFICIENT BECAUSE THEY SAY THAT A LUNCH
23 PERIOD MUST BE PROVIDED AFTER FIVE HOURS OF WORK, NOT SIX
24 HOURS OF WORK, AND THE PLAINTIFFS'S POSITION IS THAT THAT WAS
25 THE ONLY PERTINENT EMPLOYEE HANDBOOK.

26 I THINK THE PLAINTIFFS ARE RIGHT AS TO BOTH
27 THOSE CONTENTIONS. EXHIBIT 3 BEARS THE DATE OF JANUARY,
28 2003. PLAINTIFFS ADMIT THAT THIS IS THE CORRECT DATE. THAT

1 IS, IT SEEMS TO ME, THE OPERATIVE EMPLOYEE HANDBOOK. EXHIBIT
2 D WHICH HAS DIFFERENT PROVISIONS IN IT CONCERNING THE SAME
3 TOPICS WAS, IN MY VIEW, FIRST NOT PRODUCED DURING DISCOVERY;
4 SECOND, A WRITING THAT CAME INTO EXISTENCE IN AUGUST, 2010,
5 SUBSTANTIAL PERIOD OF TIME AFTER THE PLAINTIFFS HAD ALREADY
6 HAD THEIR EMPLOYMENT TERMINATED AND INDEED AUGUST, 2010, IS
7 EVEN AFTER THE PRESENT SUIT WAS FILED. THIS CAN BE SEEN FROM
8 EXHIBIT D PAGE 17, SECOND FULL PARAGRAPH.

9 AS I HAVE SAID, THIS SUIT WAS FILED ON THE
10 28TH OF JANUARY, 2010.

11 ONE OF THE COMPLICATING FACTORS IN THIS
12 CASE -- AND THE LAWYERS HAVE RECOGNIZED IT, AND IT'S OBVIOUS
13 TO ANYONE WITH ANY LEGAL EXPERIENCE -- IS THAT ALTHOUGH THE
14 LAWSUIT ORIGINALLY NAMED RJ FINANCIAL, INC., THAT DEFENDANT
15 IS A DEBTOR IN A CHAPTER 11 BANKRUPTCY. AS I HAVE SAID, THE
16 CASE IS OBVIOUSLY STAYED AS TO THAT PARTY, BUT THE PLAINTIFFS
17 HAVE HAD TO REORGANIZE THEIR CASE TO PRESS IT AGAINST
18 MR. ABALKHAD WHO IS NOT IN BANKRUPTCY AND IT SEEMS TO ME THEY
19 HAVE DONE SO SUCCESSFULLY.

20 THERE IS NO SERIOUS QUESTION BETWEEN THE SIDES
21 CONCERNING THE FOLLOWING PROPOSITIONS OF LAW. AN EMPLOYEE IS
22 ENTITLED TO OVERTIME COMPENSATION FOR WORK IN EXCESS OF EIGHT
23 HOURS IN ONE WORKDAY, FOR WORKING IN EXCESS OF 40 HOURS IN
24 ONE WORKWEEK, AND FOR WORK ON THE SEVENTH DAY IN ONE WORK
25 WEEK. THE OVERTIME COMPENSATION DIFFERS, BUT THOSE ARE
26 OVERTIME ITEMS.

27 IT IS ALSO TRUE -- BY THE WAY, THIS IS
28 PROVIDED FOR UNDER LABOR CODE 510(A). IT'S ALSO TRUE THAT

1 EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EMPLOYEES WHO ARE
2 SPECIFICALLY EXEMPTED BY THE CALIFORNIA INDUSTRIAL WELFARE
3 AND COMMISSION ARE EXEMPT FROM THE HOURS WORKED AND DAYS
4 WORKED PER WEEK LIMITATIONS AS PROVIDED FOR IN LABOR CODE 515
5 BUT -- PARDON ME -- THE PLAINTIFFS IN THIS CASE DO NOT FALL
6 INTO THAT EXEMPTED CATEGORY AND INDEED THE DEFENDANT DOES NOT
7 CLAIM THAT THEY DO.

8 FOR THE REASONS THAT I HAVE MENTIONED EARLIER
9 ABOUT THE RESERVATIONS WITH WHICH THE TESTIMONY OF THE
10 WITNESSES HAVE TO BE INTERPRETED WITH, I DO NOT ATTEMPT TO
11 SUMMARIZE ALL THE TESTIMONY OF ALL THE WITNESSES.

12 IT IS ALSO TRUE THAT SUCCESSFUL EMPLOYEE
13 PLAINTIFFS WHO ARE AWARDED UNPAID OVERTIME ARE ENTITLED TO
14 INTEREST ACCRUING FROM THE DATE ON WHICH THE RIGHT TO RECOVER
15 THEIR OVERTIME VESTS. THIS WOULD BE ON THE MODEL INDICATED
16 IN CIVIL CODE 3287(A) COMPUTED TO THE DATE OF ENTRY OF
17 JUDGMENT. THIS IS LABOR CODE 1194(A), AND IT'S ALSO
18 DISCUSSED IN ESPINOSA VERSUS CLASSIC PIZZA, WHICH IS A CASE
19 THAT APPEARS IN 114 CALIFORNIA APPELLATE 4TH. THE PARTICULAR
20 PASSAGE THAT I'M MAKING REFERENCE TO IS AT PAGE 975.

21 THE TERM "WILLFUL" UNDER THE LABOR CODE --
22 THIS APPEARS IN LABOR CODE 203 -- IT MEANS ONLY THAT AN
23 EMPLOYER INTENTIONALLY FAILED OR REFUSED TO PERFORM AN ACT
24 THAT WAS REQUIRED TO BE DONE. THAT POINT IS MADE IN BARNHILL
25 VERSUS ROBERT SAUNDERS & COMPANY, (1981) 125 CALIFORNIA
26 APPELLATE 3D 1 AT PAGES 7 AND 8.

27 OBVIOUSLY, IN THE CURRENT CASE, UNLIKE THE
28 SITUATION IN BARNHILL, THERE'S NO EVIDENCE OF OFFSET. I'M

1 CITING BARNHILL JUST FOR THE PURPOSE OF THE DEFINITION OF THE
2 WORD "WILLFUL."

3 I WILL MAKE A COUPLE OF OTHER POINTS.

4 I RECOGNIZE THE INTENSITY WITH WHICH THE
5 DEFENSE HAS MAINTAINED THAT THIS IS A CASE DRIVEN BY
6 ATTORNEYS AND ATTORNEY'S FEES ON THE PLAINTIFFS'S SIDE. FOR
7 THE REASONS THAT I HAVE MENTIONED PREVIOUSLY, THAT IS, THAT
8 ONE OF THE PURPOSES OF PAGA IS PRECISELY TO INCENTIVIZE
9 ATTORNEYS TO -- TO FILE AND TO PROSECUTE SUCH CASES -- THAT
10 ARGUMENT EXISTS AND IT DOES HAVE A CERTAIN AMOUNT OF
11 OCCURRENCE, BUT I DO NOT REGARD IT AS BEING A STRONG
12 ARGUMENT. IT IS THE PURPOSE OF THE LAW PRECISELY TO PROVIDE
13 AN INCENTIVE FOR ATTORNEYS WHO MIGHT OTHERWISE BE UNABLE TO
14 HANDLE CASES OF THIS TYPE TO BE ABLE TO HANDLE CASES OF THIS
15 TYPE.

16 I WILL SAY THAT APPLICATIONS FOR ATTORNEYS'S
17 FEES, IF ANYBODY CLAIMS ENTITLEMENT TO ANY, CAN BE MADE BY
18 POST-JUDGMENT MOTION FOR ALLOWANCE OF ATTORNEY'S FEES AS
19 PARTS OF COSTS UNDER CIVIL CODE 1717(A), IF THAT'S WHAT
20 APPLIES, OR UNDER THE CORRESPONDING STATUTE IN THE LABOR
21 CODE. AND THE METHOD OF MAKING A POST-JUDGMENT MOTION FOR
22 ALLOWANCE IS REFERRED TO IN SUCH CASES AS ALLSTATE INSURANCE
23 VERSUS LEW, (1996) 46 CALIFORNIA APPELLATE 4TH 174 -- 1794 AT
24 1797, AND BANKES VERSUS LUCAS -- BANKES IS SPELLED
25 B-A-N-K-E-S, VERSUS LUCAS -- (1992) 9 CALIFORNIA --
26 9 CALIFORNIA APPELLATE 4TH, 365 AT 370.

27 I CITE THOSE TWO CASES NOT FOR THE PROPOSITION
28 THAT THEY APPLY IN LABOR CASES OR THAT THEY ARE DISPOSITIVE

1 ON THE ISSUE OF THE AMOUNT OF LEGAL FEES BUT JUST TO SHOW
2 THAT THAT IS AN APPROPRIATE TIME TO MAKE APPLICATIONS FOR
3 FEES.

4 IN THE PREMISES OF THIS CASE, THOUGH, FOR
5 REASONS THAT I WILL EXPLAIN IN JUST A SECOND, THE APPLICATION
6 FOR ATTORNEY'S FEES, IF THERE IS GOING TO BE ONE ON THE PART
7 OF THE PLAINTIFFS'S ATTORNEY, SHOULD BE, IT SEEMS TO ME, MADE
8 AFTER DISTRIBUTION OF ALL THE FUNDS THAT WILL BE DISTRIBUTED
9 UNDER MY AWARD WHICH I'M GOING TO MAKE UNDER PAGA SO THAT WE
10 DON'T HAVE THE SITUATION WHERE THE ATTORNEY IS PAID,
11 PLAINTIFFS'S ATTORNEY IS PAID FIRST OR SEEKS PAYMENT FIRST
12 WITHOUT ALSO DOING ALL THE, IT SEEMS TO ME, RATHER LABORIOUS
13 WORK THAT'S GOING TO BE REQUIRED UNDER PAGA, AND IT'S 25
14 PERCENT, 75 PERCENT SHARING ARRANGEMENT WITH THE PLAINTIFFS
15 TO GET 25 PERCENT AND WITH THE STATE OF CALIFORNIA TO GET THE
16 75 PERCENT.

17 SO I'M GOING TO TREAT THAT ASPECT OF THIS CASE
18 AS CALLING FOR ATTORNEY FEE MOTIONS, IF ANY ARE TO BE MADE,
19 AT A TIME AFTER THAT STEP OF CONCURSUS OF CLAIMS AND
20 DISTRIBUTION OF FUNDS HAS EITHER BEEN COMPLETELY FINISHED OR
21 HAS BEEN FINISHED WITH THE EXCEPTION OF A FEW SMALL
22 MINISTERIAL ACTS.

23 PARDON ME.

24 WITH RESPECT TO THE -- TO THE REMEDIES, IT
25 SEEMS TO ME THAT THE EVIDENCE STRONGLY SUPPORTS THE
26 PLAINTIFFS'S ARGUMENTS AS TO WHAT I WILL CALL THE 558-510-512
27 THEORY AND THE 1197.1-1198-WORK ORDER THEORY.

28 I THINK THAT THE EVIDENCE ESTABLISHES

1 VIOLATIONS OF THOSE SUBSTANTIVE PROVISIONS AND THAT THE
2 EVIDENCE ESTABLISHES A RIGHT TO RECOVER ON BEHALF OF THE
3 PAGA-AGGRIEVED EMPLOYEES AND ON BEHALF OF THE PLAINTIFFS BUT
4 IN AMOUNTS THAT ARE DIFFERENT FROM THOSE -- THE THEORIES ARE
5 THOSE ADVOCATED BY MR. SPIVAK AND HIS CLIENTS. THE AMOUNTS
6 ARE AMOUNTS THAT I AM GOING TO ALTER, THOUGH, AS WILL BE
7 CLEAR.

8 WITH RESPECT TO THE GHRDILYAN 558-510-512
9 LABOR CODE RECOVERY, I AM GOING TO AWARD \$7,654.60 -- THAT'S
10 EXACTLY AS CALCULATED BY MR. SPIVAK AND THOSE ARE -- THAT'S
11 IN FAVOR OF MS. GHRDILYAN AND AGAINST MR. ABALKHAD.

12 WITH RESPECT TO THE 1197.1 THEORY, WITH 1198
13 AND WORK ORDER BEING THE SUBSTANTIVE BASES, I AGREE WITH
14 MR. SPIVAK THAT MS. GHRDILYAN'S RECOVERY SHOULD BE \$14,218
15 AND THAT COMES OUT TO A TOTAL OF 21,872.60 FOR GHRDILYAN.

16 WITH RESPECT TO SULTANIAN, MY DETERMINATION IS
17 THAT REGARDING THE LABOR CODE 558-510-512 THEORY,
18 MS. SULTANIAN IS ENTITLED TO RECOVERY AGAINST MR. ABALKHAD OF
19 \$5,264.19, AND WITH RESPECT TO HER THEORY UNDER 1197.1 LABOR
20 CODE, MS. SULTANIAN IS ENTITLED TO RECOVER AGAINST
21 MR. ABALKHAD \$13,936.50. TOTAL IS \$19,200.69, AND THAT'S THE
22 AMOUNT THAT SULTANIAN IS ENTITLED TO RECOVER ON HER ACCOUNT
23 AGAINST MR. ABALKHAD.

24 THIS NOW BRINGS US TO THE AWARD IN FAVOR OF
25 THE SO-CALLED AGGRIEVED EMPLOYEES.

26 MY DETERMINATION IS THAT THE AGGRIEVED
27 EMPLOYEES'S CLAIMS ARE VALID AND MERITORIOUS CLAIMS; THAT
28 THEY CAN BE AND HAVE BEEN VALIDLY ASSERTED BY, PROSECUTED BY

1 THE TWO PLAINTIFFS IN OUR CASE.

2 I AM GOING, HOWEVER, NOT TO ACCEPT THE DOLLAR
3 FIGURES IN THE ULTIMATE SENSE THAT MR. SPIVAK AND HIS CLIENTS
4 HAVE ADVOCATED. IN DOING THIS, I AM GOING TO SPECIFICALLY
5 EXERCISE MY POWERS, WHICH IT SEEMS TO ME ARE IN THE NATURE OF
6 JUDICIAL DISCRETION, TO REDUCE THE AMOUNT OF RECOVERY FROM
7 THE AMOUNTS ADVOCATED BY MR. SPIVAK AND HIS CLIENTS.

8 WITH RESPECT TO THE LABOR CODE 558, 510, AND
9 512 THEORIES, AS TO THE AGGRIEVED EMPLOYEES, MY DETERMINATION
10 IS THAT THE AMOUNT WHICH MR. ABALKHAD MUST PAY IS NOT THE
11 \$2,164,278 AMOUNT THAT MR. SPIVAK ARGUED FOR BUT RATHER
12 \$125,000.

13 WITH RESPECT TO THE 1197.1-1198-WAGE-ORDER
14 CLAIM, MY DETERMINATION IS THAT THE AMOUNT THAT MR. ABALKHAD
15 WILL BE REQUIRED TO PAY IS NOT \$3,269,490, WHICH WAS THE
16 AMOUNT ADVOCATED BY MR. SPIVAK ON BEHALF OF HIS CLIENTS BUT
17 RATHER \$200,000.

18 NOW, THAT COMES OUT TO A TOTAL THEN OF
19 \$325,000.

20 NOW, IN DOING THIS, I HAVE EXERCISED MY
21 DISCRETION TAKING INTO CONSIDERATION THE FOLLOWING POINTS. I
22 AGREE WITH MR. SPIVAK'S CHARACTERIZATION OF MR. ABALKHAD AS A
23 PERSON WHO WAS INADEQUATELY OBSERVANT OF CALIFORNIA LAW.
24 MR. SPIVAK REFERS TO HIM AS A "SCOFFLAW." THAT'S A
25 JOURNALISTIC RATHER THAN A -- A LEGAL TERM. BUT I THINK HE
26 DID HAVE THE INTENTION SIMPLY OF TRYING TO RUN THINGS THROUGH
27 AND GET OFF AS CHEAPLY AS HE COULD WHILE HE WAS RUNNING HIS
28 BUSINESSES.

1 BUT I ALSO FIND THAT ONE OF THE PROBLEMS IN
2 THE OPERATION OF HIS BUSINESS WAS THAT HE GOT IN WAY OVER HIS
3 HEAD. HE SIMPLY EXPANDED BEYOND HIS OR HIS CORPORATION'S
4 CAPACITY PROPERLY TO RUN THESE BUSINESSES. HE RAN THEM AS
5 THOUGH HE WERE RUNNING A KIND OF SMALL OPERATIONS OUT OF HIS
6 HIP POCKET, AND I RECOGNIZE THAT THAT IS NOT A PRAISEWORTHY
7 BEHAVIOR, BUT IT SEEMS TO ME THAT IT IS NOT BEHAVIOR OF A
8 HIGHLY BLAMEWORTHY SENSE AND THAT IT IS BEHAVIOR WHICH MERITS
9 A REDUCTION OR SOFTENING OF THE PENALTIES.

10 NOW, I WILL ALSO SAY THE FOLLOWING. IF ON
11 APPEAL, THE APPELLATE COURT DETERMINES THAT I AM MISTAKEN
12 CONCERNING THE POTENTIAL OTHER THEORIES OF LIABILITY ASSERTED
13 BY MR. SPIVAK AND HIS CLIENTS AGAINST MR. ABALKHAD, I WILL
14 TELL YOU WHAT I WOULD HAVE AWARDED ON THOSE THEORIES SO THAT
15 IT MAY BE THAT THE APPELLATE COURT CAN SIMPLY TAKE WHAT I
16 HAVE SAID HERE AND RATHER THAN MAKING A DISPOSITION WHICH
17 REMANDS THE CASE FOR FURTHER CALCULATION OF DAMAGES, THE
18 APPELLATE COURT CAN SIMPLY INSERT THE MONETARY REMEDY THAT I
19 WOULD HAVE INSERTED MYSELF HAD I NOT BEEN PERSUADED THAT
20 MR. ABALKHAD WAS NOT LIABLE EXCEPT UNDER THE THEORIES THAT I
21 HAVE MADE REFERENCE TO.

22 HAD THAT BEEN DONE, I WOULD HAVE AWARDED AN
23 ADDITIONAL \$200,000 AS TO THE AGGRIEVED EMPLOYEES.

24 NOW, I WILL SAY THAT THESE AMOUNTS ARE, I
25 RECOGNIZE, EXTREMELY LENIENT AND PERMISSIVE TO MR. ABALKHAD.
26 IN OTHER WORDS, THIS IS NOT A CASE WHERE THE COURT HAS TRIED
27 TO SOCK IT TO HIM. IT IS, RATHER, A CASE IN WHICH I HAVE
28 TREATED IT AS A SERIES OF OFFENSES BUT ONE AS TO WHICH

1 MR. ABALKHAD SHOULD BE GIVEN AT LEAST SOME LENIENCY IN THE
2 FASHIONING OF A REMEDY. I THINK THAT'S IT. LET ME ASK THE
3 LAWYERS.

4 FIRST OF ALL, PLAINTIFFS'S LAWYER. ARE THERE
5 OTHER MATTERS AS TO WHICH YOUR CLIENTS CONTEND I SHOULD MAKE
6 A STATEMENT OF SOME KIND OR A FINDING OF SOME KIND?

7 MR. SPIVAK: WAS THERE SOME FINDING AS TO THE
8 ADDITIONAL \$200,000 WITH RESPECT TO THE INDIVIDUAL
9 PLAINTIFFS, YOUR HONOR?

10 YOU SPOKE TO THE OTHER CLAIMS WHICH PERHAPS
11 WOULD AFFECT THE APPELLATE COURT SHOULD IT SEND BACK FOR
12 CALCULATION.

13 THE COURT: YEAH.

14 MR. SPIVAK: I KNOW YOU GAVE AN AGGRIEVED EMPLOYEE
15 NUMBER BUT NOT FOR THE TWO PLAINTIFFS.

16 THE COURT: SHOW ME -- JUST A SECOND. COULD YOU,
17 PLEASE, TURN BACK TO -- OH, I GUESS I OUGHT TO SAY THAT. LET
18 ME DO THAT NOW.

19 THE PLAINTIFFS CONTEND THAT THERE WERE THESE
20 WRONGS AS TO BOTH THEMSELVES AND AS TO THE AGGRIEVED
21 EMPLOYEES, AND I WILL JUST REFER TO THEM IN SHORT, COMPRESSED
22 TERMS. AND ESSENTIALLY IT BOILS DOWN TO I THINK NINE
23 THEORIES AND I WILL ENUMERATE THEM NOW: OVERTIME, REST AND
24 MEAL PERIODS, WAGE STATEMENT, IN OTHER WORDS, LABOR CODE 226,
25 UNPAID TRAVEL EXPENSES AND MILEAGE -- THAT'S FOUR --
26 OFF-THE-CLOCK WORK, UNTIMELY PAYMENT OF WAGES, VACATION PAY
27 AT TERMINATION, AND FAILURE FAIRLY TO ADVISE THE EMPLOYEES OF
28 CHANGE IN THE COMMISSION STRUCTURE SO THAT WHAT HAPPENED WAS

1 THAT THEY WERE MADE TO DO WORK WITHOUT KNOWING -- WITHOUT, AS
2 IT TURNED OUT, WHAT THE ULTIMATE PAYMENT FOR IT WAS GOING TO
3 BE.

4 EACH OF THOSE CONTENTIONS -- EACH OF THOSE
5 THEORIES IS A THEORY THAT WOULD BE DECIDED IN FAVOR OF THE
6 PLAINTIFFS AND AGAINST THE -- AND AGAINST THE DEFENDANT
7 ABALKHAD EXCEPT FOR MY DETERMINATION THAT HE INDIVIDUALLY IS
8 NOT LIABLE. BUT IF HE IS LIABLE, THAT IS, IF THE APPELLATE
9 COURT DECIDES THAT I HAVE MADE AN ERROR REGARDING EXCESSIVELY
10 NARROW INTERPRETATION OF THE LABOR CODE PROVISIONS, I WOULD
11 AWARD EACH OF THE PLAINTIFFS AS PENALTIES \$60,000 EACH; 60
12 PLUS 60 IS 120.

13 NOW, I WILL SAY, AGAIN, I RECOGNIZE THAT THIS
14 IS WAY BELOW THE PLAINTIFFS'S TARGET NUMBER, BUT IT IS A
15 NUMBER THAT I THINK IS APPROPRIATE.

16 NOW, I WANT TO SAY SOMETHING ELSE ABOUT THIS,
17 AND THIS IS A COMPLICATION CREATED BY FACTORS THAT I HAD
18 REFERRED TO PREVIOUSLY. THIS IS THE BANKRUPTCY OF THE
19 CORPORATION.

20 WHAT I AM SAYING CONCERNING THESE OTHER
21 PENALTIES AND OTHER AMOUNTS, THAT IS, AMOUNTS I AM NOT
22 ACTUALLY AWARDING ARE FOR THE BENEFIT OF THE APPELLATE COURT
23 IN ASSISTING IT TO FRAME A DISPOSITIONAL ORDER IF THE CASE IS
24 SENT BACK TO THE SUPERIOR COURT UPON A REVERSAL IN PART OR IN
25 WHOLE.

26 I WANT TO PUT THESE PEOPLE IN A POSITION SO
27 THEY WILL HAVE A REMEDY ON BOTH SIDES WITHOUT THE NECESSITY
28 OF THE SUPERIOR COURT HAVING TO REVISIT THIS AND BY THE

1 SUPERIOR COURT TELLING THE APPELLATE COURT WHAT THE SUPERIOR
2 COURT WOULD HAVE DONE HAD THE SUPERIOR COURT'S REASONING NOT
3 FORECLOSED IT.

4 I AM EXTREMELY CONCERNED TO STATE THIS IN THAT
5 WAY SO THAT THE BANKRUPTCY PROCEEDINGS ARE NOT IN SOME WAY
6 SPOILED OR IMPROPERLY AFFECTED BY THE WORK DONE HERE IN THE
7 -- IN THE TRIAL COURT. AND I AM TRYING TO SUPPLY ALL OF THE
8 INFORMATION THAT I CAN WHILE STILL BEING TRUE TO AND
9 OBSERVANT OF THE NECESSITY FOR TRYING TO ACHIEVE AS MUCH
10 FINALITY AS I CAN WHILE STILL ASSISTING IN THE LITIGATION
11 PROCESS AS MUCH AS THIS COURT CAN.

12 NOW, I HAVE PREVIOUSLY DISCUSSED AND I WILL
13 MAKE A PART OF MY STATEMENT OF DECISION HERE THE SET OF DATES
14 THAT PIVOT AROUND THE APPEAL. AS I HAVE SAID PREVIOUSLY, THE
15 CASE THAT I HAVE BEEN TRYING, THIS CASE, WAS FILED ON THE
16 26TH OF JANUARY, 2010. THE DEFENDANT WAS AT THAT TIME ONLY
17 RJ FINANCIAL, AND THE CASE WAS DENOMINATED A CLASS ACTION. A
18 LITTLE LESS THAN MONTH AFTER THAT, ON THE 24TH OF FEBRUARY,
19 2010, THE PLAINTIFFS FILED A FIRST AMENDED COMPLAINT. THEY
20 ADDED MR. ABALKHAD AS A NAMED DEFENDANT. THEY CONTINUED WITH
21 THE DESIGNATION OF THIS CASE AS A CLASS ACTION.

22 ON THE 8TH OF MARCH, 2010, THE PLAINTIFFS
23 FILED A 170.6 AS TO JUDGE WILLIAM FAHEY OF THIS COURT.

24 ON THE 22ND OF MARCH, 2010, THE LAWYER WHO THE
25 TESTIMONY HAS IDENTIFIED AS MR. SANFORD FREY, F-R-E-Y -- THAT
26 NAME ALSO APPEARS ON THE DOCUMENT I'M GOING TO DESCRIBE --
27 FILED A NOTICE OF STAY AS TO THE CORPORATE DEFENDANT,
28 REFERRING TO THE CHAPTER 11 BANKRUPTCY. THAT BANKRUPTCY

1 PETITION APPEARS TO HAVE BEEN FILED ON THE 7TH OF JANUARY,
2 2010, THAT IS, BEFORE THE CASE WAS EVER FILED.

3 THAT ACCOUNTS FOR THE MODIFICATION OF THE NAME
4 OF THE PARTIES TO INCLUDE ABALKHAD AS AN INDIVIDUAL. I THINK
5 IT IS THAT OBVIOUS THAT -- BUT I WANT TO MAKE IT VERY, VERY
6 CLEAR THAT THIS IS NOT ONLY OBVIOUS, BUT IT IS A FACT THAT --
7 THIS CASE IS STAYED AS TO THE RJ FINANCIAL CORPORATION UNDER
8 THE STATUTORY CITATION I HAVE GIVEN, 11 U.S.C. 362.

9 MR. ABALKHAD'S DEFAULT WAS TAKEN IN THIS CASE
10 AND IN AUGUST OF 2010, HE MOVED TO SET ASIDE THE DEFAULT. IN
11 THAT SET OF PAPERS, THERE WAS THE CLAIM MADE THAT PLAINTIFFS
12 ADDED ABALKHAD ON THE 26TH OF MARCH, 2010. AS I HAVE
13 INDICATED, THAT WAS NOT TRUE. IT WAS ON THE 26TH -- 24TH OF
14 FEBRUARY, 2010, BUT THAT WAS NOT A SIGNIFICANT INACCURACY
15 BECAUSE IN THE COURT'S VIEW, ABALKHAD WAS ENTITLED TO HAVE
16 THE DEFAULT SET ASIDE.

17 NOW IS THERE ANYTHING THAT I AM SUPPOSED TO
18 SAY?

19 MR. SPIVAK: I DON'T THINK SO, YOUR HONOR.

20 THE COURT: OKAY. HOW ABOUT YOU, MR. SABZEVAR?

21 MR. SABZEVAR: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT. HERE'S WHAT I'M GOING TO DO
23 THEN.

24 I'M GOING TO SET A HEARING OUT IN THE FUTURE.
25 FIRST OF ALL, THE STATEMENT OF DECISION IS SUFFICIENT IF IT
26 STATES ALL THE FACTS. IT NEED NOT STATE EVIDENTIARY FACTS.
27 I THINK THE STATEMENT OF DECISION I HAVE MADE DOES THAT.

28 SECONDLY, I'M GOING TO ORDER THE PLAINTIFFS

1 THROUGH COUNSEL TO PREPARE, SERVE, OBTAIN APPROVAL AS TO FORM
2 FROM DEFENDANT ABALKHAD. THIS MAY REQUIRE A MEET AND CONFER
3 AND COURT EXPECTS COUNSEL TO BE ATTENTIVE AND COOPERATIVE IN
4 THIS REGARD. SO SUBMIT THAT TO DEFENSE COUNSEL AND LODGE
5 WITH THE COURT A JUDGMENT SUITABLE FOR COURT'S SIGNATURE IN
6 CONFORMITY WITH THE FOREGOING.

7 I AM GOING TO ORDER ALSO THAT THE PARTIES
8 AND/OR COUNSEL PICK UP ALL EXHIBITS LODGED WITH THE CLERK AND
9 ALL EXHIBITS MARKED AND/OR RECEIVED IN EVIDENCE, EACH SIDE TO
10 PICK UP THE ITEM PROFFERED BY THAT SIDE FOR RECEIPT INTO
11 EVIDENCE WITHIN FIVE DAYS FROM THE COURT'S SIGNING OF THE
12 JUDGMENT.

13 NOW, TODAY IS THE 23RD OF APRIL, 2010 -- 2012,
14 I SHOULD SAY. I WANT TO HAVE A HEARING AT WHICH THE JUDGMENT
15 IS PRESENTED TO ME FOR SIGNATURE AND I WANT TO DO THESE
16 THINGS AT THAT HEARING. I WANT TO SETTLE THE FORM AND
17 SUBSTANCE OF THE DECISION -- OF THE JUDGMENT. IF THERE'S ANY
18 OTHER WORK THAT NEEDS TO BE DONE, I WANT TO DO THAT AT THIS
19 HEARING. I WANT TO DETERMINE WHAT, IF ANYTHING, REMAINS TO
20 BE DONE REGARDING FUTURE PROCEEDINGS IN THIS CASE, AND I WANT
21 TO DETERMINE WHAT THE STATUS OF THIS CASE IS AND I WANT TO
22 HAVE THE LAWYERS FOR THE PARTIES PERSONALLY PRESENT.

23 MY IDEA WOULD BE THE JUDGMENT SHOULD BE
24 SUBMITTED BEFORE THE HEARING BUT THAT PLAINTIFFS'S COUNSEL
25 SHOULD BRING WITH HIM A DUPLICATE ORIGINAL OF THE JUDGMENT IN
26 CASE THE PAPERWORK HANDLING PRODUCES A SITUATION WHERE I
27 CAN'T LAY MY HANDS ON THE JUDGMENT THAT I AM SUPPOSED TO SIGN
28 IMMEDIATELY. I LOOK TO THE ATTORNEYS NOW FOR SOME

1 SUGGESTIONS AS TO THE DATE WHEN THAT HEARING SHOULD BE
2 SCHEDULED.

3 MR. SABZEVAR, DO YOU HAVE ANY IDEAS ABOUT WHEN
4 I SHOULD SCHEDULE IT?

5 MR. SABZEVAR: FORTY-FIVE DAYS, YOUR HONOR?

6 THE COURT: FORTY-FIVE DAYS.

7 MR. SPIVAK: THAT'S FINE FOR PLAINTIFFS.

8 THE COURT: SO TODAY IS THE 23RD. LET'S SET IT FOR
9 HEARING ON THE -- LET'S GO OUT MORE THAN 45 DAYS.

10 AS YOU CAN SEE, FROM THE 4TH TO THE 8TH, I
11 WON'T BE ABLE TO WORK WITH YOU -- OF JUNE. I WON'T BE ABLE
12 TO WORK WITH YOU. SO WOULD IT ALL RIGHT WITH YOU LAWYERS IF
13 I PICK THE 21ST OF JUNE, 2012, 8:30, THIS DEPARTMENT?

14 MR. SABZEVAR: THAT'S FINE, YOUR HONOR.

15 THE COURT: ARE YOU GOING TO BE AVAILABLE ON THOSE
16 DATES?

17 MR. SPIVAK: YES, YOUR HONOR.

18 THE COURT: ARE YOU GOING TO BE ABLE TO DO THE
19 THINGS I TALKED ABOUT, SETTLING THE FORM AND SUBSTANCE OF THE
20 JUDGMENT?

21 MR. SPIVAK: YES, YOUR HONOR.

22 MR. SABZEVAR: THAT'S FINE.

23 THE COURT: THANK YOU VERY MUCH. I APPRECIATE YOUR
24 PARTICIPATION AND -- AND YOUR ADVOCACY, AND I WILL SEE YOU
25 WHEN WE NEXT HAVE TO WORK ON THE CASE.

26 NOW, I WILL TELL YOU SOMETHING ELSE. PLEASE
27 STAY ALERT AND PLEASE LOOK IN ADVISES TO ATTORNEYS, OR
28 NOTICES, OR WHATEVER WE ARE GOING TO DO IN THE NEXT THREE OR

1 FOUR WEEKS. HERE'S OUR SITUATION.

2 AS OF 15TH OF MAY, WE WON'T HAVE REPORTERS IN
3 THESE DEPARTMENTS ANYMORE FOR TRIAL MATTERS -- THEY WILL HAVE
4 TO BE SUPPLIED BY THE PARTIES -- AND WE WON'T HAVE THE
5 REPORTERS EXCEPT TWO LAW AND MOTION SESSIONS A WEEK. THE
6 IDEA IS IT WILL BE ONE MORNING AND ONE AFTERNOON. THAT WILL
7 BE ALL THE REPORTERS WE ARE GOING TO HAVE SUPPLIED BY THE
8 COURT.

9 MOREOVER, THEY ARE GOING TO, AS I MENTIONED TO
10 YOU PREVIOUSLY, THEY ARE GOING TO REDUCE THE STAFF.

11 SO I HAD GIVEN YOU DATE, BUT I AM NOT ONE
12 HUNDRED PERCENT CERTAIN ABOUT HOW THAT DATE IS GOING TO WORK.
13 PLEASE KEEP YOUR EYES AND EARS OPEN. IF THERE'S SOME FOUL UP
14 OR SOMETHING, DO WHATEVER YOU NEED TO DO TO MAKE IT RIGHT. I
15 MEAN, WE ARE -- I WISH I COULD SAY SOMETHING THAT SOUNDED
16 MORE EMPHATIC AND MORE DEFINITIVE, BUT I CAN'T. I JUST DON'T
17 KNOW WHAT'S GOING TO HAPPEN.

18 WHAT I WANT TO DO IS TO FINISH UP YOUR CASE
19 AND GET YOU ALONG FOR THE NEXT STEP FOR OBVIOUS REASONS. AND
20 I DON'T WANT THE COLLAPSE OF THE SYSTEM'S ABILITY TO HANDLE
21 MATTERS TIMELY TO REDOUND TO YOUR DISADVANTAGE OR TO
22 ADDITIONAL EXPENSE ON THE PART OF EITHER SIDE THAT MIGHT
23 OTHERWISE BE AVOIDED IF YOU LAWYERS KEPT YOUR EYES PEELED FOR
24 WHAT'S HAPPENING IN THE COURTS AND IF I WERE ABLE TO PREDICT
25 A LITTLE BIT, I JUST CAN'T PREDICT THAT. I DON'T EVEN KNOW.
26 BUT KEEP YOUR EYES OPEN. TRY TO DO WHAT'S RIGHT, AND I WILL
27 TRY TO DO WHAT'S RIGHT. IT'S ABOUT THE BEST I CAN DO FOR
28 YOU.

1 ALL RIGHT. THANK YOU ALL VERY MUCH.

2 MR. SPIVAK: THANK YOU, YOUR HONOR.

3 MR. SABZEVAR: THANK YOU, YOUR HONOR.

4 THE COURT: SEE YOU WHEN WE NEXT HAVE TO WORK ON
5 THE CASE.

6 (PROCEEDINGS CONCLUDED.)

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DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE

CASE NO. BC430633
CERTIFIED COPY

MONDAY, APRIL 23, 2012

REPORTED BY:
ANGELA ZARATAN PARADELA
OFFICIAL COURT REPORTER
CSR NO. 9659

EXHIBIT 11

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

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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).

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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,
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
28 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.

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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

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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 ¹⁴ The 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

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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-

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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
15 Having established the factual existence of a violation of the labor laws based on Security
16 Paving’s failure to afford nighttime road repair and replacement crews legally compliant rest
17 breaks, the next question is how many aggrieved employees on how many shifts failed to receive a
18 legally compliant rest break?

19
20 Under Labor Code Section 2699(a), aggrieved employees can initiate actions to recover civil
21 penalties for Labor Code violations that may be recovered by the Labor and Workforce
22 Development Agency (“LWDA”) or any of its departments, divisions or employees. To prevail in
23 his representative claims, Plaintiff must prove Labor Code violations with respect to each and
24 every individual on whose behalf plaintiff seeks to recover civil penalties under PAGA. *See*
25 *Hibbs-Rines v. Seagate Tech., LLC* (N.D. Cal. Mar. 2, 2009) 2009 WL 513496, at *4.

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
16 D. If the Petersen Survey and Damage Study Are Entitled to No Weight, What Is the Effect of that
17 Failure of Proof?

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
26 were found in well-performed statistical studies.

27 ³⁵ Although in his post-trial brief, plaintiff's counsel attempted to reopen the trial to adduce two more evidentiary
28 bases by which to identify the number of rest breaks missed by aggrieved employees, such evidence cannot be
"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 California's meal period rules are set forth in Labor Code Section 512 and the Wage Orders.
19 These rules generally prohibit employers from employing an employee for a work period of more
20 than five hours without providing a meal period of at least 30 minutes. As explained and
21

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
practices. Thus, there is no basis to find an ongoing violation that would occasion the need for an injunction.

26 The court declines to award a separate PAGA statutory penalty in this case. PAGA is simply a procedural statute
27 allowing aggrieved employees to recover civil penalties for Labor Code violations. PAGA's plain language confirms
28 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

³⁹ He further testified that he received premium payments for some missed meal periods during the time that he
25 worked on asphalt projects and could answer the question of how often by referring to his "notes." (Trial Transcript –
26 September 20, 2017 at 26:2-3).

27
28
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
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

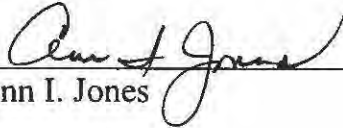
26 
Hon. Ann I. Jones

EXHIBIT 12

TSLF TIME EXHIBIT RUIZ

Attorney/Paralegal	Hours	Rate	Pre-Multiplier Lodestar
David Spivak (26th Year Attorney)	17.56	\$ 700.00	\$ 12,292.00
Caroline Tahmassian (9th Year Attorney)	42.51	\$ 450.00	\$ 19,129.50
Breck Oyama (13th Year Paralegal)	2.72	\$ 300.00	\$ 816.00
Lizzett Cortez (9th Year Paralegal)	0.67	\$ 250.00	\$ 167.50
Maya Cheaitani (2nd Year Attorney)	21.33	\$ 250.00	\$ 5,332.50
Nora Greer (15 year Paralegal)	62.39	\$ 200.00	\$ 12,478.00
Stacy Sussman (10+ Year Legal Secretary)	0.08	\$ 200.00	\$ 16.00
Daniela Linares (1st Year Intake Assistant)	5.48	\$ 150.00	\$ 822.00
Emily Ly (1st Year Paralegal)	0.83	\$ 150.00	\$ 124.50
Laura Solorzano (1st Year Intake Assistant)	12.55	\$ 150.00	\$ 1,882.50
Grand Total	166.12		\$ 53,060.50

Firm	Hours	Pre-Multiplier Lodestar
The Spivak Law Firm	166.12	\$ 53,060.50
United Employees Law Group	24.70	\$ 17,907.50
Grand Total	190.82	\$ 70,968.00

Attorneys' Fees Requested	\$ 91,200.00
Lodestar Multiplier	1.29

TSLF TIME EXHIBIT RUIZ

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Lodestar
2/7/2021	David Spivak (26th Year Attorney)	intake	0.50	\$ 700.00	\$ 350.00
2/17/2021	Nora Greer (15 year Paralegal)	Email CL client questionnaire and client docs	0.17	\$ 200.00	\$ 34.00
2/17/2021	Nora Greer (15 year Paralegal)	Save SOS records to file, save PS to file, TC to CL	0.25	\$ 200.00	\$ 50.00
2/17/2021	Nora Greer (15 year Paralegal)	DLSE CPRA Requests for both Ds	0.25	\$ 200.00	\$ 50.00
2/17/2021	Nora Greer (15 year Paralegal)	Email CL Retainer and FAQ	0.17	\$ 200.00	\$ 34.00
3/4/2021	Nora Greer (15 year Paralegal)	TC with CL re FV Intake	0.50	\$ 200.00	\$ 100.00
3/8/2021	Nora Greer (15 year Paralegal)	Prepare and send It re ee docs to cl	0.30	\$ 200.00	\$ 60.00
4/26/2021	Nora Greer (15 year Paralegal)	F/U Email to CL re status of Client Docs and Questionnaire	0.17	\$ 200.00	\$ 34.00
5/25/2021	Nora Greer (15 year Paralegal)	Email CL re Status of Client docs and Questionnaire, Send Client USB Drive, prepare cover letter	0.50	\$ 200.00	\$ 100.00
5/27/2021	Nora Greer (15 year Paralegal)	TC with CL re phone call with CT, email UELG re PF file, and intake notes	0.25	\$ 200.00	\$ 50.00
6/2/2021	Nora Greer (15 year Paralegal)	Prepare and send EDD Autho, Prepare and send LT EDD, circulate same to client	0.50	\$ 200.00	\$ 100.00
6/7/2021	Nora Greer (15 year Paralegal)	Save payroll documents to file, f/u email to UELG re login info, email to cl re time clock	0.33	\$ 200.00	\$ 66.00
7/14/2021	Maya Cheaitani (2nd Year Attorney)	Email DGS/NG abt case/failure produce PF/review docs	0.50	\$ 250.00	\$ 125.00
7/21/2021	Nora Greer (15 year Paralegal)	Email to DGS/MC re failure to produce LWDA, email to UELG re same, review file, begin to prepare letter	0.25	\$ 200.00	\$ 50.00
7/22/2021	Nora Greer (15 year Paralegal)	Email CL re status of USB, Lvm for CL, TC with CT re case	0.25	\$ 200.00	\$ 50.00
7/22/2021	Nora Greer (15 year Paralegal)	Lt to LWDA re failure to produce PF	0.25	\$ 200.00	\$ 50.00
7/22/2021	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
7/22/2021	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
7/22/2021	Caroline Tahmassian (9th Year Attorney)	review case status; email Maya re intake; call with MC re case status, FU with staff re documents; email client	1.00	\$ 450.00	\$ 450.00
7/23/2021	Nora Greer (15 year Paralegal)	Email dgs lt re failure to produce pf, review client contact info, update fv	0.25	\$ 200.00	\$ 50.00
7/23/2021	Maya Cheaitani (2nd Year Attorney)	Review CT emails about previous intake/organize info for further intake/review case history	2.00	\$ 250.00	\$ 500.00
7/23/2021	Maya Cheaitani (2nd Year Attorney)	Review client emails	0.25	\$ 250.00	\$ 62.50
8/1/2021	David Spivak (26th Year Attorney)	Review and revise LWDA notice re failure to produce personnel file	0.33	\$ 700.00	\$ 231.00
8/2/2021	Nora Greer (15 year Paralegal)	Email to CL re status of usb drive	0.08	\$ 200.00	\$ 16.00
8/3/2021	Lizzett Cortez (9th Year Paralegal)	mtg w/ NG re lt PAGA re failure to provide personnel file	0.25	\$ 250.00	\$ 62.50
8/3/2021	Nora Greer (15 year Paralegal)	Confer with LC and CT re DGS redlines	0.42	\$ 200.00	\$ 84.00
8/4/2021	Nora Greer (15 year Paralegal)	Review LWDA's re penalties, email to CT re same for PAGA lt for failure to produce PF	0.50	\$ 200.00	\$ 100.00
8/9/2021	Nora Greer (15 year Paralegal)	Review LWDA letter, finalize, send to DGS for signature, file same, circulate to client, email to vendor for cert mail, update calendar	0.75	\$ 200.00	\$ 150.00
8/18/2021	Maya Cheaitani (2nd Year Attorney)	draft class complaint	3.00	\$ 250.00	\$ 750.00
8/19/2021	David Spivak (26th Year Attorney)	Review and revise class action complaint	0.42	\$ 700.00	\$ 294.00
8/19/2021	Maya Cheaitani (2nd Year Attorney)	revise complaint/upload versions to gdrive/ email NG	0.50	\$ 250.00	\$ 125.00
8/19/2021	Caroline Tahmassian (9th Year Attorney)	review LWDA letter and complaint class def and emails to MC re class definition	0.17	\$ 450.00	\$ 76.50
8/20/2021	David Spivak (26th Year Attorney)	Emails with staff re compensation system	0.08	\$ 700.00	\$ 56.00
8/26/2021	Nora Greer (15 year Paralegal)	Save Cert Mail Returned to file, run USPS tracking	0.17	\$ 200.00	\$ 34.00
9/1/2021	Nora Greer (15 year Paralegal)	F/U with CT re Lt re PF	0.08	\$ 200.00	\$ 16.00
9/2/2021	Caroline Tahmassian (9th Year Attorney)	review/revise LWDA letter (failure to produce docs)	0.33	\$ 450.00	\$ 148.50
9/9/2021	Nora Greer (15 year Paralegal)	Finalize lt lwda re failure to produce PF, upload same to LWDA, circulate to CL and Opposing Party, send lt to excelsior for processing	0.67	\$ 200.00	\$ 134.00
9/10/2021	Nora Greer (15 year Paralegal)	Save sent cert mail to file	0.08	\$ 200.00	\$ 16.00
9/17/2021	Breck Oyama (13th Year Paralegal)	email NG tasks re LWDA	0.08	\$ 300.00	\$ 24.00
9/20/2021	Nora Greer (15 year Paralegal)	Confer with BO, prepare cover letter re forward LWDA letter to Momentum, Email to Excelsior, Saver Cert Mail Sent scans, update FV tabs, email to client	0.50	\$ 200.00	\$ 100.00
9/20/2021	Maya Cheaitani (2nd Year Attorney)	review emails/revise complaint/email team	0.50	\$ 250.00	\$ 125.00
9/21/2021	Nora Greer (15 year Paralegal)	Send CL Complaint Email for review	0.08	\$ 200.00	\$ 16.00
9/21/2021	David Spivak (26th Year Attorney)	Review and revise complaint under the private attorney general act	0.33	\$ 700.00	\$ 231.00
9/21/2021	Nora Greer (15 year Paralegal)	Prepare civil case cover sheet, summons, finalize complaint, messages with MC, emails with DGS	0.75	\$ 200.00	\$ 150.00
9/21/2021	Maya Cheaitani (2nd Year Attorney)	review emails/msg NG/revise complaint	0.33	\$ 250.00	\$ 82.50
9/22/2021	David Spivak (26th Year Attorney)	email to client re class actions and incentive awards	0.25	\$ 700.00	\$ 175.00
9/23/2021	Nora Greer (15 year Paralegal)	Review emails, email CL re witnesses	0.08	\$ 200.00	\$ 16.00
9/23/2021	David Spivak (26th Year Attorney)	Email with about witnesses and. Documentary evidence	0.08	\$ 700.00	\$ 56.00

TSLF TIME EXHIBIT RUIZ

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Lodestar
9/23/2021	Nora Greer (15 year Paralegal)	Save filed docs to file, ocr, send out for personal service, update FV with Case information, Update calendars with dates and deadlines, circulate to CL and CC	0.67	\$ 200.00	\$ 134.00
9/24/2021	Nora Greer (15 year Paralegal)	Review emails	0.17	\$ 200.00	\$ 34.00
9/28/2021	Nora Greer (15 year Paralegal)	Save expenses to file	0.08	\$ 200.00	\$ 16.00
9/28/2021	Maya Cheaitani (2nd Year Attorney)	review emails to client	0.33	\$ 250.00	\$ 82.50
9/28/2021	Nora Greer (15 year Paralegal)	Prepare Proof of Service, File Proof of Service of Summons, email same to Court, update calendar with deadlines	0.25	\$ 200.00	\$ 50.00
9/30/2021	Nora Greer (15 year Paralegal)	Save Cert Mail Returned to file, run USPS tracking	0.17	\$ 200.00	\$ 34.00
10/5/2021	David Spivak (26th Year Attorney)	Prepare initial discovery requests	1.83	\$ 700.00	\$ 1,281.00
10/13/2021	Nora Greer (15 year Paralegal)	Review emails, email to CL to contact TSLF, enter OC contact info in FV, TCSs to CL's ICE, messages with CT	0.42	\$ 200.00	\$ 84.00
10/13/2021	Caroline Tahmassian (9th Year Attorney)	review OC letter; call with LC re FAB PAGA only emails; email dgs re arb agreement; emails to OC to schedule a call; email NG to set up call with client	0.67	\$ 450.00	\$ 301.50
10/13/2021	David Spivak (26th Year Attorney)	Email client concerning private attorney general act in arbitration agreement	0.33	\$ 700.00	\$ 231.00
10/13/2021	Lizzett Cortez (9th Year Paralegal)	Call w/ CT re filvine emails. Fwd emails to NG and CT	0.17	\$ 250.00	\$ 42.50
10/13/2021	Maya Cheaitani (2nd Year Attorney)	review emails	0.25	\$ 250.00	\$ 62.50
10/14/2021	Caroline Tahmassian (9th Year Attorney)	call/email with client; call with OC; emails with dgs re 1AC	0.67	\$ 450.00	\$ 301.50
10/14/2021	Maya Cheaitani (2nd Year Attorney)	review emails/review case/start draft 1ac	1.00	\$ 250.00	\$ 250.00
10/15/2021	Maya Cheaitani (2nd Year Attorney)	draft 1ac/msg CT/email team	2.00	\$ 250.00	\$ 500.00
10/15/2021	Nora Greer (15 year Paralegal)	Review emails	0.08	\$ 200.00	\$ 16.00
10/15/2021	Caroline Tahmassian (9th Year Attorney)	call with dgs re 1AC; emails to OC re 1Ac and mediation; discuss 1AC with MC	0.33	\$ 450.00	\$ 148.50
10/19/2021	Nora Greer (15 year Paralegal)	Emails to DGS and CL re Arb Agreement, TC with CL re same	0.25	\$ 200.00	\$ 50.00
10/20/2021	Nora Greer (15 year Paralegal)	Save mailed docs to file	0.08	\$ 200.00	\$ 16.00
10/21/2021	Nora Greer (15 year Paralegal)	Review emails	0.08	\$ 200.00	\$ 16.00
10/21/2021	Maya Cheaitani (2nd Year Attorney)	review emails w/OC - review case	0.67	\$ 250.00	\$ 167.50
10/21/2021	David Spivak (26th Year Attorney)	review arb agreement	0.25	\$ 700.00	\$ 175.00
10/22/2021	Maya Cheaitani (2nd Year Attorney)	finalize 1ac/proofread/email team	1.75	\$ 250.00	\$ 437.50
10/22/2021	Maya Cheaitani (2nd Year Attorney)	turn 1ac into paga only/review emails	3.00	\$ 250.00	\$ 750.00
10/26/2021	Nora Greer (15 year Paralegal)	Check docket for Responsive pleading, email bo	0.17	\$ 200.00	\$ 34.00
10/27/2021	Maya Cheaitani (2nd Year Attorney)	draft paga only/review emails/review case	3.00	\$ 250.00	\$ 750.00
10/28/2021	Nora Greer (15 year Paralegal)	Review emails	0.08	\$ 200.00	\$ 16.00
11/1/2021	Maya Cheaitani (2nd Year Attorney)	review OC emails	0.25	\$ 250.00	\$ 62.50
11/4/2021	Maya Cheaitani (2nd Year Attorney)	revise paga complaint/review emails/research client docs	2.00	\$ 250.00	\$ 500.00
11/4/2021	Caroline Tahmassian (9th Year Attorney)	emails OC to reschedule call	0.17	\$ 450.00	\$ 76.50
11/5/2021	Caroline Tahmassian (9th Year Attorney)	review claims and case status and prep for conf. call; call with dgs re claims; conf call with OC; call with client; emails to dgs re cone call ntoes and call with client	1.50	\$ 450.00	\$ 675.00
11/5/2021	David Spivak (26th Year Attorney)	Review file; call with Caroline and Advanced a call with opposing counsel; zoom with opposing counsel; post conference call with Caroline	1.08	\$ 700.00	\$ 756.00
11/8/2021	Nora Greer (15 year Paralegal)	Review emails	0.17	\$ 200.00	\$ 34.00
11/10/2021	Nora Greer (15 year Paralegal)	F/U email to TSLF re 1AC	0.08	\$ 200.00	\$ 16.00
11/15/2021	Nora Greer (15 year Paralegal)	Email to MC re status of complaint	0.08	\$ 200.00	\$ 16.00
11/29/2021	Nora Greer (15 year Paralegal)	Download, OCR, and Circulate CLs Personnel File, review emails, F/U email to CT re 1AC	0.25	\$ 200.00	\$ 50.00
11/29/2021	David Spivak (26th Year Attorney)	review employee file for client; email notes to staff	0.50	\$ 700.00	\$ 350.00
12/3/2021	Nora Greer (15 year Paralegal)	F/U email to Team re Paga Complaint	0.08	\$ 200.00	\$ 16.00
12/10/2021	Nora Greer (15 year Paralegal)	Review emails, messages to MC	0.17	\$ 200.00	\$ 34.00
12/10/2021	Caroline Tahmassian (9th Year Attorney)	review notes; revise 1AC; email dgs/MC re claims	0.50	\$ 450.00	\$ 225.00
12/13/2021	Nora Greer (15 year Paralegal)	Prepare POS, file, serve and circulate 1AC, add oc to fv	0.58	\$ 200.00	\$ 116.00
12/14/2021	Emily Ly (1st Year Paralegal)	Met with NG.	0.25	\$ 150.00	\$ 37.50
12/14/2021	Nora Greer (15 year Paralegal)	DL filed 1AC, upload to LWDA, update calendar with responsive pleading deadline	0.25	\$ 200.00	\$ 50.00
12/14/2021	Nora Greer (15 year Paralegal)	F/U email with CT re Mediation, meeting with EL re written discovery, review file and FABs	0.75	\$ 200.00	\$ 150.00
12/28/2021	Nora Greer (15 year Paralegal)	Email to CL re witnesses	0.08	\$ 200.00	\$ 16.00
12/28/2021	Daniela Linares (1st Year Intake Assistant)	Drafting interview questions.	0.58	\$ 150.00	\$ 87.00
12/28/2021	Nora Greer (15 year Paralegal)	Review emails	0.08	\$ 200.00	\$ 16.00
12/28/2021	Daniela Linares (1st Year Intake Assistant)	Linkedin message draft. Found list of potential witnesses.	1.17	\$ 150.00	\$ 175.50

TSLF TIME EXHIBIT RUIZ

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Lodestar
12/29/2021	Nora Greer (15 year Paralegal)	Review emails, meeting with DL re Ev Prez letter	0.42	\$ 200.00	\$ 84.00
12/29/2021	Daniela Linares (1st Year Intake Assistant)	Payroll evid pres. Email to team.	1.25	\$ 150.00	\$ 187.50
12/29/2021	Daniela Linares (1st Year Intake Assistant)	Payroll evid pres. Drafting	0.58	\$ 150.00	\$ 87.00
12/30/2021	Daniela Linares (1st Year Intake Assistant)	Email	0.08	\$ 150.00	\$ 12.00
12/30/2021	Daniela Linares (1st Year Intake Assistant)	Cell phone evid prez	0.17	\$ 150.00	\$ 25.50
12/30/2021	Nora Greer (15 year Paralegal)	Review ev prez lt, print and mail same, circulate to OC and CL	0.17	\$ 200.00	\$ 34.00
1/7/2022	Nora Greer (15 year Paralegal)	Review emails	0.08	\$ 200.00	\$ 16.00
1/20/2022	Caroline Tahmassian (9th Year Attorney)	check case status and email staff re discovery	0.25	\$ 450.00	\$ 112.50
1/20/2022	Breck Oyama (13th Year Paralegal)	mtg w/ NG	0.17	\$ 300.00	\$ 51.00
1/20/2022	Nora Greer (15 year Paralegal)	Confer with BO, email DGS re 1AC	0.25	\$ 200.00	\$ 50.00
1/26/2022	Nora Greer (15 year Paralegal)	Prepare letter re Notice of Ack Receipt via email and mail, update calendar	0.83	\$ 200.00	\$ 166.00
2/9/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
2/14/2022	Nora Greer (15 year Paralegal)	Prepare Notice of Change of address, email to ct for signature	0.25	\$ 200.00	\$ 50.00
2/14/2022	Nora Greer (15 year Paralegal)	Prepare POS, file, serve, circulate Notice of Change of Address, F/U email to OC re Notice of Acknowledgment	0.33	\$ 200.00	\$ 66.00
2/15/2022	Nora Greer (15 year Paralegal)	Review emails, save filed docs to file	0.17	\$ 200.00	\$ 34.00
2/17/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
2/23/2022	Nora Greer (15 year Paralegal)	Save filed docs to file	0.08	\$ 200.00	\$ 16.00
2/25/2022	Breck Oyama (13th Year Paralegal)	review emails	0.25	\$ 300.00	\$ 75.00
2/28/2022	Breck Oyama (13th Year Paralegal)	review emails re N&A	0.08	\$ 300.00	\$ 24.00
3/1/2022	Nora Greer (15 year Paralegal)	Review emails, prepare, file, serve and circulate Proof of Service of Summons re 1AC	0.58	\$ 200.00	\$ 116.00
3/2/2022	Nora Greer (15 year Paralegal)	Review filed docs, save to file, prepare, file, serve, circulate Amended Proof of Service of Summons, update calendar	0.58	\$ 200.00	\$ 116.00
3/2/2022	Breck Oyama (13th Year Paralegal)	review emails/filing	0.08	\$ 300.00	\$ 24.00
3/2/2022	Breck Oyama (13th Year Paralegal)	review filing, update litigation chain, msgs w/ NG	0.25	\$ 300.00	\$ 75.00
3/2/2022	Nora Greer (15 year Paralegal)	Save filed docs to file	0.08	\$ 200.00	\$ 16.00
3/10/2022	Nora Greer (15 year Paralegal)	Review emails, email to DGS re Discovery	0.17	\$ 200.00	\$ 34.00
3/23/2022	David Spivak (26th Year Attorney)	Review answer to the complaint and note defense of dispute resolution agreement for arbitration	0.08	\$ 700.00	\$ 56.00
4/22/2022	Breck Oyama (13th Year Paralegal)	check status	0.08	\$ 300.00	\$ 24.00
4/26/2022	Breck Oyama (13th Year Paralegal)	update teams	0.08	\$ 300.00	\$ 24.00
5/9/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
5/12/2022	Nora Greer (15 year Paralegal)	Finalize Discovery Set 1 save and circulate, review calendar, send depo notices, finalize BW Stip and PO and send to OC	1.75	\$ 200.00	\$ 350.00
5/13/2022	Nora Greer (15 year Paralegal)	Reserve RFP	0.17	\$ 200.00	\$ 34.00
5/16/2022	Nora Greer (15 year Paralegal)	Save expenses to file	0.08	\$ 200.00	\$ 16.00
6/6/2022	Breck Oyama (13th Year Paralegal)	review emails/FV, update deadline chain	0.17	\$ 300.00	\$ 51.00
6/6/2022	Nora Greer (15 year Paralegal)	Review emails, f/u email to OC re BW and PO	0.17	\$ 200.00	\$ 34.00
6/9/2022	Nora Greer (15 year Paralegal)	Save and circulate Notice of Rescheduled hearing, update calendar	0.25	\$ 200.00	\$ 50.00
6/10/2022	Breck Oyama (13th Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
6/13/2022	David Spivak (26th Year Attorney)	review and revise belaire stip	0.17	\$ 700.00	\$ 119.00
6/13/2022	Breck Oyama (13th Year Paralegal)	review emails, update deadline chain	0.08	\$ 300.00	\$ 24.00
6/13/2022	Nora Greer (15 year Paralegal)	Review emails, revise BW West, circulate to OC, update calendar with Disc. deadlines	0.42	\$ 200.00	\$ 84.00
6/17/2022	Nora Greer (15 year Paralegal)	F/U Email re PO and BW	0.08	\$ 200.00	\$ 16.00
6/23/2022	Nora Greer (15 year Paralegal)	F/U email to OC re Depo Dates and BW and PO drafts	0.08	\$ 200.00	\$ 16.00
7/6/2022	Caroline Tahmassian (9th Year Attorney)	review case status; review arb agreement; email OC	0.50	\$ 450.00	\$ 225.00
7/6/2022	Nora Greer (15 year Paralegal)	Review emails	0.17	\$ 200.00	\$ 34.00
7/7/2022	Nora Greer (15 year Paralegal)	Review calendar, email to OC re M/C	0.17	\$ 200.00	\$ 34.00
7/11/2022	Nora Greer (15 year Paralegal)	F/U email to OC re Meet/Confer, schedule same, email re same	0.17	\$ 200.00	\$ 34.00
7/13/2022	Daniela Linares (1st Year Intake Assistant)	search for pcms, call w NG re task	0.75	\$ 150.00	\$ 112.50
7/13/2022	Nora Greer (15 year Paralegal)	Email OC re M/C re CMC	0.08	\$ 200.00	\$ 16.00
7/13/2022	Nora Greer (15 year Paralegal)	Messages with CT and DL re case, Call with DL re witnesses	0.25	\$ 200.00	\$ 50.00
7/13/2022	Nora Greer (15 year Paralegal)	TC with Client re expenses, witnesses, and arb argeement	0.58	\$ 200.00	\$ 116.00
7/14/2022	Nora Greer (15 year Paralegal)	Review emails, update calendar	0.17	\$ 200.00	\$ 34.00

TSLF TIME EXHIBIT RUIZ

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Lodestar
7/18/2022	Nora Greer (15 year Paralegal)	Review emails, save Defendant's Responses to Discovery, Set 1, Circulate same, review same, update calendar with mx compel date	0.33	\$ 200.00	\$ 66.00
7/18/2022	Nora Greer (15 year Paralegal)	TC, Email, to Client re Witnesses and other questions	0.25	\$ 200.00	\$ 50.00
7/18/2022	Nora Greer (15 year Paralegal)	Review emails, update calendar	0.25	\$ 200.00	\$ 50.00
7/18/2022	Nora Greer (15 year Paralegal)	Messages with CT re Meet/Confer	0.17	\$ 200.00	\$ 34.00
7/18/2022	Nora Greer (15 year Paralegal)	TC with CT	0.17	\$ 200.00	\$ 34.00
7/18/2022	Nora Greer (15 year Paralegal)	Save and circulate D's Discovery Responses, Set 1, Calendar Mx Compel Deadline, Review Discovery	0.33	\$ 200.00	\$ 66.00
7/21/2022	Daniela Linares (1st Year Intake Assistant)	ee search, ee email	0.42	\$ 150.00	\$ 63.00
7/22/2022	Daniela Linares (1st Year Intake Assistant)	email	0.08	\$ 150.00	\$ 12.00
7/25/2022	Nora Greer (15 year Paralegal)	Messages with Ct re M/C	0.08	\$ 200.00	\$ 16.00
7/26/2022	Caroline Tahmassian (9th Year Attorney)	message dgs re mediators; email OC re mediators; prep for call with OC; call with OC re discovery and mediation	0.75	\$ 450.00	\$ 337.50
7/28/2022	Daniela Linares (1st Year Intake Assistant)	call to pcm, lvm	0.08	\$ 150.00	\$ 12.00
7/28/2022	Daniela Linares (1st Year Intake Assistant)	added pcm info to fv	0.08	\$ 150.00	\$ 12.00
7/29/2022	Nora Greer (15 year Paralegal)	Review emails, update calendar, email to oc re depo dates	0.25	\$ 200.00	\$ 50.00
8/1/2022	Nora Greer (15 year Paralegal)	Prepare Jury Fees, CMC, and Remote Appearance, send to CT for Review	0.75	\$ 200.00	\$ 150.00
8/1/2022	Nora Greer (15 year Paralegal)	Review emails	0.08	\$ 200.00	\$ 16.00
8/1/2022	Breck Oyama (13th Year Paralegal)	review emails/docs/calendar, email team	0.17	\$ 300.00	\$ 51.00
8/2/2022	Caroline Tahmassian (9th Year Attorney)	review CMC stm, jury fees, etc. and email NG	0.17	\$ 450.00	\$ 76.50
8/2/2022	Daniela Linares (1st Year Intake Assistant)	call form pcm, calendar entry	0.08	\$ 150.00	\$ 12.00
8/2/2022	Nora Greer (15 year Paralegal)	Confer with BO, update calendar, revise CMC and Jury Fees send back to CT	0.42	\$ 200.00	\$ 84.00
8/3/2022	Nora Greer (15 year Paralegal)	Prepare proof of service, file, serve, circulate CMC Statement, Notice of Posting Jury Fees, Notice of Remote Appearance	0.50	\$ 200.00	\$ 100.00
8/3/2022	Caroline Tahmassian (9th Year Attorney)	review revised CMC and jury fees	0.00	\$ 450.00	\$ -
8/9/2022	Nora Greer (15 year Paralegal)	Save filed docs to file	0.08	\$ 200.00	\$ 16.00
8/10/2022	Nora Greer (15 year Paralegal)	Enter Expense to file	0.08	\$ 200.00	\$ 16.00
8/15/2022	Nora Greer (15 year Paralegal)	F/U with Client re witnesses	0.08	\$ 200.00	\$ 16.00
8/15/2022	Nora Greer (15 year Paralegal)	F/U to OC re Depos and Mediation	0.08	\$ 200.00	\$ 16.00
8/23/2022	Daniela Linares (1st Year Intake Assistant)	email review	0.08	\$ 150.00	\$ 12.00
8/23/2022	Nora Greer (15 year Paralegal)	F/U email to OC re Depo/Mediation	0.08	\$ 200.00	\$ 16.00
8/23/2022	Nora Greer (15 year Paralegal)	F/U email to Client re witness list	0.08	\$ 200.00	\$ 16.00
8/24/2022	Laura Solorzano (1st Year Intake Assistant)	Called witnesses set up witness calls	0.67	\$ 150.00	\$ 100.50
8/24/2022	Laura Solorzano (1st Year Intake Assistant)	Saved witness list and uploaded all witness to FV	0.50	\$ 150.00	\$ 75.00
8/24/2022	Nora Greer (15 year Paralegal)	Review emails, instructions to Staff re witnesses	0.17	\$ 200.00	\$ 34.00
8/26/2022	Nora Greer (15 year Paralegal)	Email OC, request CMC Statement	0.08	\$ 200.00	\$ 16.00
8/26/2022	Nora Greer (15 year Paralegal)	Review and circulate Def. CMC Statement to Client	0.17	\$ 200.00	\$ 34.00
8/26/2022	Caroline Tahmassian (9th Year Attorney)	prep for CMC hearing; attend hearing	1.00	\$ 450.00	\$ 450.00
8/26/2022	Nora Greer (15 year Paralegal)	Call with CT re CMC, messages with CT re CMC, update appearance info	0.25	\$ 200.00	\$ 50.00
8/26/2022	Nora Greer (15 year Paralegal)	Save CT Hearing notes to file	0.08	\$ 200.00	\$ 16.00
8/29/2022	Nora Greer (15 year Paralegal)	Check docket for MO	0.08	\$ 200.00	\$ 16.00
8/29/2022	Laura Solorzano (1st Year Intake Assistant)	Called witness [REDACTED] was not available for call . will resc for later this week.	0.17	\$ 150.00	\$ 25.50
8/31/2022	Nora Greer (15 year Paralegal)	Save mailed docs to file	0.08	\$ 200.00	\$ 16.00
8/31/2022	Laura Solorzano (1st Year Intake Assistant)	Witness interview [REDACTED]	0.50	\$ 150.00	\$ 75.00
9/1/2022	Nora Greer (15 year Paralegal)	Check docket for MO, TC to Court re MO, update calendar	0.17	\$ 200.00	\$ 34.00
9/1/2022	Nora Greer (15 year Paralegal)	Email to OC re Mx Compel and Mediation	0.08	\$ 200.00	\$ 16.00
9/2/2022	Nora Greer (15 year Paralegal)	Check docket for MO	0.08	\$ 200.00	\$ 16.00
9/2/2022	Nora Greer (15 year Paralegal)	Review emails, update calendar re Mx Compel deadline	0.08	\$ 200.00	\$ 16.00
9/6/2022	Nora Greer (15 year Paralegal)	Check docket for MO	0.08	\$ 200.00	\$ 16.00
9/7/2022	Nora Greer (15 year Paralegal)	Obtain Minute Order, Circulate Minute Order, Verify calendar dates, enter expense	0.25	\$ 200.00	\$ 50.00

TSLF TIME EXHIBIT RUIZ

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Lodestar
9/7/2022	Nora Greer (15 year Paralegal)	Review emails, review 2 mediator's schedules, review calendar, email to OC re Mediation availability	0.25	\$ 200.00	\$ 50.00
9/8/2022	Breck Oyama (13th Year Paralegal)	review emails/calendar, update deadline chains	0.17	\$ 300.00	\$ 51.00
9/12/2022	Nora Greer (15 year Paralegal)	Review emails re mediation, send email to mediator office, update calendar, tc and text to client re mediation, email client FAB re mediation, update Proof of Service, update FV	0.58	\$ 200.00	\$ 116.00
9/13/2022	Nora Greer (15 year Paralegal)	Review email	0.08	\$ 200.00	\$ 16.00
9/14/2022	Nora Greer (15 year Paralegal)	F/U email to Mediator	0.08	\$ 200.00	\$ 16.00
9/16/2022	Nora Greer (15 year Paralegal)	Lvm for Mediator, f/u email to mediator, review calendar, email Defense counsel re mediation	0.25	\$ 200.00	\$ 50.00
9/19/2022	Nora Greer (15 year Paralegal)	F/U email to OC re Mediation	0.08	\$ 200.00	\$ 16.00
9/20/2022	Nora Greer (15 year Paralegal)	Review emails re Mediation, F/U with Mediator, F/U with OC, update calendar, save mediation confirmation and invoice to file, email client re mediation date	0.42	\$ 200.00	\$ 84.00
9/21/2022	Nora Greer (15 year Paralegal)	Review emails re mediation	0.08	\$ 200.00	\$ 16.00
9/21/2022	Nora Greer (15 year Paralegal)	Review additional emails re mediation	0.08	\$ 200.00	\$ 16.00
10/3/2022	Nora Greer (15 year Paralegal)	Messages with CT, TC with CT, Lvm Crossman, Lvm Steinart, Lvm Steinart mobile, review emails, update calendar	0.42	\$ 200.00	\$ 84.00
10/5/2022	Laura Solorzano (1st Year Intake Assistant)	review fv	0.17	\$ 150.00	\$ 25.50
10/25/2022	Breck Oyama (13th Year Paralegal)	update case summary re jury fees	0.08	\$ 300.00	\$ 24.00
11/2/2022	Breck Oyama (13th Year Paralegal)	review emails/FV	0.17	\$ 300.00	\$ 51.00
11/23/2022	Nora Greer (15 year Paralegal)	Email to team re mediation discovery requests	0.08	\$ 200.00	\$ 16.00
12/1/2022	Nora Greer (15 year Paralegal)	Enter expense to file, email controller to pay	0.08	\$ 200.00	\$ 16.00
12/5/2022	Nora Greer (15 year Paralegal)	Messages with CT re Mediation Discovery	0.08	\$ 200.00	\$ 16.00
12/6/2022	Caroline Tahmassian (9th Year Attorney)	review case status; review documents; draft mediation discovery	1.50	\$ 450.00	\$ 675.00
12/7/2022	Caroline Tahmassian (9th Year Attorney)	message with dgs re mediation discovery; finalize discovery and email NG	0.25	\$ 450.00	\$ 112.50
12/28/2022	Laura Solorzano (1st Year Intake Assistant)	review fv, fv emails and tasks, set reminder to begin cold calls with witnesses	0.25	\$ 150.00	\$ 37.50
12/29/2022	Nora Greer (15 year Paralegal)	Review emails, save and review correspondence to file, circulate correspondence to client, update calendar	0.17	\$ 200.00	\$ 34.00
1/3/2023	Nora Greer (15 year Paralegal)	Review emails	0.08	\$ 200.00	\$ 16.00
1/6/2023	Caroline Tahmassian (9th Year Attorney)	review OC mediation letter; call with dgs to discuss	0.50	\$ 450.00	\$ 225.00
1/9/2023	Nora Greer (15 year Paralegal)	Review emails	0.08	\$ 200.00	\$ 16.00
1/9/2023	Nora Greer (15 year Paralegal)	Review emails, update calendar	0.08	\$ 200.00	\$ 16.00
1/10/2023	Nora Greer (15 year Paralegal)	Review emails	0.08	\$ 200.00	\$ 16.00
1/11/2023	Laura Solorzano (1st Year Intake Assistant)	review emails. review fv and witness list, call witnesses based on witness list provided by CL, left witness vm	0.50	\$ 150.00	\$ 75.00
1/11/2023	Caroline Tahmassian (9th Year Attorney)	review mediation discovery requests and OC letter; prep for call; call with OC re mediation; email dgs re call	0.75	\$ 450.00	\$ 337.50
1/11/2023	Nora Greer (15 year Paralegal)	Review emails	0.08	\$ 200.00	\$ 16.00
1/23/2023	Laura Solorzano (1st Year Intake Assistant)	review emails and fv	0.17	\$ 150.00	\$ 25.50
1/24/2023	Nora Greer (15 year Paralegal)	Move costs to folder begin chart for mediation	0.25	\$ 200.00	\$ 50.00
2/2/2023	Laura Solorzano (1st Year Intake Assistant)	review emails	0.08	\$ 150.00	\$ 12.00
2/8/2023	Breck Oyama (13th Year Paralegal)	review emails/FV/calendar, update FV phase	0.08	\$ 300.00	\$ 24.00
2/9/2023	Nora Greer (15 year Paralegal)	Save Def Doc Mediation Discovery to file	0.08	\$ 200.00	\$ 16.00
2/9/2023	Caroline Tahmassian (9th Year Attorney)	email OC re mediation discovery	0.08	\$ 450.00	\$ 36.00
2/14/2023	Nora Greer (15 year Paralegal)	F/U email to OC re Mediation Discovery	0.08	\$ 200.00	\$ 16.00
2/15/2023	Nora Greer (15 year Paralegal)	Review emails	0.08	\$ 200.00	\$ 16.00
2/16/2023	Laura Solorzano (1st Year Intake Assistant)	review fv	0.08	\$ 150.00	\$ 12.00
2/17/2023	Laura Solorzano (1st Year Intake Assistant)	review emails	0.08	\$ 150.00	\$ 12.00
2/17/2023	Nora Greer (15 year Paralegal)	Email Expert re availability	0.08	\$ 200.00	\$ 16.00
2/21/2023	Nora Greer (15 year Paralegal)	Review and respond to expert email	0.08	\$ 200.00	\$ 16.00
2/22/2023	Laura Solorzano (1st Year Intake Assistant)	review emails, and fv	0.08	\$ 150.00	\$ 12.00
2/24/2023	Nora Greer (15 year Paralegal)	F/U with OC re Mediation Discovery Requests	0.08	\$ 200.00	\$ 16.00
2/27/2023	Laura Solorzano (1st Year Intake Assistant)	review emails	0.08	\$ 150.00	\$ 12.00
2/27/2023	Nora Greer (15 year Paralegal)	Review/respond to OC email re mediation data	0.17	\$ 200.00	\$ 34.00
3/1/2023	Nora Greer (15 year Paralegal)	Email to expert, update fees and costs chart	0.25	\$ 200.00	\$ 50.00
3/2/2023	Laura Solorzano (1st Year Intake Assistant)	review emails, review drive, review pf	0.25	\$ 150.00	\$ 37.50

TSLF TIME EXHIBIT RUIZ

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Lodestar
3/3/2023	Caroline Tahmassian (9th Year Attorney)	review docs; messages with NG; email OC re data	0.25	\$ 450.00	\$ 112.50
3/3/2023	Nora Greer (15 year Paralegal)	Review emails, messages with CT, save doc production to file	0.25	\$ 200.00	\$ 50.00
3/7/2023	Nora Greer (15 year Paralegal)	Review emails, messages re data with CT, update calendar	0.17	\$ 200.00	\$ 34.00
3/8/2023	Nora Greer (15 year Paralegal)	Review OC emails, Upload Data, emails to Expert, messages with CT	0.42	\$ 200.00	\$ 84.00
3/8/2023	Laura Solorzano (1st Year Intake Assistant)	review emails re Sri	0.08	\$ 150.00	\$ 12.00
3/9/2023	Nora Greer (15 year Paralegal)	TC with LNS re witnesses	0.08	\$ 200.00	\$ 16.00
3/9/2023	Nora Greer (15 year Paralegal)	Lvm for Client re EDD	0.08	\$ 200.00	\$ 16.00
3/9/2023	Nora Greer (15 year Paralegal)	Review emails	0.17	\$ 200.00	\$ 34.00
3/9/2023	Caroline Tahmassian (9th Year Attorney)	review records; email with OC and staff	0.50	\$ 450.00	\$ 225.00
3/9/2023	Nora Greer (15 year Paralegal)	Texts, Calls, Emails to Client	0.17	\$ 200.00	\$ 34.00
3/10/2023	Nora Greer (15 year Paralegal)	Review emails, schedule call with expert, update calendar	0.17	\$ 200.00	\$ 34.00
3/10/2023	Nora Greer (15 year Paralegal)	Texts with Client re meeting	0.08	\$ 200.00	\$ 16.00
3/10/2023	Nora Greer (15 year Paralegal)	Prepare Mediation Confidentiality Agreement, send for signature, send to Mediator	0.25	\$ 200.00	\$ 50.00
3/10/2023	Caroline Tahmassian (9th Year Attorney)	review records; call with NG; call with Sri	1.00	\$ 450.00	\$ 450.00
3/10/2023	Nora Greer (15 year Paralegal)	Email CC re fees, costs	0.08	\$ 200.00	\$ 16.00
3/10/2023	Laura Solorzano (1st Year Intake Assistant)	search for witnesses, review emails, review text	0.58	\$ 150.00	\$ 87.00
3/10/2023	Nora Greer (15 year Paralegal)	Review OC email, send info to expert	0.08	\$ 200.00	\$ 16.00
3/10/2023	Nora Greer (15 year Paralegal)	Call with CT and Expert	0.75	\$ 200.00	\$ 150.00
3/10/2023	Nora Greer (15 year Paralegal)	TC with Client	0.42	\$ 200.00	\$ 84.00
3/13/2023	Nora Greer (15 year Paralegal)	Review Notes, messages with CT, update Mediation tab on FV	0.50	\$ 200.00	\$ 100.00
3/13/2023	Nora Greer (15 year Paralegal)	Review emails, messages with CT	0.17	\$ 200.00	\$ 34.00
3/13/2023	Laura Solorzano (1st Year Intake Assistant)	call with NG and Client re pre mediation practice	0.17	\$ 150.00	\$ 25.50
3/14/2023	Nora Greer (15 year Paralegal)	TC with LNS re Tasks	0.17	\$ 200.00	\$ 34.00
3/14/2023	Lizzett Cortez (9th Year Paralegal)	call w/ NG re glassdoor	0.25	\$ 250.00	\$ 62.50
3/14/2023	Nora Greer (15 year Paralegal)	Messages with LNS, email EDD	0.17	\$ 200.00	\$ 34.00
3/14/2023	Nora Greer (15 year Paralegal)	TC with LC re Glass Door	0.25	\$ 200.00	\$ 50.00
3/14/2023	Laura Solorzano (1st Year Intake Assistant)	TC with NG re glass door, tc with NG re tasks, TG with ng re EDD, save and combine pdf for glass door review, save and combine job listing, indeed job listing	1.75	\$ 150.00	\$ 262.50
3/15/2023	Caroline Tahmassian (9th Year Attorney)	review docs; draft mediation brief; call with NG re mediation; emails with Sri	1.50	\$ 450.00	\$ 675.00
3/15/2023	Laura Solorzano (1st Year Intake Assistant)	review emails	0.08	\$ 150.00	\$ 12.00
3/15/2023	Nora Greer (15 year Paralegal)	TC with CT re Mediation	0.33	\$ 200.00	\$ 66.00
3/15/2023	Laura Solorzano (1st Year Intake Assistant)	review emails, tc with ng re employee handbook, review employee handbook.	0.42	\$ 150.00	\$ 63.00
3/15/2023	Nora Greer (15 year Paralegal)	TC with LNS, Review Handbooks/Policies messages with CT re Same	0.75	\$ 200.00	\$ 150.00
3/15/2023	Nora Greer (15 year Paralegal)	Review emails re analysis	0.25	\$ 200.00	\$ 50.00
3/16/2023	Nora Greer (15 year Paralegal)	TC with CT	0.08	\$ 200.00	\$ 16.00
3/16/2023	Laura Solorzano (1st Year Intake Assistant)	TC with NG re EDD and Witnesses	0.08	\$ 150.00	\$ 12.00
3/16/2023	Laura Solorzano (1st Year Intake Assistant)	review emails, search for witnesses, email to team re witnesses	0.67	\$ 150.00	\$ 100.50
3/16/2023	Nora Greer (15 year Paralegal)	Read/Respond email, schedule meeting, messages with CT	0.17	\$ 200.00	\$ 34.00
3/16/2023	Caroline Tahmassian (9th Year Attorney)	call with OC; call with NG	0.75	\$ 450.00	\$ 337.50
3/16/2023	Nora Greer (15 year Paralegal)	Review emails, save analysis to file	0.17	\$ 200.00	\$ 34.00
3/16/2023	Nora Greer (15 year Paralegal)	TC with LNS re Witnesses/Edd	0.08	\$ 200.00	\$ 16.00
3/16/2023	Nora Greer (15 year Paralegal)	TC with CT/OC re Mediation, save notes to file, email OC	0.50	\$ 200.00	\$ 100.00
3/16/2023	Laura Solorzano (1st Year Intake Assistant)	review emails, call with EDD re EDD records	0.25	\$ 150.00	\$ 37.50
3/17/2023	Nora Greer (15 year Paralegal)	Review emails, combine def docs	0.17	\$ 200.00	\$ 34.00
3/20/2023	Nora Greer (15 year Paralegal)	TC/Email/Text to client	0.08	\$ 200.00	\$ 16.00
3/20/2023	Nora Greer (15 year Paralegal)	Review emails, messages with CT, combine docs again	0.17	\$ 200.00	\$ 34.00
3/20/2023	Laura Solorzano (1st Year Intake Assistant)	call with NG/ combine glass door reviews, indeed search, search for witnesses	1.08	\$ 150.00	\$ 162.00

TSLF TIME EXHIBIT RUIZ

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Lodestar
3/20/2023	Caroline Tahmassian (9th Year Attorney)	draft mediation brief; review docs	7.00	\$ 450.00	\$ 3,150.00
3/21/2023	Nora Greer (15 year Paralegal)	Review emails	0.17	\$ 200.00	\$ 34.00
3/21/2023	Nora Greer (15 year Paralegal)	Email, calls, texts to client	0.17	\$ 200.00	\$ 34.00
3/21/2023	Caroline Tahmassian (9th Year Attorney)	emails with Expert; review docs; email with OC	0.50	\$ 450.00	\$ 225.00
3/21/2023	Nora Greer (15 year Paralegal)	Paga Search, save results to file	0.17	\$ 200.00	\$ 34.00
3/21/2023	Nora Greer (15 year Paralegal)	Update calendar with zoom info	0.08	\$ 200.00	\$ 16.00
3/21/2023	Nora Greer (15 year Paralegal)	Pull Brief Exhibits, messages with team	0.92	\$ 200.00	\$ 184.00
3/21/2023	Laura Solorzano (1st Year Intake Assistant)	tc with NG re tasks, search for employees, been verified on CEO, saved docs	0.33	\$ 150.00	\$ 49.50
3/22/2023	David Spivak (26th Year Attorney)	Review mediation, statement; instructions to staff	0.50	\$ 700.00	\$ 350.00
3/22/2023	Nora Greer (15 year Paralegal)	Listen to VM, TC REDACTED	0.17	\$ 200.00	\$ 34.00
3/22/2023	Nora Greer (15 year Paralegal)	TC REDACTED	0.25	\$ 200.00	\$ 50.00
3/22/2023	Caroline Tahmassian (9th Year Attorney)	call with NG and dgs re client; revise mediation brief; review docs	2.00	\$ 450.00	\$ 900.00
3/22/2023	Nora Greer (15 year Paralegal)	Team Messages re brief, finalize, bookmark, circulate, review emails	0.58	\$ 200.00	\$ 116.00
3/22/2023	Nora Greer (15 year Paralegal)	Email Mediation Brief to client	0.08	\$ 200.00	\$ 16.00
3/22/2023	Nora Greer (15 year Paralegal)	Review website, email client at facility, update email to team	0.25	\$ 200.00	\$ 50.00
3/22/2023	Nora Greer (15 year Paralegal)	Email to team re client's status, research online, TC with CT and DGS, texts to CL's mom	0.25	\$ 200.00	\$ 50.00
3/23/2023	Nora Greer (15 year Paralegal)	Circulate damages	0.08	\$ 200.00	\$ 16.00
3/23/2023	Nora Greer (15 year Paralegal)	Call with CT and Expert	0.25	\$ 200.00	\$ 50.00
3/23/2023	Nora Greer (15 year Paralegal)	TC with Client	0.17	\$ 200.00	\$ 34.00
3/23/2023	Laura Solorzano (1st Year Intake Assistant)	review emails	0.08	\$ 150.00	\$ 12.00
3/23/2023	Caroline Tahmassian (9th Year Attorney)	call with Sri; draft damages	1.50	\$ 450.00	\$ 675.00
3/23/2023	Nora Greer (15 year Paralegal)	Review emails, save MOU and Analysis to file	0.17	\$ 200.00	\$ 34.00
3/23/2023	Nora Greer (15 year Paralegal)	Email to CC re fees/costs	0.08	\$ 200.00	\$ 16.00
3/23/2023	Nora Greer (15 year Paralegal)	Team messages	0.08	\$ 200.00	\$ 16.00
3/24/2023	Caroline Tahmassian (9th Year Attorney)	prepare and attend mediation	4.50	\$ 450.00	\$ 2,025.00
3/24/2023	Laura Solorzano (1st Year Intake Assistant)	Review emails, review fv, mediation	3.00	\$ 150.00	\$ 450.00
3/24/2023	Laura Solorzano (1st Year Intake Assistant)	review emails	0.08	\$ 150.00	\$ 12.00
3/24/2023	Nora Greer (15 year Paralegal)	Review emails, review messages, start text thread	0.25	\$ 200.00	\$ 50.00
3/24/2023	Nora Greer (15 year Paralegal)	Attend Mediation, Mediation Tasks, Lt to Client to sign MOU	4.75	\$ 200.00	\$ 950.00
3/24/2023	Breck Oyama (13th Year Paralegal)	review emails/FV	0.17	\$ 300.00	\$ 51.00
3/24/2023	Emily Ly (1st Year Paralegal)	Call with NG and mailed MOU to client.	0.58	\$ 150.00	\$ 87.00
3/24/2023	David Spivak (26th Year Attorney)	prepare for mediation and mediation	4.00	\$ 700.00	\$ 2,800.00
3/24/2023	Daniela Linares (1st Year Intake Assistant)	email review	0.08	\$ 150.00	\$ 12.00
3/26/2023	David Spivak (26th Year Attorney)	prepare deposition exhibit instructions to staff; review file	3.50	\$ 700.00	\$ 2,450.00
3/27/2023	Nora Greer (15 year Paralegal)	Messages with CT re MOU	0.08	\$ 200.00	\$ 16.00
3/27/2023	Nora Greer (15 year Paralegal)	Enter expense to file	0.08	\$ 200.00	\$ 16.00
3/27/2023	Nora Greer (15 year Paralegal)	TC with REDACTED	0.08	\$ 200.00	\$ 16.00
3/27/2023	Nora Greer (15 year Paralegal)	Save D signed MOU to file, email to OC re same	0.08	\$ 200.00	\$ 16.00
3/27/2023	Nora Greer (15 year Paralegal)	TC with Client	0.08	\$ 200.00	\$ 16.00
3/29/2023	Nora Greer (15 year Paralegal)	Review website, text to client mom	0.08	\$ 200.00	\$ 16.00
3/30/2023	Nora Greer (15 year Paralegal)	TC to REDACTED	0.08	\$ 200.00	\$ 16.00
3/30/2023	Nora Greer (15 year Paralegal)	TC REDACTED	0.17	\$ 200.00	\$ 34.00
3/30/2023	Nora Greer (15 year Paralegal)	Review website, email client	0.17	\$ 200.00	\$ 34.00
3/30/2023	Nora Greer (15 year Paralegal)	Email OC re status of MOU	0.08	\$ 200.00	\$ 16.00
3/30/2023	Nora Greer (15 year Paralegal)	Messages with Team	0.08	\$ 200.00	\$ 16.00
3/31/2023	Nora Greer (15 year Paralegal)	Review texts, messages to team, TCs to Appearing Attorneys, Confer with BO	0.50	\$ 200.00	\$ 100.00
3/31/2023	Nora Greer (15 year Paralegal)	Send PAGA Settlement Bids, create chart, update fv	0.25	\$ 200.00	\$ 50.00
4/3/2023	Nora Greer (15 year Paralegal)	Save two tpa bids to file, update chart	0.17	\$ 200.00	\$ 34.00
4/4/2023	Nora Greer (15 year Paralegal)	Review/Save TPA bid	0.08	\$ 200.00	\$ 16.00
4/5/2023	Breck Oyama (13th Year Paralegal)	review emails/FV	0.08	\$ 300.00	\$ 24.00
4/7/2023	Nora Greer (15 year Paralegal)	Review/Respond Team emails re stip to vacate, review Dept. Procedures	0.17	\$ 200.00	\$ 34.00
4/7/2023	Nora Greer (15 year Paralegal)	Email client re mou	0.08	\$ 200.00	\$ 16.00
4/10/2023	Nora Greer (15 year Paralegal)	Team messages, check usps tracking, text REDACTED	0.17	\$ 200.00	\$ 34.00

TSLF TIME EXHIBIT RUIZ

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Lodestar
4/10/2023	Caroline Tahmassian (9th Year Attorney)	draft stip vacate	0.75	\$ 450.00	\$ 337.50
4/11/2023	Nora Greer (15 year Paralegal)	Text/TC with REDACTED	0.17	\$ 200.00	\$ 34.00
4/11/2023	Nora Greer (15 year Paralegal)	Multiple calls, team chats re Plaintiff's signature	0.60	\$ 200.00	\$ 120.00
4/12/2023	Nora Greer (15 year Paralegal)	Circulate fully executed MOU and Stip to Vacate Trial to Client	0.17	\$ 200.00	\$ 34.00
4/12/2023	Nora Greer (15 year Paralegal)	Email to Client	0.08	\$ 200.00	\$ 16.00
4/12/2023	Nora Greer (15 year Paralegal)	Texts with notary	0.08	\$ 200.00	\$ 16.00
4/12/2023	Nora Greer (15 year Paralegal)	TC with LC re notary	0.08	\$ 200.00	\$ 16.00
4/12/2023	Nora Greer (15 year Paralegal)	Update calendar	0.08	\$ 200.00	\$ 16.00
4/12/2023	Laura Solorzano (1st Year Intake Assistant)	review emails	0.08	\$ 150.00	\$ 12.00
4/12/2023	Nora Greer (15 year Paralegal)	Review team emails	0.08	\$ 200.00	\$ 16.00
4/12/2023	Laura Solorzano (1st Year Intake Assistant)	review emails	0.08	\$ 150.00	\$ 12.00
4/13/2023	Nora Greer (15 year Paralegal)	Email OC TPA bids	0.08	\$ 200.00	\$ 16.00
4/13/2023	Nora Greer (15 year Paralegal)	Email client paga time line email	0.08	\$ 200.00	\$ 16.00
4/13/2023	Nora Greer (15 year Paralegal)	Texts and email to Notary, send invoice to DGS, enter expense to file, email OC Stip to Vacate and fully executed MOU, update FV	0.67	\$ 200.00	\$ 134.00
4/13/2023	Laura Solorzano (1st Year Intake Assistant)	review emails	0.08	\$ 150.00	\$ 12.00
4/14/2023	David Spivak (26th Year Attorney)	prepare settlement agreement, approval order, judgment and PAGA notice to go with checks	2.50	\$ 700.00	\$ 1,750.00
4/17/2023	Nora Greer (15 year Paralegal)	Review emails, save mx paga approval draft to file	0.17	\$ 200.00	\$ 34.00
4/18/2023	Nora Greer (15 year Paralegal)	Emails to OC re discovery extension, review emails, review docket, circulate Notice of Hearing, update calendar, enter expense	0.42	\$ 200.00	\$ 84.00
4/18/2023	Nora Greer (15 year Paralegal)	Circulate Notice of Hearing to Client	0.08	\$ 200.00	\$ 16.00
4/19/2023	Laura Solorzano (1st Year Intake Assistant)	review emails and fv	0.08	\$ 150.00	\$ 12.00
4/19/2023	Nora Greer (15 year Paralegal)	Save Return to sender docs to file, email team	0.08	\$ 200.00	\$ 16.00
4/28/2023	Nora Greer (15 year Paralegal)	Review Website REDACTED	0.08	\$ 200.00	\$ 16.00
5/9/2023	Nora Greer (15 year Paralegal)	File, serve, circulate Notice of Entry, review emails	0.25	\$ 200.00	\$ 50.00
5/9/2023	Nora Greer (15 year Paralegal)	Review emails, download filed order, prepare notice of entry of order	0.33	\$ 200.00	\$ 66.00
5/9/2023	Caroline Tahmassian (9th Year Attorney)	review/revise draft settlement and email OC	1.25	\$ 450.00	\$ 562.50
5/9/2023	Nora Greer (15 year Paralegal)	Save filed docs to file	0.08	\$ 200.00	\$ 16.00
5/10/2023	Nora Greer (15 year Paralegal)	Enter expenses to file	0.17	\$ 200.00	\$ 34.00
5/15/2023	Nora Greer (15 year Paralegal)	Review emails	0.17	\$ 200.00	\$ 34.00
5/16/2023	Nora Greer (15 year Paralegal)	Review/Respond emails, check website REDACTED	0.25	\$ 200.00	\$ 50.00
5/16/2023	Caroline Tahmassian (9th Year Attorney)	email OC; email NG	0.17	\$ 450.00	\$ 76.50
5/17/2023	Nora Greer (15 year Paralegal)	Check website REDACTED	0.08	\$ 200.00	\$ 16.00
5/19/2023	Nora Greer (15 year Paralegal)	TC and Texts REDACTED	0.17	\$ 200.00	\$ 34.00
5/22/2023	Nora Greer (15 year Paralegal)	Update calendar re call with OC	0.08	\$ 200.00	\$ 16.00
5/22/2023	Nora Greer (15 year Paralegal)	Review emails, save settlement agreement drafts to file	0.17	\$ 200.00	\$ 34.00
5/23/2023	Caroline Tahmassian (9th Year Attorney)	Call with OC	0.17	\$ 450.00	\$ 76.50
5/30/2023	Nora Greer (15 year Paralegal)	Review emails	0.08	\$ 200.00	\$ 16.00
6/8/2023	Nora Greer (15 year Paralegal)	Call with Client	0.17	\$ 200.00	\$ 34.00
6/8/2023	Nora Greer (15 year Paralegal)	Review emails, save drafts to file	0.17	\$ 200.00	\$ 34.00
6/12/2023	Caroline Tahmassian (9th Year Attorney)	review/revise settlement agreements and email OC	1.33	\$ 450.00	\$ 598.50
6/13/2023	Nora Greer (15 year Paralegal)	Review emails	0.08	\$ 200.00	\$ 16.00
7/3/2023	Stacy Sussman (10+ Year Legal Secretary)	Enter Lexis usage to FV	0.08	\$ 200.00	\$ 16.00
7/6/2023	Nora Greer (15 year Paralegal)	F/U with OC re settlement agreements	0.08	\$ 200.00	\$ 16.00
7/12/2023	Nora Greer (15 year Paralegal)	F/U with OC re Settlement Agreements	0.08	\$ 200.00	\$ 16.00
7/17/2023	Nora Greer (15 year Paralegal)	Review emails	0.08	\$ 200.00	\$ 16.00
7/18/2023	Nora Greer (15 year Paralegal)	Listen to VM, leave VM for client, update fv, email to dgs re advance	0.17	\$ 200.00	\$ 34.00
7/20/2023	Nora Greer (15 year Paralegal)	TC with Client	0.17	\$ 200.00	\$ 34.00
7/20/2023	Nora Greer (15 year Paralegal)	Email to DGS re client request for advance	0.08	\$ 200.00	\$ 16.00
7/24/2023	Nora Greer (15 year Paralegal)	Text to Client	0.08	\$ 200.00	\$ 16.00
7/24/2023	Nora Greer (15 year Paralegal)	Review tabs, redline comparisons, email CT	0.33	\$ 200.00	\$ 66.00
7/24/2023	Nora Greer (15 year Paralegal)	F/U email to team re Settlement Agreement	0.08	\$ 200.00	\$ 16.00
7/24/2023	Nora Greer (15 year Paralegal)	Message to DGS	0.08	\$ 200.00	\$ 16.00
7/26/2023	Nora Greer (15 year Paralegal)	Circulate Settlement Agreements for signatures, text to client	0.25	\$ 200.00	\$ 50.00

TSLF TIME EXHIBIT RUIZ

Time Date	Attorney/Paralegal	Description	Hours (decimal)	Rate	Lodestar
7/26/2023	Caroline Tahmassian (9th Year Attorney)	review settlement agreement and email NG	0.25	\$ 450.00	\$ 112.50
7/27/2023	Nora Greer (15 year Paralegal)	Save signed PAGA settlement agreements to file	0.17	\$ 200.00	\$ 34.00
7/27/2023	Nora Greer (15 year Paralegal)	Review/Respond to Client texts	0.08	\$ 200.00	\$ 16.00
7/27/2023	Nora Greer (15 year Paralegal)	Leave VM for Clerk	0.08	\$ 200.00	\$ 16.00
7/28/2023	Nora Greer (15 year Paralegal)	LVM for client	0.08	\$ 200.00	\$ 16.00
7/28/2023	Caroline Tahmassian (9th Year Attorney)	review settlement doc; draft motion approval	2.50	\$ 450.00	\$ 1,125.00
7/28/2023	Nora Greer (15 year Paralegal)	staff chats	0.08	\$ 200.00	\$ 16.00
7/31/2023	Nora Greer (15 year Paralegal)	TC with Client re Settlement Agreement	0.08	\$ 200.00	\$ 16.00
7/31/2023	Nora Greer (15 year Paralegal)	Begin Cost Exhibit	0.50	\$ 200.00	\$ 100.00
7/31/2023	Caroline Tahmassian (9th Year Attorney)	draft PAGA Mx	2.00	\$ 450.00	\$ 900.00
7/31/2023	Nora Greer (15 year Paralegal)	Text to Client	0.08	\$ 200.00	\$ 16.00
8/1/2023	Nora Greer (15 year Paralegal)	Text to Client	0.08	\$ 200.00	\$ 16.00
8/1/2023	Nora Greer (15 year Paralegal)	Staff chats	0.08	\$ 200.00	\$ 16.00
8/1/2023	Nora Greer (15 year Paralegal)	Review/Respond UELG emails	0.08	\$ 200.00	\$ 16.00
8/1/2023	Nora Greer (15 year Paralegal)	Save and send signed settlement agreements to OC, update calendar	0.17	\$ 200.00	\$ 34.00
8/1/2023	Caroline Tahmassian (9th Year Attorney)	draft PAGA MX	3.00	\$ 450.00	\$ 1,350.00
8/2/2023	Nora Greer (15 year Paralegal)	Pull exhibits for Mx Paga	0.25	\$ 200.00	\$ 50.00
8/2/2023	Nora Greer (15 year Paralegal)	F/U email to OC re settlement agreements	0.08	\$ 200.00	\$ 16.00
8/3/2023	Nora Greer (15 year Paralegal)	Review emails, update calendar	0.08	\$ 200.00	\$ 16.00
8/4/2023	David Spivak (26th Year Attorney)	review and revise motion for approval of private attorney general settlement	0.83	\$ 700.00	\$ 581.00
8/4/2023	Caroline Tahmassian (9th Year Attorney)	review/revise/email OC MX PAGA; email team re motion; message LC re motion	0.50	\$ 450.00	\$ 225.00
8/15/2023	Nora Greer (15 year Paralegal)	Review emails, send fully executed settlement agreements to client	0.17	\$ 200.00	\$ 34.00
8/16/2023	Nora Greer (15 year Paralegal)	Review emails	0.08	\$ 200.00	\$ 16.00
8/17/2023	Nora Greer (15 year Paralegal)	Prepare, File, Serve, Circulate CMC Statement	0.67	\$ 200.00	\$ 134.00
8/17/2023	Nora Greer (15 year Paralegal)	Finalize MX Paga Approval	2.00	\$ 200.00	\$ 400.00
		TOTAL PRE-MULTIPLIER LODESTAR AS OF 08/17/2023	166.12		\$ 53,060.50

EXHIBIT 13

TSLF COST EXHIBIT RUIZ

Date	Expense Type	Expense Description	Expense Amount
3/8/2021	Photocopies	17 pages (Client Questionnaire)	\$ 4.25
4/1/2021	Postage	Postage Mar 2021	\$ 35.20
6/2/2021	Photocopies	LT to EDD (3 pages)	\$ 0.75
6/4/2021	Postage	Postage May 2021	\$ 15.40
7/6/2021	Postage	Postage June 2021	\$ 14.26
8/9/2021	LWDA Filing Fee	Order Number: ORD-000130112	\$ 75.00
8/16/2021	Attorney Service-Filing	Excelsior Copy Service Invoice 79673	\$ 33.11
9/20/2021	Records Requests	Excelsior Copy Service Invoice 8007	\$ 56.51
9/23/2021	Attorney Service-Filing	One Legal 16953101 (Summons and Complaint)	\$ 1,489.69
9/27/2021	Attorney Service-Service	One Legal #16959150 (SOP Summons)	\$ 82.36
9/28/2021	Attorney Service-Filing	One Legal #16981020	\$ 12.35
9/30/2021	Records Requests	Excelsior Digital Invoice #80119	\$ 44.49
10/1/2021	Postage	Postage September 2021	\$ 0.53
12/14/2021	Attorney Service-Filing	One Legal 17368868	\$ 12.35
1/3/2022	Postage	Postage December 2021	\$ 7.40
1/26/2022	Photocopies	69 pages (It re notice of acknowledgement and receipt)	\$ 17.25
2/2/2022	Postage	Postage January 2022	\$ 8.28
2/15/2022	Attorney Service-Filing	One Legal 17692314	\$ 12.35
3/2/2022	Attorney Service-Filing	One Legal 17779528	\$ 12.35
3/2/2022	Attorney Service-Filing	One Legal #17786301	\$ 12.35
5/13/2022	Postage	Letter Stream Invoice 6295301	\$ 45.39
8/1/2022	Lexis or Westlaw	Westlaw usage July 2022	\$ 3.68
8/1/2022	Lexis or Westlaw	Westlaw usage July 2022	\$ 3.68
8/9/2022	Attorney Service-Service	One Legal #18671884	\$ 167.29
9/7/2022	Records Requests	San Diego Court: Confirmation Number 2180510	\$ 2.00
10/4/2022	Lexis or Westlaw	Lexis usage Sept 2022	\$ 17.97
11/2/2022	Lexis or Westlaw	Lexis usage Oct 2022	\$ 7.80
12/1/2022	Mediator Fees	Ortman Mediation Invoice No. 2762	\$ 15,000.00
12/2/2022	Lexis or Westlaw	Lexis usage Nov 2022	\$ 6.48
1/3/2023	Lexis or Westlaw	Lexis usage Dec 2022	\$ 7.27
2/2/2023	Lexis or Westlaw	Lexis usage Jan 2023	\$ 7.48
3/1/2023	Lexis or Westlaw	Lexis usage Feb 2023	\$ 6.85
3/27/2023	Expert or Data Analysis	Invoice #2037	\$ 1,900.00
4/3/2023	Lexis or Westlaw	Lexis Usage March 2023	\$ 13.58
4/3/2023	Photocopies	March 2023 Postage	\$ 24.80
4/12/2023	Notary	Notary for MOU	\$ 150.00
4/18/2023	Records Requests	San Diego Court Confirmation Number 2280931	\$ 2.00
5/1/2023	Lexis or Westlaw	Lexis Usage April 2023	\$ 5.10
5/9/2023	Attorney Service-Filing	One Legal #20381850	\$ 14.36
5/9/2023	Attorney Service-Filing	One Legal #20201761	\$ 33.92

TSLF COST EXHIBIT RUIZ

Date	Expense Type	Expense Description	Expense Amount
6/1/2023	Lexis or Westlaw	Lexis Usage May 2023	\$ 4.67
7/3/2023	Lexis or Westlaw	Lexis usage June 2023	\$ 4.57
8/2/2023	Lexis or Westlaw	Lexis Usage July 2023	\$ 4.98
TBD	Attorney Service- Court Filings	Estimated Attorney Service charges for efilng CMC Statement	\$ 14.36
TBD	Attorney Service- Court Filings	Estimated Attorney Service charges for efilng motion for PAGA Approval	\$ 75.10
TBD	Attorney Service- Court Filings	Estimated Attorney Service charges for efilng for PAGA Approval Supplemental Briefing	\$ 14.36
TBD	Attorney Service- Court Filings	Estimated Attorney Service charges for efilng notice of entry of order and judgment	\$ 14.36
TBD	Attorney Service- Court Filings	Estimated Attorney Service charges for efilng final accounting declaration	\$ 14.36
TBD	Attorney Service- Court Filings	Estimated Attorney Service charges for efilng final accounting declaration	\$ 14.36
		TSLF CURRENT COSTS THROUGH 08/17/2023	\$ 19,380.10
		UELG CURRENT COSTS THROUGH 08/17/2023	\$8.50
		TSLF ESTIMATED FUTURE COSTS	\$ 146.90
		TOTAL APPROX COSTS THROUGH FINAL ACCOUNTING	\$ 19,535.50

EXHIBIT 14



CASE ASSUMPTIONS

Class Members	150
Opt Out Rate	N/A
Opt Outs Received	
Total Class Claimants	150
Subtotal Admin Only	\$5,889.35

Flat Fee Total **\$5,000.00**

For 150 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

April 3, 2023

Case: Ruiz v. Pro Custom Solar LLCdba Momentum Solar, PAGA Administration

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

Requesting Attorney: Nora Greer
Firm: The Spivak Law Firm
Contact Number: (818) 582-3073
Email: nora@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 **150** 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	24		\$60.00
NCOA (USPS)	\$35.00	1		\$35.00
Total				\$495.00

* 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	150		\$13.50
Notice and Check Packet	\$1.00	150		\$150.00
Estimated Postage (up to 1 oz.)*	\$0.61	150		\$91.50
Total				\$355.00

* 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	3		\$165.00
Skip Tracing Undeliverables	\$0.75	38		\$28.13
Remail Notice Packets	\$0.65	35		\$22.43
Estimated Postage	\$0.61	35		\$21.05
Programming Undeliverables	\$50.00	1		\$50.00
Total				\$286.60

Database Programming

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Claims Database	\$150.00	1		\$150.00
Case Associate	\$55.00	6		\$330.00
Case Manager	\$85.00	4		\$340.00
Total				\$820.00

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	2		\$270.00
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				\$1,310.00

* 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	29		\$42.75
Case Associate	\$55.00	3		\$165.00
Reconcile Uncashed Checks	\$85.00	6		\$510.00
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>15</u> Total Class Members	\$300.00	1		\$300.00
Total				\$2,622.75

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

Estimate Total: \$5,889.35



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 15

CASE NAME: RUIZ v PRO CUSTOM SOLAR LLC

Date: March 31, 2023

Requesting Paralegal: Nora Greer

Plaintiff or Defense: Plaintiff

Firm Name: The Spivak Law Firm

Telephone: (818) 582-3073

Email: nora@spivaklaw.com

PAGA Disbursement Only

Aggrieved Employees: 150

Postage Total: \$117.20

Grand Total: \$9,040.00

DISCOUNTED FLAT FEE: \$6,000.00

The services and numbers reflected herein are an estimate provided by counsel. If the actual services and number are different, our cost estimate will change accordingly.

The attached Terms and Conditions are included as part of our cost proposal. By accepting our costs proposal for this matter, you are thereby agreeing to the Terms and Conditions.

CASE SETUP

Upon Intake of the Data, CPT will Scrub all Records to a Useable Format to Reduce Duplicates, Anomalies and Increase the Success Rate of Deliverability of the Class Notice. Aggrieved Employees will be Assigned a Unique Mailing ID which will be Used Throughout Administration. CPT will Maintain a Toll-Free Phone Number with IVR Capabilities and Live Call Center Support Representatives During Normal Business Hours (Monday-Friday, 9:00 AM - 5:30 PM, PST). CPT will Setup and Maintain a Static Website.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Case Intake & Review	\$95.00	1	\$95.00
Project Manager: Notice Format	\$95.00	1	\$95.00
Programming: Data Base Setup	\$150.00	1	\$150.00
Live Call Center Support Reps.*	\$3.00	30	\$90.00
Static Website	\$500.00	1	\$500.00
		TOTAL	\$930.00

* Up to 120 days after disbursement

SSN VERIFICATION

Verify SSN for Validity with IRS / IRS Backup Withholdings

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: SSN Selection	\$150.00	1	\$150.00
Department Manager: Analysis & Reporting	\$95.00	3	\$285.00
IRS SSN Verification	\$0.20	150	\$30.00
		TOTAL	\$465.00

DISTRIBUTION SERVICES

CPT will Establish and Manage the Qualified Settlement Fund (QSF) for up to One Year After Disbursement. Upon Approval, CPT will Perform all Necessary Calculations and Disburse Funds. CPT will Mail an 8.5"x11" MICR Check and Notice to Valid Aggrieved Employees. CPT Uses a Payee Positive Pay System to Reconcile Checks Cashed and Conducts Monthly Account Reconciliations for the QSF.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: Calculation Totals	\$150.00	2	\$300.00
Project Supervisor: Review of Distribution	\$150.00	3	\$450.00
Project Manager: Correspondence w/Parties	\$95.00	2	\$190.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Programming: Setup & Printing of Checks	\$150.00	3	\$450.00
National Change of Address Search (NCOA)	\$135.00	1	\$135.00
Print & Mail Notice, Checks & 1099	\$3.00	150	\$450.00
First-Class Postage (up to 1 oz.)*	\$0.60	150	\$90.00
		TOTAL	\$2,515.00

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

POST-DISTRIBUTION & TAX REPORTING

CPT Estimates that 8% of the Checks will be Returned Undeliverable and Skip Traced to Locate a Current Address and Remailed Accordingly. CPT will Process all Requests for Check Re-Issues Continuously. CPT Prepares Annual Tax Reporting on Behalf of the QSF. Throughout the Duration of Administration, CPT will Provide the Parties with Bi-Weekly Status Reports. Upon the Conclusion of the Disbursement, CPT will Issue a Due Process Declaration.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Re-Issue Checks as Required	\$5.00	2	\$10.00
Project Supervisor: Account Reconciliation	\$150.00	6	\$900.00
Skip Trace for Best Address	\$1.00	12	\$12.00
Remail Undeliverable Checks	\$3.00	12	\$36.00
First-Class Postage (up to 1 oz.)	\$0.60	14	\$8.40
Project Supervisor: Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming: Weekly & Final Reports	\$150.00	1	\$150.00
Project Manager: Account Files Sent to Atty	\$95.00	1	\$95.00
Project Supervisor: Final Declaration	\$150.00	1	\$150.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
TOTAL			\$3,011.40

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

SCO ESCHEATMENT PROCESSING

Escheatment Processing to the State Controller Unclaimed Property Division / Uncashed Check Rate 21%			
ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
UPEnterprise Reporting Services	\$0.15	32	\$4.80
Project Manager: SCO Fall Reporting	\$95.00	2	\$190.00
Project Supervisor: Review of SCO Reports	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Check Reissues for Winter/Spring QTR	\$5.00	3	\$15.00
First-Class Postage (up to 1 oz.)	\$0.58	3	\$1.74
Project Manager: June Remittance	\$95.00	2	\$190.00
Project Supervisor: June Remittance	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Add'l Account Recons	\$150.00	6	\$900.00
Add'l QSF Annual Tax Reporting	\$500.00	1	\$500.00
TOTAL			\$2,118.60

GRAND TOTAL

\$9,040.00

TERMS AND CONDITIONS

These Terms and Conditions are made a part of, and incorporated by reference into, any cost proposal or Bid presented by CPT Group, Inc. to Client

1. Definitions.

- a) **"Affiliate"** means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with another party.
 - b) **"Approved Bank"** means a financial institution insured by the Federal Deposit Insurance Corporation with capital exceeding \$1 billion.
 - c) **"Case"** means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.
 - d) **"Claims Administrator"** means CPT Group, Inc., a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
 - e) **"Client"** means collectively Plaintiff Counsel and Defense Counsel.
 - f) **"Client Content"** means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, and objections, which contain Client Data.
 - g) **"Client Data"** means proprietary or personal data regarding Client or any of its Class Members under this Agreement, as provided by Client.
 - h) **"Class Member"** means an individual who is eligible under the Settlement Agreement to receive a designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons so designated or addressed therein.
 - i) **"Confidential Information"** means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
 - j) **"Court Order"** means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more parties to the Case to carry out a legal obligation pursuant to the Case.
 - k) **"Defendant"** means the named party and/or parties in the Case against whom action is brought.
 - l) **"Defense Counsel"** means the attorney of record for the defendant(s) in the Case.
 - m) **"Intellectual Property Right"** means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
 - n) **"Order"** means a Product purchase in a schedule, statement of work, addendum, exhibit, or amendment signed by Client and CPT.
 - o) **"Parties"** shall mean collectively Defendants, Defense and Plaintiff as defined in the Settlement Agreement or Court Order.
 - p) **"Plaintiff"** means the named party and/or parties in the Case who are bringing the action.
 - q) **"Plaintiff Counsel"** means the attorney of record for plaintiff Class Members in the Case.
 - r) **"Products"** means any and all CPT Services, and work products resulting from Services.
 - s) **"Qualified Settlement Fund"** means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.
 - t) **"Service"** means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
 - u) **"Software"** means any and all of CPT's proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
 - v) **"Settlement"** means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.
 - w) **"Settlement Agreement"** means the contract between parties to the Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Class Members.
 - x) **"Term"** means the term of the Agreement, as set forth in the Order.
 - y) **"Transmission Methods"** means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.
 - z) **"Wire Information"** means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.
2. Client Obligations. Client will ensure that it has obtained all necessary consents and approvals for CPT to access Client Data for the purposes permitted under this Agreement and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect the Client Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.
3. Security. The Parties and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any personally identifiable information provided by Class Members and/or Client under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such personally identifiable information; (c) protect against unauthorized access to or use of such personally identifiable information that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such personally identifiable information in connection with its disposal. Each Party will respond promptly to remedy any known security breach involving the personally identifiable information provided by you and/or Client under this Agreement and shall promptly inform the other Parties of such breaches.
4. CPT Obligations. Provided that Client complies with all provisions of Section "Client Obligations", CPT will (i) maintain appropriate safeguards for the protection of Client Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Client Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Client.
5. Mutual Obligations.
- a) Resources. Each party agrees to: (i) provide the resources reasonably necessary to enable the performance of the Services; (ii) manage its project staffing, milestones, and attendance at status meetings; and (iii) ensure completion of its project deliverables and active participation during all phases of a Service project. The parties acknowledge that failure to cooperate during a Service project may delay delivery of the Service.

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

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

Confidentiality. Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; provided, however, that such party shall use at least reasonable care. These obligations shall survive termination of this Agreement.

15. **Miscellaneous Provisions.**

- a) **Governing Law; Jurisdiction.** This Agreement will be governed by

- a) **Compelled Disclosure.** If receiving party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such party shall (i) promptly notify the other party, (ii) reasonably cooperate with the other party in such party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each party is advised by its counsel in writing is legally required to be disclosed.

- b) **Remedies.** If either party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.

10. **Intellectual Property.** As between the parties, CPT will and does retain all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. Client retains all ownership rights to Client Data.

11. **Indemnification.** Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, Covered CPT Parties") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "Damages") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Client Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.

12. **Warranties.** Each party represents and warrants to the other party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such party; (iii) the Agreement is a legally valid and binding obligation of such party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.

13. **Liability.**

- a) **Liability Cap.** EXCEPT FOR A PARTY'S WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL CLAIMS ADMINISTRATOR FEES PAID OR PAYABLE BY CLIENT TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.

- b) **Exclusion of Consequential Damages.** NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14. **Communications.** CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.

Agreement, CPT has the perpetual right to use aggregated, summarized, and statistical data ("Statistical Data") derived from

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

- b) Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party's reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
- c) Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
- d) Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
- e) Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.
- f) Assignment. Neither party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other party's prior written consent; provided, however, either party, without the consent of the other party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of the other party are not increased by such assignment and the rights and remedies available to the other party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
- g) No Third-Party Beneficiaries. The representations, warranties, and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns and shall not be construed as conferring any rights on any other persons.
- h) Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this

anonymized, and statistical data ("Statistical Data") derived from the operation of the Software, and nothing herein shall be construed as prohibiting CPT from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third-party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.

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

EXHIBIT 16

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Ruiz v. Pro Custom Solar LLC dba Momentum Solar

Monday, April 3, 2023

Requesting Law Firm:

Law Firm Contact:

E-Mail Address:

ILYM Contact:

E-Mail Address:

Contact Number:

The Spivak Law Firm

Nora Greer

nora@spivaklaw.com

ILYM Group

Lisa@ilymgroup.com

714.878.8836

ASSUMPTIONS

Total Number of Aggrieved Employees	150
Static Website	Yes
Remail of Undeliverables	Yes

Activity

Rate Type

Unit Cost

Volume

Amount

CASE STARTUP

Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	2	\$300.00
Project Manager (Case notification and maintenance)	Hourly	\$120.00	3	\$360.00
Toll-Free Telephone Support	Flat Rate	\$50.00	1	\$50.00
NCOA	Flat Rate	\$50.00	1	\$50.00
ILYM Group Static Website, Includes Hosting	Flat Rate	\$750.00	1	\$750.00

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

Subtotal \$1,510.00

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
Notice, Check, Stub & Release - (including 1099)	Per Check	\$2.00	150	\$300.00
USPS First Class Postage	Per Piece	\$0.60	150	\$90.00
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.50	30	\$75.00
Preparation of Taxes	Hourly	\$125.00	5	\$625.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

*Additional Bank fees may apply

Subtotal \$3,140.00

CASE CONCLUSION

Data Manager Final Reporting	Hourly	\$100.00	2	\$200.00
Process Unclaimed Funds to State Controller's Office	Flat Fee	\$750.00	1	\$750.00
Declaration	Hourly	\$125.00	2	\$250.00

Subtotal \$1,200.00

Total Case Estimate: \$5,850.00

Terms and Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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