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

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

16 *Plaintiff(s),*

17
18 vs.

19 RED DOOR ESCAPE ROOM, LLC, a
California limited liability company;
20 KINGSMEN ESCAPE ENTERTAINMENT
LLC, a California limited liability company;
21 KYLE MALOY, a natural person; and DOES 1–
22 50, inclusive,

23 *Defendant(s).*

Case No. CIVMSC21-01753

**DECLARATION OF DAVID SPIVAK
IN SUPPORT OF PLAINTIFF
MCKENNA MCKENZIE’S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Hearing Date: TBD
Hearing Time: TBD
Hearing Dept.: 39, The Honorable
Edward G. Weil

Action filed: August 27, 2021



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1 **DECLARATION OF DAVID G. SPIVAK IN SUPPORT OF MOTION FOR**
2 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

3 I, DAVID SPIVAK, declare as follows:

4 1. I am an attorney duly licensed to practice law in the State of California and am an
5 attorney of record for Plaintiff McKenna McKenzie (“Plaintiff”) in her lawsuit against
6 Defendants Red Door Escape Room, LLC, Kingsmen Escape Entertainment LLC, and Kyle
7 Maloy and (collectively “Defendants”). Plaintiff and Defendants are collectively referred to as
8 the “Parties.”

9 2. Except as otherwise indicated, I have personal knowledge of all matters set forth
10 herein and, if called as a witness, could and would competently testify thereto under oath.

11 3. The Class Action and PAGA Settlement Agreement (the “Settlement”) is attached
12 hereto as **Exhibit 1**.

13 ***Factual and Procedural Background***

14 4. Defendants operate and create escape room games Defendants employed Plaintiff
15 as a front desk attendant, team lead, game master, and manager-on-duty from about May 11,
16 2019 until June 18, 2021.

17 5. On August 02, 2021, Plaintiff notified Defendants and the California Labor and
18 Workforce Development Agency (“LWDA”), pursuant to the California Private Attorneys
19 General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”), of alleged Labor
20 Code violations committed by Defendants. A true and correct copy of the letter to the LWDA
21 dated August 02, 2021 is attached hereto as **Exhibit 2**.

22 6. On August 27, 2021, Plaintiff filed a Class Action Complaint in the Contra Costa
23 County Superior Court, Case No. CIVMSC21-01753, against Defendants on behalf of herself
24 and others similarly situated, alleging causes of action on a class-wide basis for: (1) Failure to
25 Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198); (2)
26 Failure to Provide Rest Breaks (Lab. Code §§226.7 and 1198); (3) Failure to Provide Meal
27 Periods (Lab. Code §§226.7, 512 and 1198); (4) Unlawful Deductions (Lab. Code § 221); (5)
28 Wage Statement Penalties (Lab. Code §§ 226 and 226.2); (6) Waiting Time Penalties (Lab. Code
§§ 201-203); and (7) Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*). On October 28,
2021, Plaintiff filed her First Amended Complaint adding a claim under the Labor Code Private
Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* (“PAGA”). On December 13, 2021,



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

6 7. The Parties engaged in the Belaire-West notice process. In April 2022, Defendants
7 responded for formal discovery requests and produced relevant documents, including Plaintiff's
8 entire personnel file (including policies and agreements she signed and acknowledged), copies
9 of their relevant company written policies, sample time and payroll records for the putative class,
10 and more detailed time and payroll data for a random sample of putative class members
11 specifically selected by Plaintiff's counsel. As part of this discovery and investigation process,
12 we learned that the five California businesses operated under the "Red Door Escape Room" brand
name were owned by different entities, as follows:

- 13 • Defendant Kingsmen Escape Entertainment, LLC owned the escape room business
14 located in Concord,
- 15 • Defendant Red Door Escape Room, LLC owned the escape room business located in
16 Sacramento, and
- 17 • Red Door Jet Fuel, LP owned the escape room businesses located in Oxnard, San Diego,
and San Mateo.

18 The Parties thereafter engaged in an informal, voluntary exchange of information about the
19 businesses owned by Red Door Jet Fuel, LP in the context of privileged settlement discussions
20 to facilitate an early mediation.

21 8. On August 31, 2022, following much of the foregoing informal discovery and
22 exchange of information, the Parties participated in a mediation session presided over by
23 Mediator Monique Ngo-Bonnici, an experienced class action mediator. During the mediation,
24 the Parties had a full day of productive negotiations and reached agreement on a class-wide
25 settlement subject to confirmatory discovery pertaining to the number of putative class members
26 and pay periods. During the mediation sessions, each side, represented by her/their respective
27 counsel, recognized the risk of an adverse result in the Action and agreed to settle the Action and
28



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1 all other matters covered by this Agreement pursuant to the terms and conditions of this
2 Settlement.

3 9. At the mediation, it became clear that that Defendants had insufficient resources
4 to cover the full extent of liability. As part of the settlement negotiations, Defendants disclosed
5 copies of their tax returns, bank and credit card statements, and loans for the last two years.
6 Plaintiff's Counsel reviewed the financial records. The information provided was sufficient to
7 demonstrate the financial condition of the company. Based on such records, Plaintiff, on her own
8 behalf and on behalf of the Class Members, has agreed to settle the lawsuit on the terms set forth
9 in the Settlement.

10 *Ascertainable and Numerous Class*

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

16 11. The Settlement Class has sufficiently numerous members to render joinder
17 impractical. No set number is required as a matter of law to maintain a class action. The California
18 Supreme Court has upheld a class of as few as 10 individuals. Defendants estimate that there are
19 approximately 262 Class Members and 220 Aggrieved Employees as of the date of mediation.
20 Plaintiff maintains that it would be impractical and economically inefficient to require each
21 Settlement Class Member to separately maintain an individual action or be joined as a named
22 plaintiff in this action. In light of these considerations, the Settlement Class' membership is
23 sufficiently numerous.

24 *Predominant Common Questions*

25 12. A question of law or fact is common to the members of a class if it may be resolved
26 through common proof. In this case, there are many predominant common questions. Plaintiff
27 asserts all class members were subject to the same or similar operations and employment policies,
28 practices, and procedures. The claims arise from Defendants' alleged policy-driven failure to pay
wages, unlawful deductions, failure to provide meal periods, failure to authorize and permit rest
periods, failure to issue proper wage statements, failure to timely pay wages, failure to maintain
required payroll records, and related labor law violations, all of which Plaintiff claims constitute



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1 unfair business practices and give rise to PAGA penalties. Plaintiff asserts that common
2 questions include, but are not limited to: (1) Whether Defendants failed to pay all wages earned
3 to class members for all hours worked at the correct rates of pay; (2) Whether Defendants failed
4 to provide the class with all meal and rest periods in compliance with California law; (3) Whether
5 Defendants failed to pay the class one additional hour of pay on workdays they failed to provide
6 the class with one or more meal or rest periods in compliance with California law; (4) Whether
7 Defendants unlawfully deducted wages from the class; (5) Whether Defendants knowingly and
8 intentionally failed to provide the class with accurate wage statements; (6) Whether Defendants
9 willfully failed to provide the class with timely final wages; and (7) Whether Defendants engaged
10 in unfair competition within the meaning of Business and Professions Code section 17200, *et*
seq., with respect to the class.

11 *Typicality*

12 13. Plaintiff contends that her claims are typical for the purposes of certifying the
13 Settlement Class. Plaintiff asserts that she, like absent Class Members was subject to the same
14 relevant policies and procedures governing her compensation, hours of work, and meal and rest
15 periods. Because Plaintiff contends that she was subject to the same general course of conduct as
16 absent Class Members, resolving the common questions as they apply to Plaintiff will determine
17 Defendants' *prima facie* liability to all Class Members. Moreover, Plaintiff's claims could
18 potentially be subject to the same primary affirmative defenses as those of absent Class Members.
Accordingly, Plaintiff's claims are typical of the Class.

19 *Adequacy*

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

25 15. To the best of my knowledge, neither Plaintiff nor I have any conflicts of interest
26 with the absent Settlement Class Members. Plaintiff contends that she is an adequate class
27 representative. Plaintiff and the Class Members have strong and co-extensive interests in this
28 litigation because they all worked for Defendants during the relevant time period, allegedly
suffered the same alleged injuries from the same alleged course of conduct, and there is no



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1 evidence of any conflict of interest between Plaintiff and the Class Members. Moreover, Plaintiff
2 has demonstrated her commitment to the Settlement Class by, among other things, retaining
3 experienced counsel, providing counsel with documents and extensively speaking with them to
4 assist in identifying the claims asserted in this case, assisting them in identifying witnesses, as
5 well as exposing herself to the risk of attorneys' fees and costs awards against her if this lawsuit
6 had been unsuccessful. Plaintiff also attended the mediation and was an active participant. Thus,
7 Plaintiff is adequate to serve as settlement class representative.

8 ***Background of Class Counsel***

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

12 17. In December of 1995, the Supreme Court for the State of California admitted me
13 as an Attorney and Counselor at Law and licensed me to practice law in all the Courts of this
14 State. On May 11, 2012, I also became admitted to the District of Columbia Bar. In February
15 2013, I became admitted to the New York State Bar.

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

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

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

24 a. *Ricardo Sandoval v. Dept. of Treasury*, United States District Court,
25 Southern District of California (the Honorable Judith Keep presiding), 1998. Plaintiffs Special
26 Agent for the U. S. Customs Service alleged discrimination and retaliation in promotions and
27 discipline. The jury awarded compensatory damages. Court subsequently awarded additional
28 back pay and gave Plaintiffs a retroactive promotion. See "Lawsuit Puts Customs Service on
Trial: Agent Alleges Corruption, White Supremacist Cabal" by Valerie Alvord, San Diego



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1 Union-Tribune, April 29, 1998; "Customs Agent Is Awarded \$200,000: Jury Says He Faced Bias
2 And Retaliation" by Valerie Alvord, San Diego Union-Tribune, May 16, 1998.

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

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

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

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

27 f. *Richard Wamel v. Ocelot Engineering Co.*, Judicate West before the
28 Honorable Robert Polis (ret.) (2008). In that case, I represented a victim of FMLA violations and
wrongful termination against his former employer. The Neutral Arbitrator awarded

1 compensatory and liquidated damages. The claims for damages, attorney's fees and costs were
2 resolved shortly thereafter by means of a confidential settlement.

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

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

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

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

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

27 b. *Cuellar v. Lovin Oven*, Orange County Superior Court, Case No. 30-2010-
28 000382146 (appointed Class Counsel and granted final approval of class action settlement by the
court on behalf of nonexempt employees).



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

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

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

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

13 g. *Huynh v. Carefusion Resources, LLC, et al.*, San Diego Sup.Ct., Case No.
14 37-2009-00103277-CU-OE-CTL (appointed Class Counsel and granted final approval of class
15 action settlement on behalf of medical devices employees).

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

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

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

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

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



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

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

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

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

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

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

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

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

u. *Vang v. Burlington Coat Factory Corporation*, United States District
Court Central District of California, Case No. 09-CV-08061-CAS-JCx (appointed Class Counsel

1 and granted final approval of class action settlement by the court on behalf of assistant store
2 manager employees).

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

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

9 ***Class Action Treatment Is Superior***

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

19 ***The Settlement is Presumptively Fair***

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

Exposure & Risk Analysis



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1 26. Plaintiff prepared “damages” estimates in advance of the mediation. In advance
2 of the mediation, Plaintiff determined Defendants’ maximum exposure for restitution and
3 penalties to be approximately \$2,000,132.32 (consisting of \$30,486.01 in unpaid wages,
4 \$60,972.01 in missed meal period premium wages, \$130,216.11 in missed rest break premium
5 wages, \$259,293.48 for wage statement penalties, \$280,517.85 for waiting time penalties, and
6 \$1,216,479.45 for civil penalties). True and correct copies of the spreadsheets I prepared for
7 mediation of this Action are collectively attached to this declaration as **Exhibit 6**. The estimates
8 are in essence “home run” projections that omit data points that will undoubtedly reduce the
9 maximum possible damages award and do not factor in any of the risks involved in litigating this
10 Action. Plaintiff calculated the damages based on the number of workweeks and pay periods
11 provided by Defendants, Plaintiff’s reports, and the sample data. *Id.* Plaintiff also considered the
12 possibility that Defendants could launch a *Pick Up Stix* campaign and pursue individual release
13 agreements from the Class Members. Plaintiff’s Counsel applied discounts to the maximum
14 exposure to account for all other risks discussed below. While it is difficult to assign anything
15 but crudely-determined percentages of risk to any of the claims, it is safe to say that the risk that
16 a *Pick Up Stix* campaign would preclude recovery for such employees is substantial and alone
17 justifies a significant discount because Defendants would likely by trial have gathered releases
18 from the majority of the Class Members. A settlement for approximately 20% of the potential
19 recovery is a proportion substantially in excess of recovery proportions sanctioned by existing
20 case law.⁶

21 27. My initial estimates do not realistically account for the risks outlined below or the
22 risk that a class will not be certified. Therefore, I believe a class settlement for \$395,000.00 is
23 fair and reasonable.
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⁶ See, e.g., *In re Newbridge Networks Sec. Litig.*, 1998 WL 765724 at *2 (D.D.C. Oct. 23, 1998) (“[A]n agreement that secures roughly six to twelve percent of a total trial recovery . . . seems to be within the targeted range of reasonableness.”); *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.* 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the proposed allocation to settle class claims was at least 9.53 percent); *Bravo v. Gale Triangle, Inc.*, 2017 WL 708766 at * 10 (C.D. Cal. Feb 16, 2017) (“a settlement for fourteen percent recovery of Plaintiffs’ maximum recovery is reasonable”); *In re Omnivision Techs., Inc.*, 559 F.Supp.2d 1036, 1042 (N.D. Cal. 2008) (approving settlement amount that “is just over 9% of the maximum potential recovery asserted by either party.”).



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28. **Risks Associated with Defendants' Financial Condition.** Defendants' financial condition was the key factor in reaching this Settlement. Due to Defendants' financial condition, even if Plaintiff prevailed on all claims at trial, she may never recover the damages due to the risk of insolvency. A very large class action judgment would almost certainly put the company out of business and/or would interfere with the Defendants' ability to carry out their contractual obligations.

29. **Risks Associated with Unpaid Wages Claim.** There is a risk that Plaintiff's recovery for unpaid wages would be extremely limited at best, largely because Defendants' written policies throughout the relevant time period prohibited off-the-clock work. Off-the-clock claims are difficult where a defendant requires in its written policies that all work must take place while clocked in. *See Jong v. Kaiser Foundation Hospital* (2012) 226 Cal.App.4th 391 (employer must have notice of off-the-clock work for it to be compensable). *Id.* In their written employment policies, Defendants mandate that employees must record all time worked accurately on their time records and strictly prohibit employees from performing any work off-the-clock. Moreover, while Defendants dispute that off-the-clock work occurred, they contend that any time spent off the clock was *de minimis*. The California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835 suggested that irregular and minute periods of time may still be subject to a *de minimis* defense even if compensable. (Stating that "We do not decide whether there are circumstances where compensable time is so minute or irregular that it is unreasonable to expect the time to be recorded."). Following *Troester*, Defendants contend that the *de minimis* doctrine may apply here because the time spent off the clock were minute and insignificant. Accordingly, a large award of penalties seems unlikely with respect to this claim.

30. The difficulty inherent in proving that off-the-clock work occurred poses a significant hurdle to Plaintiff. Plaintiff will rely on declarations and witness statements to prove this claim. Generally, a court will not certify a class unless it can determine an appropriate classwide methodology. *See, e.g., Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014). Here, Plaintiff may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially given the lack of records indicating when such off-the-clock work may have taken place. Individualized inquiries would need to be conducted person-by-person, day-by-day, to determine if an individual in fact worked "minutes" off-the-clock on a "regular" basis. Accordingly, there

1 is a significant risk that the Court would consider this evidentiary showing insufficient as a
2 classwide methodology.

3 31. **Risks Associated with the Meal Period Claims.** There are risks to Plaintiff's
4 meal period claim. Defendants contend that, to establish a violation for missed meal periods, a
5 plaintiff must do more than show that a meal break was not taken. *Brinker*, 53 Cal. 4th at 1004.
6 So long as an employer provides employees with a "reasonable opportunity" to take a duty-free
7 meal period, it has no further duty to "police meal breaks and ensure no work thereafter is
8 performed." *Id.* at 1040-41. *Id.* Instead, a plaintiff must show the employer impeded, discouraged,
9 or prohibited the employee from taking a proper break, or otherwise failed to release the
10 employee of all control. *Id.* "Thus, the crucial issue with regard to the meal break claim is the
11 reason that a particular employee may have failed to take a meal break." *Washington v. Joe's*
12 *Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. *Id.*

13 32. Defendants contend they did not impede or discourage Plaintiff, or any other
14 employees, from taking their meal or rest periods. Defendants' policies mandate that employees
15 take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time
16 of their meal breaks each day on their time records. Accordingly, there is a significant risk that
17 the value of Plaintiff's meal period claim would be substantially reduced at trial.

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



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34. **Risks Associated with the Statutory “Wage Statement” Penalty Claims.**

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

35. **Risks Associated with The Waiting Time Penalties Claim.**

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

36. **Risks Associated With the PAGA Claim.**

Regarding PAGA, a court has discretion to award a lesser amount than the maximum penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendants have posed valid defenses to the Labor Code claims 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. Moreover, the current COVID-19 pandemic could motivate the Court to further reduce the penalty award to avoid what it may consider a confiscatory taking.

37. 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 \$1,216,479.45 in civil penalties. This estimate did not take into account any of the risks discussed above and assumed a violation for every single pay period. *Id.* Plaintiff’s counsel also assessed multiple penalties for the same pay 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.

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

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

10 ⁷ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil
11 penalties under the PAGA of \$12,277,500.00 where total adjusted damages were
12 \$18,695,692.58. In this regard, the district court stated,

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

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

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

⁸ In 2012, I tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number
BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. A true and
correct copy of the complaint is attached as **Exhibit 7**. The plaintiff sought in excess of \$9
million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M.
Sohigian awarded approximately \$325,000 in civil penalties under the PAGA. A true and correct
copy of the statement of decision is attached as **Exhibit 8**, 19:8-20:19. Also, on October 24, 2017,
the Los Angeles Superior Court awarded a prevailing PAGA plaintiff civil, represented by very
experienced counsel, penalties totaling only \$50.00. *Shields v. Security Paving Company, Inc.*,
LA Superior Court case no. BC492828. A similar result could occur here.



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40. **Risks Associated With A Pick-Up Stix Campaign.** An employer enjoys the right to settle a putative class member's disputed wage claims individually, without the consent or involvement of class counsel. (See *Chindarah v. Pick Up Stix, Inc.* 171 Cal. App. 4th 796 (2009). As discussed above, Defendants may launch a "pick off" settlement campaign to pursue individual release agreements from the Class Members, thereby potentially narrowing the size of the Settlement Class – 262 members - until it is no longer numerous enough for class certification. *Id.* Plaintiff, then, may not have sufficient number of employees to represent. This led to a significant reduction of claim value in settlement negotiations.

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

Allocation of the PAGA Payment

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

Attorneys' Fees and Costs

43. I intend to request Class Counsel Attorneys' Fees of \$131,666.00 (one-third of the GSA) and Class Counsel's litigation costs incurred in prosecuting this Action, which I currently estimate to be approximately \$19,482.21 and will be no more than \$20,000.00 at the



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conclusion of matters related to the Settlement. In view of my efforts and risks in pursuing this case these amounts are well within the range of reasonableness and thus warrant this Court's preliminary approval. In addition, based on my experience in wage and hour class action matters, fee awards of approximately one-third of the settlement fund are routinely approved as reasonable. I have been awarded attorneys' fees equaling approximately one-third of the fund in several recent wage and hour class actions, including: *Alvarez v. Gary Grace Enterprises, LP*, Marin County Superior Court, Case No. CIV1002553 (one-third of fund); *Calderon v. Greatcall, Inc.*, San Diego Superior Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of fund); *Butler v. Lexxiom, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1001579 (one-third of fund); *Perez v. Southwest Dealer Services, Inc.*, Los Angeles County Superior Court, Case No. BC439253 (one-third of fund); *O'Brien v. Optima Network Services, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1107056 (one-third of fund); *Noyd v. The Cristcat Group, et al.*, Los Angeles County Superior Court, Case No. BC439558 (one-third of fund); *Huynh v. Carefusion Resources, LLC, et al*, San Diego Sup.Ct., Case No. 37-2009-00103277-CU-OE-CTL (one-third of fund); *Cunningham v. DPI Specialty Foods West, Inc.*, Los Angeles Sup.Ct., Case No. BC465017 (one-third of fund); *Stucker v. L'Oreal USA S/D, Inc.*, Los Angeles Sup. Ct., Case No. BC456080 (one-third of fund); *Valdez v. Healthcare Services Group, Inc.*, Los Angeles Sup.Ct., Case No. BC462917 (one-third of fund); *Hernandez, et al v. HSBC*, U.S. District Court, Central District of California, Case No. 10-CV-4753 (one-third of fund); *Sandoval, et al. v. Thrifty Payless, Inc.*, et al. Los Angeles Sup.Ct., Case No. BC431249 (one-third of fund); *Alafa v. Custom Built Personal Training, Inc.*, Tulare County Superior Court, Case No. VCU-245496 (one-third of fund); *Nardone v. Sequoia Beverage Company, LP*, Tulare Sup.Ct., Case No. VCU-248370 (one-third of fund); *Rosen v. Image Transfer*, Los Angeles Sup.Ct., Case No. BC511702 (one-third of fund); *Tucker v. Maly's West, Inc.*, Los Angeles Sup.Ct., Case No. BC483920 (one-third of fund); *King v. Build.com*, Butte Sup.Ct., Case No. 159985 (one-third of fund); *Clifford v. Anderson Hay & Grain*, Los Angeles Sup.Ct., Case No. BC517625 (one-third of fund); *Nichols, et al. v. Vitamin Shoppe*, Contra Costa Sup.Ct., Case No. 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.



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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).

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

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

Class Representative Service Payment

46. The Settlement provides that Plaintiff may seek a Class Representative Service Payment of \$10,000.00. This amount is entirely reasonable given Plaintiff's efforts in this Action and the risks she undertook on behalf of Class Members. Here, Plaintiff has devoted many hours advancing the interests of the Settlement Class. Plaintiff has done this by, among other things, retaining experienced counsel, providing them with information about her work history with Defendants and Defendants' policies and practices with respect to the wage and hour claims at issue, assisting counsel in identifying witnesses, traveling to and participating in mediation, and

1 being actively involved in the settlement process to ensure a fair result for the Settlement Class
2 as a whole. In doing this, Plaintiff has been exposed to significant risks, including the risk of an
3 order to pay Defendants' attorneys' fees and costs if this action had been unsuccessful (*See* Labor
4 Code §§ 218.5-218.6). The efforts and risks that Plaintiff undertook on behalf of the Settlement
5 Class shows that the proposed Class Representative Service Payment is fair, adequate, and
reasonable, and thus warrant preliminary approval.

6 ***Individual Class Payment***

7 47. The Individual Class Payment will be paid to each Class Member based on his or
8 her eligible Pay Periods compared to the total Pay Periods. Settlement ¶ 3.2. Because this method
9 compensates Class Members based on the extent of their potential injuries, in that Class Members
10 who worked for Defendants longer would have been subject to more alleged violations, it is fair,
adequate, and reasonable.

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

12 48. The Settlement requires distribution of the Notice by First Class U.S. mail only.
13 Settlement, ¶ 8.4.2. Although there are current employee Class Members, it is uncertain whether
14 Defendants' records of their contact information include email addresses and Class Members are
15 not in a position to check their emails. As such, notice by mail alone is fair, adequate, and
16 reasonable. The Notice Packet (attached as Exhibits 1 and 2 to the Settlement) provides Class
17 Members with all pertinent information that they need to fully evaluate their options and exercise
18 their rights under the Settlement. Specifically, it clearly and concisely explains, among other
19 things: (1) what the Settlement is about; (2) who is a Settlement Class Member; (3) how Class
20 Counsel will be paid; (4) how to submit an exclusion request not to be bound by the Settlement;
21 (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how payments
22 to Class Members will be calculated; (8) how the disputes will be resolved; and (9) the estimated
23 Individual Settlement Payment for each Class Member. Additionally, the Notice will include the
24 number of Eligible Workweeks a Class Member had during the Class Period. Accordingly, the
25 Notice should be approved because it describes the Settlement with sufficient clarity and
26 specificity to explain to Class Members what this action is about, their rights under the
27 Settlement, and how to exercise those rights. As such, the parties' proposed Notice fully complies
with California Rules of Court 3.766(d) and 3.769(f) and will allow Class Members to make
informed responses to the proposed settlement.



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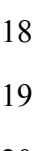
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EXHIBIT 1

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Attorneys for Plaintiff(s),
MCKENNA MCKENZIE, and all others similarly situated
(Additional attorneys for parties on following page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA
(UNLIMITED JURISDICTION)

MCKENNA MCKENZIE, 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.

RED DOOR ESCAPE ROOM, LLC, a California
limited liability company; KINGSMEN
ESCAPE ENTERTAINMENT LLC, a California
limited liability company; KYLE MALOY, a
natural person; and DOES 1–50, inclusive,

Defendant(s).

Case No. CIVMSC21-01753

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

Action filed: August 27, 2021
Dept: 39, The Honorable Edward
G. Weil

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Attorneys for Defendant(s),
RED DOOR ESCAPE ROOM, LLC, KINGSMEN ESCAPE ENTERTAINMENT LLC, and
KYLE MALOY

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and
2 between plaintiff McKenna McKenzie (“Plaintiff”) and defendants Red Door Escape Room,
3 LLC, Kingsmen Escape Entertainment LLC, and Kyle Maloy (collectively “Defendants”). The
4 Agreement refers to Plaintiff and Defendants 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 Red Door Escape Room, LLC, Kingsmen Escape Entertainment LLC, and Kyle Maloy captioned
8 “McKenna McKenzie, on behalf of herself, and all others similarly situated, and as an ‘aggrieved
9 employee’ on behalf of other ‘aggrieved employees’ under the Labor Code Private Attorneys
10 General Act of 2004, *Plaintiff(s)*, vs. defendants Red Door Escape Room, LLC, Kingsmen Escape
11 Entertainment LLC, and Kyle Maloy, and DOES 1 through 50, inclusive, *Defendant(s)*,” Case
12 No. CIVMSC21-01753 initiated on August 27, 2021 and pending in Superior Court of the State
of California, County of Contra Costa.

13 1.2. “Administrator” means Simpluris, Inc., the neutral entity the Parties have agreed
14 to appoint to administer the Settlement.

15 1.3. “Administration Expenses Payment” means the amount the Administrator will be
16 paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
17 accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection
with Preliminary Approval of the Settlement.

18 1.4. “Aggrieved Employee” means a person employed by Defendants and/or Red Door
19 Jet Fuel, L.P., an entity affiliated with Defendants, in California and classified as a hourly, non-
20 exempt employees who worked for Defendants and/or Red Door Jet Fuel, L.P. during the PAGA
21 Period except those who are immediate family members of anyone with an ownership interest in
one or more of the entities.

22 1.5. “Class” means all persons employed by Defendants and/or Red Door Jet Fuel, L.P.
23 in California and classified as hourly, non-exempt employees who worked for Defendants and/or
24 Red Door Jet Fuel, L.P. during the Class Period except those who are immediate family members
25 of anyone with an ownership interest in one or more of the entities.

26 1.6. “Class Counsel” means David G. Spivak of The Spivak Law Firm and Walter L.
27 Haines of United Employees Law Group.

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

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

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

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

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

1.12. “Class Period” means the period from August 27, 2018 to the date of preliminary approval of this settlement.

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

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

1.15. “Court” means the Superior Court of California, County of Contra Costa.

1.16. “Defendants” means named Defendants Red Door Escape Room, LLC, Kingsmen Escape Entertainment LLC, and Kyle Maloy.

1.17. “Defense Counsel” means Sarah Brite Evans of Schwartz Semerdjian Cauley & Evans LLP.

1.18. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no

1 Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if
2 one or more Participating Class Members objects to the Settlement, the day after the deadline for
3 filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the
4 day after the appellate court affirms the Judgment and issues a remittitur.

5 1.19. "Final Approval" means the Court's order granting final approval of the
6 Settlement.

7 1.20. "Final Approval Hearing" means the Court's hearing on the Motion for Final
8 Approval of the Settlement.

9 1.21. "Final Judgment" means the Judgment Entered by the Court upon Granting Final
10 Approval of the Settlement.

11 1.22. "Gross Settlement Amount" means \$395,000.00 which is the total amount
12 Defendants agree to pay under the Settlement except as provided in Paragraph 9 below. The Gross
13 Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments,
14 the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative
15 Service Payment and the Administrator's Expenses. Defendants will pay the Gross Settlement
16 Amount in two (2) equal \$197,500.00 biannually installment payments, outlined further below.

17 1.23. "Individual Class Payment" means the Participating Class Member's pro rata
18 share of the Net Settlement Amount calculated according to the number of Pay Periods worked
19 during the Class Period.

20 1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of
21 25% of the PAGA Penalties calculated according to the number of Pay Periods worked during the
22 PAGA Period.

23 1.25. "Judgment" means the judgment entered by the Court based upon the Final
24 Approval.

25 1.26. "LWDA" means the California Labor and Workforce Development Agency, the
26 agency entitled, under Labor Code section 2699, subd. (i).

27 1.27. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the
28 LWDA under Labor Code section 2699, subd. (i).

1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following
payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel

1 Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be
2 paid to Participating Class Members as Individual Class Payments.

3 1.29. "Non-Participating Class Member" means any Class Member who opts out of the
4 Settlement by sending the Administrator a valid and timely Request for Exclusion.

5 1.30. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee
6 worked for Defendants for at least one day during the PAGA Period.

7 1.31. "PAGA Period" means the period from August 02, 2020 to the date of preliminary
8 approval of this settlement.

9 1.32. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

10 1.33. "PAGA Notice" means Plaintiff's August 02, 2021 letter to Defendants and the
11 LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

12 1.34. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from
13 the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$1,000.00) and the
14 75% to LWDA (\$3,000.00) in settlement of PAGA claims.

15 1.35. "Participating Class Member" means a Class Member who does not submit a valid
16 and timely Request for Exclusion from the Settlement.

17 1.36. "Plaintiff" means McKenna McKenzie, the named plaintiff in the Action.

18 1.37. "Preliminary Approval" means the Court's Order Granting Preliminary Approval
19 of the Settlement.

20 1.38. "Preliminary Approval Order" means the proposed Order Granting Preliminary
21 Approval and Approval of PAGA Settlement.

22 1.39. "Released Class Claims" means the claims being released as described in
23 Paragraph 6.2 below.

24 1.40. "Released PAGA Claims" means the claims being released as described in
25 Paragraph 6.2 below.

26 1.41. "Released Parties" means: Defendants and each of their former and present
27 directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors,
28 assigns subsidiaries, and affiliates. They include Red Door Corporate, LLC, and Red Door Jet
Fuel, LP. The Settlement shall cover all five California Red Door locations (Concord,
Sacramento, San Diego, Oxnard and San Mateo), and includes only claims arising at these
locations (the "California Locations").

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

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

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

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

2. RECITALS.

2.1. On August 27, 2021, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendants for failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and related claims. On October 28, 2021, Plaintiff filed a First Amended Complaint alleging causes of action against Defendants for failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and related allegations. The First Amended Complaint is the operative complaint in the Action (the "Operative Complaint.") Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in in the Operative Complaint and deny any and all liability for the causes of action alleged.

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

2.3. On August 31, 2022, the Parties participated in an all-day mediation presided over by Ms. Monique Ngo-Bonnici Esq. which led to this Agreement to settle the Action.

2.4. Prior to mediation and negotiating the Settlement, Plaintiff obtained, through formal and informal discovery, the number of comparable employees, the number of workweeks, the number of pay periods, average rates of pay, sample time records, sample payroll records,

1 written policies, financial records, and related information. Plaintiff's investigation was sufficient
 2 to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48
 3 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-
 4 130 ("*Dunk/Kullar*").

5 2.5. The Court has not granted class certification.

6 2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware
 7 of any other pending matter or action asserting claims that will be extinguished or affected by the
 8 Settlement.

9 **3. MONETARY TERMS.**

10 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below,
 11 Defendants promise to pay \$395,000.00 and no more as the Gross Settlement Amount and to
 12 separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual
 13 Class Payments. Defendants have no obligation to pay the Gross Settlement Amount (or any
 14 payroll taxes) prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator
 15 will disburse the entire Gross Settlement Amount without asking or requiring Participating Class
 16 Members or Aggrieved Employees to submit any claim as a condition of payment. None of the
 17 Gross Settlement Amount will revert to Defendants.

18 3.2. Payments from the Gross Settlement Amount. The Administrator will make and
 19 deduct the following payments from the Gross Settlement Amount, in the amounts specified by
 20 the Court in the Final Approval:

21 3.2.1. To Plaintiff: Class Representative Service Payment to the Class
 22 Representative of not more than \$10,000.00 (in addition to any Individual Class Payment and any
 23 Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class
 24 Member). Defendants will not oppose Plaintiff's request for a Class Representative Service
 25 Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment
 26 and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class
 27 Representative Service Payments no later than 16 court days prior to the Final Approval Hearing.
 28 If the Court approves a Class Representative Service Payment less than the amount requested, the
 Administrator will retain the remainder in the Net Settlement Amount. The Administrator will
 pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full
 responsibility and liability for employee taxes owed on the Class Representative Service Payment.

1 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than
2 33.33%, which is currently estimated to be \$131,666.00 and a Class Counsel Litigation Expenses
3 Payment of not more than \$20,000.00. Defendants will not oppose requests for these payments
4 provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for
5 Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days
6 prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or
7 a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator
8 will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability
9 to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class
10 Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator
11 will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more
12 IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the
13 Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds
14 Released Parties harmless, and indemnifies Released Parties, from any dispute or controversy
15 regarding any division or sharing of any of these Payments.

16 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
17 \$9,000.00 except for a showing of good cause and as approved by the Court. To the extent the
18 Administration Expenses are less or the Court approves payment less than \$9,000.00, the
19 Administrator will retain the remainder in the Net Settlement Amount.

20 3.2.4. To Each Participating Class Member: An Individual Class Payment
21 calculated by (a) dividing the Net Settlement Amount by the total number of Pay Periods worked
22 by all Participating Class Members during the Class Period and (b) multiplying the result by each
23 Participating Class Member's Pay Periods.

24 3.2.4.1. Tax Allocation of Individual Class Payments. 33.33% of
25 each Participating Class Member's Individual Class Payment will be allocated to settlement of
26 wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be
27 reported on an IRS W-2 Form. The 66.67% of each Participating Class Member's Individual
28 Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage
Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on
IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any
employee taxes owed on their Individual Class Payment.

1 3.2.4.2. Effect of Non-Participating Class Members on Calculation
2 of Individual Class Payments. Non-Participating Class Members will not receive any Individual
3 Class Payments. The Administrator will retain amounts equal to their Individual Class Payments
4 in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

5 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the
6 amount of \$4,000.00 to be paid from the Gross Settlement Amount, with 75% (\$3,000.00)
7 allocated to the LWDA PAGA Payment and 25% (\$1,000.00) allocated to the Individual PAGA
8 Payments.

9 3.2.5.1. The Administrator will calculate each Individual PAGA Payment
10 by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$1,000.00
11 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the
12 PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay
13 Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their
14 Individual PAGA Payment.

15 3.2.5.2. If the Court approves PAGA Penalties of less than the amount
16 requested, the Administrator will allocate the remainder to the Net Settlement Amount. The
17 Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

18 **4. SETTLEMENT FUNDING AND PAYMENTS.**

19 4.1. Class Pay Periods and Aggrieved Employee Pay Periods. Based on a review of
20 its records as of August 31, 2022, Defendants estimate there are 262 Class Members who
21 collectively worked a total of 4,040 Pay Periods, and 220 Aggrieved Employees who worked a
22 total of 3,164 Pay Periods.

23 4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval
24 of the Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in
25 the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the
26 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
27 of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator
28 employees who need access to the Class Data to effect and perform under this Agreement.
Defendants have a continuing duty to immediately notify Class Counsel if they discover that the
Class Data omitted class member identifying information and to provide corrected or updated

1 Class Data as soon as reasonably feasible. Without any extension of the deadline by which must
2 send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best
3 efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted
4 Class Data.

5 4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross
6 Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll
7 taxes by transmitting the funds to the Administrator as follows:

8 4.3.1. Within ten (10) calendar days of the Effective Date, Defendants shall pay
9 the first of two \$197,500.00 installment payments on the Gross Settlement Amount into the
10 Settlement Account and shall pay each of the remaining \$197,500.00 installment payment within
11 180 calendar days of the first installment payment.

12 4.4. Distributions from the Installment Payments toward the Gross Settlement
13 Amount. There will be multiple distributions of the Gross Settlement Amount as follows:

14 4.4.1. **First Distribution.** Within fourteen (14) calendar days of the Effective
15 Date, or within ten (10) calendar days of the deadline for the First payment (whichever is later),
16 the Settlement Administrator shall distribute, *pro rata*, the portion of the Gross Settlement
17 Amount Defendants paid by that date, including *pro rata* portions of the Individual Class
18 Payments, Individual PAGA Payments, LWDA PAGA payment, Class Representative Service
19 Payments, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and
20 the Administrator's expenses.

21 4.4.2. **Second Distribution.** Within ten (10) calendar days of the Second
22 Installment Payment, the Settlement Administrator shall distribute, *pro rata*, the portion of the
23 Gross Settlement Amount Defendants paid since the first distribution, including *pro rata* portions
24 of the Individual Class Payments, Individual PAGA Payments, LWDA PAGA payment, Class
25 Representative Service Payments, the Class Counsel Fees Payment, the Class Counsel Litigation
26 Expenses Payment, and the Administrator's expenses.

27 4.5. Payments from the Gross Settlement Amount. Disbursement of the Class
28 Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class
Representative Service Payment shall not precede disbursement of Individual Class Payments
and Individual PAGA Payments.

4.5.1. The Administrator will issue checks for the Individual Class Payments

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

11 4.5.2. The Administrator must conduct a Class Member Address Search for all
12 other Class Members whose checks are returned undelivered without USPS forwarding address.
13 Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS
14 forwarding address provided or to an address ascertained through the Class Member Address
15 Search. The Administrator need not take further steps to deliver checks to Class Members whose
16 re-mailed checks are returned as undelivered. The Administrator shall promptly send a
replacement check to any Class Member whose original check was lost or misplaced, requested
by the Class Member prior to the void date.

17 4.5.3. For any Class Member whose Individual Class Payment check or
18 Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator
19 shall transmit the funds represented by such checks to the California Controller's Unclaimed
20 Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to
21 the requirements of California Code of Civil Procedure Section 384, subd. (b).

22 4.5.4. The payment of Individual Class Payments and Individual PAGA
23 Payments shall not obligate Defendants to confer any additional benefits or make any additional
24 payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in
this Agreement.

25 **5. [OMITTED]**

26 **6. RELEASES OF CLAIMS.** Effective on the date when Defendants fully fund the entire
27 Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the

1 Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims
2 against all Released Parties as follows:

3 6.1 Plaintiff's Release. Plaintiff and her respective former and present spouses,
4 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
5 and discharge Released Parties from all claims, transactions, or occurrences that occurred during
6 the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have
7 been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims
8 that were, or reasonably could have been, alleged based on facts contained in the Operative
9 Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under 6.2,
10 below. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to
11 enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability
12 benefits, social security benefits, workers' compensation benefits that arose at any time, or based
13 on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts
14 or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be
15 true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects,
16 notwithstanding such different or additional facts or Plaintiff's discovery of them.

17 6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
18 purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights,
19 and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

24 6.2 Release by Participating Class Members Who Are Not Aggrieved Employees:
25 All Participating Class Members, on behalf of themselves and their respective former and present
26 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released
27 Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the
28 Class Period facts stated in the Operative Complaint and ascertained in the course of the Action
including, failure to pay wages, failure to provide meal periods, failure to authorize and permit

1 rest periods, failure to issue proper wage statements, failure to timely pay wages, failure to
2 maintain required payroll records, and related allegations. Except as set forth in Section 6.3 of
3 this Agreement, Participating Class Members do not release any other claims, including claims
4 for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,
5 unemployment insurance, disability, social security, workers' compensation, or claims based on
6 facts occurring outside the Class Period.

6 **6.3 Release by Non-Participating Class Members Who Are Aggrieved Employees:**

7 All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on
8 behalf of themselves and their respective former and present representatives, agents, attorneys,
9 heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA
10 penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period
11 facts stated in the Operative Complaint and the PAGA Notice and ascertained in the course of the
12 Action including, failure to pay wages, failure to provide meal periods, failure to authorize and
13 permit rest periods, failure to issue proper wage statements, failure to timely pay wages, failure
14 to maintain required payroll records, and related claims.

14 **7. MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and
15 file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with
16 the Court's current checklist for Preliminary Approvals.

16 **7.1 Defendants' Declaration in Support of Preliminary Approval.** Within 21 days of
17 the full execution of this Agreement, Defendants will prepare and deliver to Class Counsel a
18 signed Declaration from Defendants and Defense Counsel disclosing all facts relevant to any
19 actual or potential conflicts of interest with the Administrator. In their Declarations, Defense
20 Counsel and Defendants shall aver that they are not aware of any other pending matter or action
21 asserting claims that will be extinguished or adversely affected by the Settlement.

22 **7.2 Plaintiff's Responsibilities.** Plaintiff will prepare and deliver to Defense Counsel
23 all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice,
24 and memorandum in support, of the Motion for Preliminary Approval that includes an analysis
25 of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under
26 Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval
27 and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration
28 from the Administrator attaching its "not to exceed" bid for administering the Settlement and

attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (vi) all facts relevant to any actual or potential conflict of interest with Class Members and the Administrator. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

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

7.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class 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 resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class 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.

8. SETTLEMENT ADMINISTRATION.

8.1 Selection of Administrator. The Parties have jointly selected Simpluris, Inc. to serve as the Administrator and verified that, as a condition of appointment, Simpluris, Inc. agrees

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

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

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

11 8.4 Notice to Class Members.

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

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

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

8.4.4 The deadlines for Class Members' written objections, Challenges to Pay

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

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

13 8.5 Requests for Exclusion (Opt-Outs).

14 8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class
15 Settlement must send the Administrator, by fax, email, or mail, a signed written Request for
16 Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional
17 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter
18 from a Class Member or his/her representative that reasonably communicates the Class Member's
19 election to be excluded from the Settlement and includes the Class Member's name, address and
20 email address or telephone number. To be valid, a Request for Exclusion must be timely faxed,
21 emailed, or postmarked by the Response Deadline.

22 8.5.2 The Administrator may not reject a Request for Exclusion as invalid
23 because it fails to contain all the information specified in the Class Notice. The Administrator
24 shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the
25 identity of the person as a Class Member and the Class Member's desire to be excluded. The
26 Administrator's determination shall be final and not appealable or otherwise susceptible to
27 challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion,
28 the Administrator may demand additional proof of the Class Member's identity. The
Administrator's determination of authenticity shall be final and not appealable or otherwise
susceptible to challenge.

8.5.3 Every Class Member who does not submit a timely and valid Request for

1 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all
2 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
3 Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless whether the
4 Participating Class Member actually receives the Class Notice or objects to the Settlement.

5 8.5.4 Every Class Member who submits a valid and timely Request for
6 Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment
7 or have the right to object to the class action components of the Settlement. Because future PAGA
8 claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class
9 Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph
6.4 of this Agreement and are eligible for an Individual PAGA Payment.

10 8.6 Challenges to Calculation of Pay Periods. Each Class Member shall have 60 days
11 after the Administrator mails the Class Notice (plus an additional 14 days for Class Members
12 whose Class Notice is re-mailed) to challenge the number of Class Pay Periods and PAGA Pay
13 Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may
14 challenge the allocation by communicating with the Administrator via fax, email or mail. The
15 Administrator must encourage the challenging Class Member to submit supporting
16 documentation. In the absence of any contrary documentation, the Administrator is entitled to
17 presume that the Pay Periods contained in the Class Notice are correct so long as they are
18 consistent with the Class Data. The Administrator's determination of each Class Member's
19 allocation of Pay Periods and/or PAGA Pay Periods shall be final and not appealable or otherwise
20 susceptible to challenge. The Administrator shall promptly provide copies of all challenges to
calculation of Pay Periods and/or PAGA Pay Periods to Defense Counsel and Class Counsel and
the Administrator's determination the challenges.

21 8.7 Objections to Settlement.

22 8.7.1 Only Participating Class Members may object to the class action
23 components of the Settlement and/or this Agreement, including contesting the fairness of the
24 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel
Litigation Expenses Payment and/or Class Representative Service Payment.

25 8.7.2 Participating Class Members may send written objections to the
26 Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear
27 in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval

1 Hearing. A Participating Class Member who elects to send a written objection to the
2 Administrator must do so not later than 60 days after the Administrator's mailing of the Class
3 Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

4 8.7.3 Non-Participating Class Members have no right to object to any of the class
5 action components of the Settlement.

6 8.8 Administrator Duties. The Administrator has a duty to perform or observe all
7 tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8 8.8.1 Website, Email Address and Toll-Free Number. The Administrator will
9 establish and maintain and use an internet website to post information of interest to Class
10 Members including the date, time and location for the Final Approval Hearing and copies of the
11 Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class
12 Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class
13 Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final
14 Approval and the Judgment. The Administrator will also maintain and monitor an email address
15 and a toll-free telephone number to receive Class Member calls, faxes and emails.

16 8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator
17 will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not
18 later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the
19 Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names
20 and other identifying information of Class Members who have timely submitted valid Requests
21 for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class
22 Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for
23 Exclusion from Settlement submitted (whether valid or invalid).

24 8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide
25 written reports to Class Counsel and Defense Counsel that, among other things, tally the number
26 of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for
27 Exclusion (whether valid or invalid) received, objections received, challenges to Pay Periods
28 and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments
and Individual PAGA Payments ("Weekly Report"). The Weekly Reports must include provide
the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all
Requests for Exclusion and objections received.

1 8.8.4 Workweek and/or Pay Period Challenges. The Administrator has the
2 authority to address and make final decisions consistent with the terms of this Agreement on all
3 Class Member challenges over the calculation of Pay Periods and/or Pay Periods. The
4 Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.

5 8.8.5 Administrator's Declaration. Not later than 14 days before the date by
6 which Plaintiff is required to file the Motion for Final Approval of the Settlement, the
7 Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable
8 for filing in Court attesting to its due diligence and compliance with all of its obligations under
9 this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices
10 returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the
11 total number of Requests for Exclusion from Settlement it received (both valid or invalid), the
12 number of written objections and attach the Exclusion List. The Administrator will supplement
13 its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible
14 for filing the Administrator's declaration(s) in Court.

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

23 **9. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on its records,
24 Defendants and Red Door estimate that, as of August 30, 2022, (1) there are 262 Class Members
25 and 4,040 Total Pay Periods during the Class period and (2) there were 220 Aggrieved Employees
26 who worked 3,164 Pay Periods during the PAGA Period. As described in the Mediator's Proposal,
27 if the Pay Periods and/or Class Members as of that August 30, 2022 date is 10% more than 6,000
28 pay periods or 240 Class members as of August 31, 2022, the Gross Settlement Amount, including
the Class Counsel Fees Payment, the Class Representative Payment, and the LWDA payment,
will increase proportionally according to the number of additional Pay Periods or Class Members,

1 whichever results in a higher increase in the Gross Settlement Amount.

2
3 **10. DEFENDANTS' RIGHT TO WITHDRAW.** If the number of valid Requests for
4 Exclusion identified in the Exclusion List exceeds 10.00% of the total of all Class Members,
5 Defendants may, but are not obligated to, elect to withdraw from the Settlement. The Parties
6 agree that, if Defendants withdraw, the Settlement shall be void ab initio, have no force or effect
7 whatsoever, and that neither Party will have any further obligation to perform under this
8 Agreement; provided, however, Defendants will remain responsible for paying all Settlement
9 Administration Expenses incurred to that point. Defendants must notify Class Counsel and the
10 Court of its election to withdraw not later than 7 days after the Administrator sends the final
11 Exclusion List to Defense Counsel; late elections will have no effect.

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

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

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

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

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

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

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

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

1 **13. ADDITIONAL PROVISIONS.**

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

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

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

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

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

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

12 13.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant
13 and represent that they are authorized by Plaintiff and Defendants, respectively, to take all
14 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
15 to effectuate its terms, and to execute any other documents reasonably required to effectuate the
16 terms of this Agreement including any amendments to this Agreement.

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

24 13.7 No Prior Assignments. The Parties separately represent and warrant that they
25 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
26 or encumber to any person or entity and portion of any liability, claim, demand, action, cause of
27 action, or right released and discharged by the Party in this Settlement.

28 13.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendants nor Defense
Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
Settlement be relied upon as such within the meaning of United States Treasury Department
Circular 230 (31 CFR Part 10, as amended) or otherwise.

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

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

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

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

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

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

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

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

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

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

4 To Plaintiff:

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

11 To Defendants:

12 Sarah Brite Evans, Esq.
13 Schwartz Semerdjian Cauley & Evans LLP
14 101 W Broadway
15 Ste 810
16 San Diego, CA 92101
17 sarah@sscelaw.com

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

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

02 / 15 / 2023

Dated: February ____, 2023

By:



MCKENNA MCKENZIE

2/14/2023
Dated: February ____, 2023

DocuSigned by:
By: Kyle Maloy
KYLE MALOY for
Red Door Escape Room, LLC,
Kingsmen Escape Entertainment LLC,
Red Door Corporate, LLC, Red Door
Jet Fuel, LP, and himself

02 / 15 / 2023
Dated: February ____, 2023

THE SPIVAK LAW FIRM
By: David Spivak
DAVID G. SPIVAK, Attorneys for
Plaintiff, MCKENNA MCKENZIE,
and all others similarly situated

Dated: February 15, 2023

UNITED EMPLOYEES LAW GROUP
By: Walter L. Haines
WALTER L. HAINES, Attorneys for
Plaintiff, MCKENNA MCKENZIE,
and all others similarly situated

2/10/2023
Dated: February ____, 2023

SCHWARTZ SEMERDJIAN CAULEY &
EVANS LLP
DocuSigned by:
By: Sarah Evans
SARAH BRITE EVANS, Attorneys for
Defendants, Red Door Escape Room,
LLC, Kingsmen Escape Entertainment
LLC, and Kyle Maloy

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EXHIBIT A

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

(case name: McKenna McKenzie v. Red Door Escape Room, LLC, et al. and number
CIVMSC21-01753)

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

You may be eligible to receive money from an employee class action lawsuit ("Action") against Red Door Escape Room, LLC, Kingsmen Escape Entertainment LLC, and Kyle Maloy (collectively "Defendants") for alleged wage and hour violations. The Action was filed by a former Kingsmen Escape Entertainment, LLC employee McKenna McKenzie ("Plaintiff") and seeks payment of (1) back wages and other relief for a class of hourly, non-exempt employees ("Class Members") who worked at any California Red Door Escape Room location owned by Red Door Escape Room, LLC; Kingsmen Escape Entertainment LLC; and/or Red Door Jet Fuel, L.P. (collectively "Red Door Escape") during the Class Period (August 27, 2018 to the date of preliminary approval of this settlement); and (2) penalties under the California Private Attorney General Act ("PAGA") for all hourly, non-exempt employees who worked for Red Door during the PAGA Period (August 02, 2020 to the date of preliminary approval of this settlement) ("Aggrieved Employees").

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

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

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

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

Aggrieved Employees to give up their rights to assert certain claims against Defendants and each of their former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns subsidiaries, and affiliates, including Red Door Corporate, LLC, and Red Door Jet Fuel, LP. (“Released Parties”).

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

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

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

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don’t Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Released Parties that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is —	If you don’t want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendants must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).

1	Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
2	Written Objections Must be Submitted by	
3	—	
4	You Can Participate in the ___ Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on _____. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
5	You Can Challenge the Calculation of Your Pay Period / Pay Periods	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many Pay Periods you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Pay Periods and number of PAGA Period Pay Periods you worked according to Defendants’ records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice.
6	Written Challenges Must be Submitted by	
7	—	

1. WHAT IS THE ACTION ABOUT?

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

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

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

So far, the Court has made no determination whether anyone is correct on the merits. In the meantime, Plaintiff and Defendants hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing

1 the expensive and time-consuming process of litigation. The negotiations were successful. By
2 signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the
3 Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and
4 Defendants have negotiated a proposed Settlement that is subject to the Court’s Final Approval.
Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to
settle, Defendants do not admit any violations or concede the merit of any claims.

5 Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they
6 believe that: (1) Defendants have agreed to pay a fair, reasonable and adequate amount
7 considering the strength of the claims and the risks and uncertainties of continued litigation; and
8 (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court
preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this
Notice, and scheduled a hearing to determine Final Approval.

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

10 1. Defendants Will Pay \$395,000.00 as the Gross Settlement Amount (Gross
11 Settlement). Defendants have agreed to deposit the Gross Settlement into an account controlled
12 by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay
13 the Individual Class Payments, Individual PAGA Payments, Class Representative Service
14 Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and
15 penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”).
16 Assuming the Court grants Final Approval, Defendants will begin to fund the Gross Settlement as
follows: Within ten (10) calendar days of the Effective Date, Red Door shall pay the first of two
(2) \$197,500.00 installment payments on the Gross Settlement Amount into the Settlement
Account and shall pay the remaining \$197,500.00 installment payments within 180 calendar days
of the first installment payment.

17 2. The Administrator will make a distribution after each installment payment as
18 follows:

19 A. **First Distribution.** Within fourteen (14) calendar days of the Effective
20 Date, or within ten (10) calendar days of the deadline for the First payment (whichever is later),
21 the Settlement Administrator shall distribute, *pro rata*, the portion of the Gross Settlement
22 Amount Defendants paid by that date, including *pro rata* portions of the Individual Class
Payments, Individual PAGA Payments, LWDA PAGA payment, Class Representative Service
Payments, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and
the Administrator’s expenses.

23 B. **Second Distribution.** Within ten (10) calendar days of the Second
24 Installment Payment, the Settlement Administrator shall distribute, *pro rata*, the portion of the
25 Gross Settlement Amount Defendants paid since the first distribution, including *pro rata* portions
26 of the Individual Class Payments, Individual PAGA Payments, LWDA PAGA payment, Class
27
28

1 Representative Service Payments, the Class Counsel Fees Payment, the Class Counsel Litigation
2 Expenses Payment, and the Administrator's expenses.

3 C. Disbursements of the pro rata portions of the Class Counsel Fees Payment,
4 the Class Counsel Litigation Expenses Payment and the Class Representative Service Payments
5 shall not precede disbursement of pro rata portions of the Individual Class Payments and
6 Individual PAGA payments.

7 3. The Judgment will be final on the date the Court enters Judgment, or a later date
8 if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

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

13 A. Up to \$131,666.00 (33.33% of the Gross Settlement to Class Counsel for
14 attorneys' fees and up to \$20,000.00 for their litigation expenses. To date, Class Counsel have
15 worked and incurred expenses on the Action without payment.

16 B. Up to \$10,000.00 as a Class Representative Award for filing the Action,
17 working with Class Counsel and representing the Class. A Class Representative Award will be
18 the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any
19 Individual PAGA Payment.

20 C. Up to \$9,000.00 to the Administrator for services administering the
21 Settlement.

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

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

27 5. Net Settlement Distributed to Class Members. After making the above deductions
28 in amounts approved by the Court, the Administrator will distribute the rest of the Gross
Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class
Members based on their Class Period Pay Periods.

6. Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking
the Court to approve an allocation of 33.33% of each Individual Class Payment to taxable wages
("Wage Portion") and 66.67% to interest and penalties ("Non-Wage Portion."). The Wage Portion
is subject to withholdings and will be reported on IRS W-2 Forms. Red Door will separately pay
employer payroll taxes they owe on the Wage Portion. The Individual PAGA Payments are
counted as penalties rather than wages for tax purposes. The Administrator will report the

1 Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS
2 1099 Forms.

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

8 7. Need to Promptly Cash Payment Checks. The front of every check issued for
9 Individual Class Payments and Individual PAGA Payments will show the date when the check
10 expires (the void date). If you don't cash it by the void date, your check will be automatically
11 cancelled, and the monies will be deposited with the California Controller's Unclaimed Property
12 Fund in your name. If the monies represented by your check is sent to the Controller's Unclaimed
13 Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

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

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

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

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

16 11. Participating Class Members' Release. After the Judgment is final and Defendants

1 have fully funded the Gross Settlement (and separately paid all employer payroll taxes),
2 Participating Class Members will be legally barred from asserting any of the claims released under
3 the Settlement. This means that unless you opted out by validly excluding yourself from the Class
4 Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against the Released
Parties for wages based on the Class Period facts and PAGA penalties based on PAGA Period
facts, as alleged in the Action and resolved by this Settlement.

5 The Participating Class Members will be bound by the following release:

6 All Participating Class Members, on behalf of themselves and their respective former and
7 present representatives, agents, attorneys, heirs, administrators, successors, and assigns,
8 release Released Parties [defined as Red Door Escape Room, LLC, Kingsmen Escape
9 Entertainment LLC, Kyle Maloy, Red Door Corporate, LLC, and Red Door Jet Fuel, LP
10 and each of their former and present directors, officers, shareholders, owners, members,
11 attorneys, insurers, predecessors, successors, assigns subsidiaries, and affiliates] from (i)
12 all claims that were alleged, or reasonably could have been alleged, based on the Class
13 Period facts stated in the Operative Complaint and ascertained in the course of the Action
14 including failure to pay wages, failure to provide meal periods, failure to authorize and
15 permit rest periods, failure to issue proper wage statements, failure to timely pay wages,
16 failure to maintain required payroll records, and related allegations. Except as set forth in
17 Section 6.3 of the Settlement Agreement, Participating Class Members do not release any
18 other claims, including claims for vested benefits, wrongful termination, violation of the
19 Fair Employment and Housing Act, unemployment insurance, disability, social security,
20 workers' compensation, or claims based on facts occurring outside the Class Period.

21 12. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and
22 Defendants have paid the Gross Settlement (and separately paid the employer-side payroll taxes),
23 all Aggrieved Employees will be barred from asserting PAGA claims against the Released Parties,
24 whether or not they exclude themselves from the Settlement. This means that all Aggrieved
25 Employees, including those who are Participating Class Members and those who opt-out of the
26 Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against the
27 Released Parties based on the PAGA Period facts alleged in the Action and resolved by this
28 Settlement.

29 The Aggrieved Employees' Releases for Participating and Non-Participating Class
30 Members are as follows:

31 All Participating and Non-Participating Class Members who are Aggrieved Employees
32 are deemed to release, on behalf of themselves and their respective former and present
33 representatives, agents, attorneys, heirs, administrators, successors, and assigns, the
34 Released Parties, from all claims for PAGA penalties that were alleged, or reasonably
35 could have been alleged, based on the PAGA Period facts stated in the Operative
36 Complaint and the PAGA Notice and ascertained in the course of the Action including
37 failure to pay wages, failure to provide meal periods, failure to authorize and permit rest
38 periods, failure to issue proper wage statements, failure to timely pay wages, failure to
39 maintain required payroll records, and related allegations.

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4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

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

2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$1,000.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.

3. Pay Period Challenges. The number of Class Pay Periods you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Defendants' records, are stated in the first page of this Notice. You have until ____ to challenge the number of Pay Periods and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

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

5. HOW WILL I GET PAID?

Within ten (10) calendar days of the Effective Date, Defendants shall pay the first of two (2) \$197,500.00 installment payments on the Gross Settlement Amount into the Settlement Account and shall pay each of the remaining \$197,500.00 installment payment within 180 days of the first installment payment.

1. Participating Class Members. After each instalment payment by Defendants toward the Gross Settlement Amount, the Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

2. Non-Participating Class Members. After each instalment payment by Defendants toward the Gross Settlement Amount, the Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

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

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

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *McKenna McKenzie vs. Red Door Escape Room, LLC*, Case No. CIVMSC21-01753, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by ___, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendants are asking the Court to approve. At least ___ days before the ___ Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website ([url](#)) or the Court's website ([url](#)).

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is ___.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action, *McKenna McKenzie vs. Red Door Escape Room, LLC*, case no. CIVMSC21-01753, and include your name, current address, telephone number, and approximate dates of employment at any California Red Door Escape Room location owned by Red Door Escape Room, LLC, Kingsmen Escape Entertainment LLC, and/or Red Door Jet Fuel, L.P. and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection.

1 See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval
2 Hearing.

3 **8. CAN I ATTEND THE FINAL APPROVAL HEARING?**

4 You can, but don't have to, attend the Final Approval Hearing on ____ at (time) in Department 39
5 of the Contra Costa Superior Court, located at Wakefield Taylor Courthouse, 725 Court Street,
6 Martinez, CA 94553. At the Hearing, the judge will decide whether to grant Final Approval of
7 the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff,
8 and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense
Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally
or virtually via ____ ([https://www. ____](https://www.____)). Check the Court's website for the most current
information.

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

11 **9. HOW CAN I GET MORE INFORMATION?**

12 The Agreement sets forth everything Defendants and Plaintiff have promised to do under the
13 proposed Settlement. The easiest way to read the Agreement, the Judgment or any other
14 Settlement documents is to go to (specify entity)'s website at (url). You can also telephone or send
15 an email to Class Counsel or the Administrator using the contact information listed below, or
16 consult the Superior Court website by going to ([http://www. ____ .aspx](http://www.____.aspx)) and entering the Case
17 Number for the Action, Case No. CIVMSC21-01753. You can also make an appointment to
personally review court documents in the Clerk's Office at the Wakefield Taylor Courthouse by
calling ____.

18 **DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION**
19 **ABOUT THE SETTLEMENT.**

20 Class Counsel:

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

26 Administrator:

27 Name of Company: Simpluris, Inc.
28 Email Address: ____

Mailing Address: _____
Telephone: _____
Fax Number: _____

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

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

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT 2



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

August 2, 2021

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

Re: McKenna McKenzie / Red Door Escape Room

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, McKenna McKenzie (hereafter “McKenzie” or “Complainant”) provides notice that Red Door Escape Room, LLC, a California limited liability company, Kingsmen Escape Entertainment LLC, a California limited liability company, and related entities (collectively “the Red Door Escape Room Employers” or “the Employers”) violated his rights and those of all other individuals the Red Door Escape Room Employers have employed or otherwise contracted with in California as nonexempt, hourly workers and employees, including but not limited to managers, gamemaster, gamemaster leads, front desk, and front desk lead, 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, 226.7, 510, 512, 1174, 1194, 1197, and 1198. On behalf of herself and all other Aggrieved Employees, McKenzie hereby provides this notice to the Labor & Workforce Development Agency and the Red Door Escape Room Employers and their agents and representatives.

At all relevant times, the Red Door Escape Room Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. McKenzie and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 10-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately May 11, 2019, the Red Door Escape Room Employers began to employ McKenzie in Concord in the position of hourly, nonexempt fro. The Red Door Escape Room Employers continuously employed her in that capacity until on or about June 18, 2021 when her employment ended.

At all relevant times, the Red Door Escape Room Employers issued wages to McKenzie and all of the other Aggrieved Employees on a basis and paid them by the hour. At all relevant times, the Red Door Escape Room Employers classified McKenzie and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Red Door Escape Room Employers willfully misclassified McKenzie and all of the other Aggrieved Employees as independent contractors. At all relevant times with regard to McKenzie and all of the other Aggrieved Employees, the Red Door Escape Room Employers . At all relevant times, McKenzie and all of the other Aggrieved Employees were employees of the Red Door Escape Room Employers. The Red Door Escape Room Employers engaged, suffered, and permitted them to work. The Red Door Escape Room Employers knew or should have known their actions of misclassifying McKenzie and all of the other Aggrieved Employees as independent contractors violated California law. Kyle Maloy knowingly advised the Red Door Escape Room Employers to misclassify McKenzie and all of the other Aggrieved Employees as independent contractors.

The Red Door Escape Room Employers failed to compensate McKenzie and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Red Door Escape Room Employers

required McKenzie and the Aggrieved Employees to work through their meal periods and, from time to time, to perform repair and related duties after they were clocked out for the day. The Red Door Escape Room Employers did not pay McKenzie and the Aggrieved Employees for this worktime.

The Red Door Escape Room Employers failed to compensate McKenzie 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 Red Door Escape Room Employers required McKenzie and the Aggrieved Employees to work through their meal periods and, from time to time, to perform repair and related duties after they were clocked out for the day. This work was performed on workdays in which the employees concerned worked in excess of eight hours in a day and in workweeks that exceeded 40 hours. The Red Door Escape Room Employers did not pay McKenzie and the Aggrieved Employees for this work time (or other impacted work time) at overtime premium rates.

The Red Door Escape Room Employers failed to compensate McKenzie and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. The Red Door Escape Room Employers required McKenzie and the Aggrieved Employees to work through their meal periods and, from time to time, to perform repair and related duties after they were clocked out for the day. This work was performed on workdays in which the employees concerned worked in excess of 12 hours in a day. The Red Door Escape Room Employers did not pay McKenzie and the Aggrieved Employees for this work time (or other impacted work time) at doubletime premium rates.

At all relevant times, the Red Door Escape Room Employers failed to provide McKenzie and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Red Door Escape Room Employers required McKenzie and the Aggrieved Employees to work through their meal periods. The Red Door Escape Room Employers did not pay McKenzie and the Aggrieved Employees for this worktime. The Red Door Escape Room Employers also failed to pay premium wages for days on which it failed to

provide McKenzie and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Red Door Escape Room Employers failed to authorize and permit McKenzie and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Red Door Escape Room Employers required McKenzie and the Aggrieved Employees to work through their rest breaks. The Red Door Escape Room Employers also failed to pay premium wages for days on which it failed to authorize and permit McKenzie and all of the other Aggrieved Employees to take rest breaks as required by law.

The Red Door Escape Room Employers unlawfully deducted wages belonging to McKenzie and all of the other Aggrieved Employees. The Red Door Escape Room Employers deducted at least 30 minutes per day from the work time McKenzie and the Aggrieved Employees recorded even though McKenzie and the Aggrieved Employees had worked such time.

At all relevant times, the Red Door Escape Room Employers failed to issue to McKenzie 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 Red Door Escape Room Employers knowingly and intentionally failed to state on the wage statements they issued to McKenzie 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 minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, and all earned wages subject to discount.

The Red Door Escape Room Employers also failed to timely pay McKenzie and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Red Door Escape Room Employers failed to maintain accurate employee records of McKenzie and all of the other Aggrieved Employees. The Red Door Escape Room Employers did not maintain records of the minimum, regular, overtime, doubletime, rest period premium, meal period premium, deducted, and discounted wages McKenzie and the Aggrieved Employees earned (discussed above).

For the reasons stated herein, McKenzie 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 Red Door Escape Room Employers failed to pay McKenzie and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (b) The Red Door Escape Room Employers failed to provide McKenzie and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Red Door Escape Room Employers failed to authorize and permit McKenzie and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Red Door Escape Room Employers failed to compensate McKenzie and all of the other Aggrieved Employees at one hour's pay for each day in which the Red Door Escape Room Employers failed to provide them with one or more meal periods as required by law;
- (e) The Red Door Escape Room Employers failed to compensate McKenzie and all of the other Aggrieved Employees at one hour's pay for each day in which the Red Door Escape Room Employers failed to authorize and permit them to take one or more rest breaks as required by law;

- (f) The Red Door Escape Room Employers unlawfully deducted wages belonging to McKenzie and all of the other Aggrieved Employees;
- (g) The Red Door Escape Room Employers knowingly and intentionally failed to provide McKenzie and all of the other Aggrieved Employees with accurate wage statements;
- (h) The Red Door Escape Room Employers willfully failed to timely pay McKenzie and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Red Door Escape Room Employers and when their employment ended; and
- (i) The Red Door Escape Room Employers failed to maintain accurate employment records pertaining to McKenzie and all of the other Aggrieved Employees.

Accordingly, McKenzie now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees based on the Red Door Escape Room Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the amusement and recreation whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Amusement and Recreation industry" to mean

any industry, business, or establishment operated for the purpose of furnishing entertainment or recreation to the public, including but not limited to theaters, dance halls, bowling alleys, billiard parlors, skating rinks, riding academies, racetracks, amusement parks, athletic fields, swimming pools, gymnasiums, golf courses, tennis courts, carnivals, and wired music studios

Wage Order, § 2(A). At all relevant times during the applicable limitations period, the Red Door Escape Room Employers, McKenzie, and all of the Aggrieved Employees were covered by the Wage Order because the Red Door Escape Room Employers operated, and McKenzie, and all of the Aggrieved Employees worked for, one or more establishments operated as amusement parks. Accordingly, McKenzie 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)

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

In relevant part, section 2(H) 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.

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

The Red Door Escape Room Employers required McKenzie and the Aggrieved Employees to work through their meal periods and, from time to time, to perform repair and related duties after they were clocked out for the day. The Red Door Escape Room Employers did not pay McKenzie and the Aggrieved Employees for this worktime. The Red Door Escape Room Employers required McKenzie and the Aggrieved Employees to work through their meal periods and, from time to time, to perform repair and related duties after they were clocked out for the day. This work was performed on workdays in which the employees concerned worked in excess of eight hours in a day and in workweeks that exceeded 40 hours. The Red Door Escape Room Employers did not pay McKenzie and the Aggrieved Employees for this work time (or other impacted work time) at overtime premium rates. The Red Door Escape Room Employers required McKenzie and the Aggrieved Employees to work through their meal periods and, from time to time, to perform repair and related duties after they were clocked out for the day. This work was performed on workdays in which the employees concerned worked in excess of 12 hours in a day. The Red Door Escape Room Employers did not pay McKenzie and the Aggrieved Employees for this work time (or other impacted work time) at doubletime premium rates.

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. Merry Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Red Door Escape Room Employers, McKenzie and all of the other Aggrieved Employees earned during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates.

At all relevant times during the applicable limitations period, the Red Door Escape Room Employers failed to compensate McKenzie and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, overtime, and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, McKenzie 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));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and

4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

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

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

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

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

In relevant part, Labor Code section 512 states:

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

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

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

In addition, Labor Code section 226.7 states:

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

At all relevant times, the Red Door Escape Room Employers failed to provide McKenzie and all of the other Aggrieved Employees with all timely meal periods. The Red Door Escape Room Employers denied McKenzie and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Red Door Escape Room Employers required McKenzie and the Aggrieved Employees to work through their meal periods. The Red Door Escape Room Employers did not pay McKenzie and the Aggrieved Employees for this worktime. Furthermore, the Red Door Escape Room Employers failed to pay premium wages for days on which they failed to provide McKenzie and all of the other Aggrieved Employees with timely meal periods. Accordingly, McKenzie now seeks civil penalties for these Labor Code violations that the Red

Door Escape Room 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 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$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 Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(H) of the Wage Order states,

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

In relevant part, Labor Code section 1198 states,

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

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

Rest Periods:

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

In addition, Labor Code section 226.7 states:

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

employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The Red Door Escape Room Employers failed to authorize and permit McKenzie and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Red Door Escape Room Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Red Door Escape Room Employers required McKenzie and the Aggrieved Employees to work through their rest breaks. Moreover, the Red Door Escape Room Employers failed to pay McKenzie and all of the other Aggrieved Employees premium wages on workdays the Red Door Escape Room Employers failed to provide McKenzie and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, McKenzie now seeks civil penalties for these Labor Code violations that the Red Door Escape Room 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 226.7, 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)).

Unlawful Deductions
(Lab. Code § 221)

Under Labor Code § 221, "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." The Red Door Escape Room Employers deducted wages from the wages earned by McKenzie and all of the other Aggrieved Employees

for hours spent working or in on-duty meal periods in violation of Labor Code § 221. Accordingly, McKenzie seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code § 221, and \$200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of Labor Code § 221, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 225.5).

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

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

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

At all relevant times during the applicable limitations period, the Red Door Escape Room 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 Red Door Escape Room Employers failed to state in the wage statements they issued to McKenzie 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 Red Door Escape Room Employers knowingly and intentionally failed to state on the wage statements they issued to McKenzie 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 minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, all earned wages subject to discount.

Accordingly, McKenzie seeks civil penalties for the Labor Code violations that the Red Door Escape Room 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).

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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 Red Door Escape Room Employers failed to compensate McKenzie and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, deducted wages, discounted wages, at the intervals stated above. As a result, the Red Door Escape Room Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, McKenzie now seeks civil penalties for the Labor Code violations that the Red Door Escape Room 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 Red Door Escape Room Employers failed to pay McKenzie 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 McKenzie, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, deducted wages, discounted wages. Additionally, the Red Door Escape Room Employers failed to issue to McKenzie 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 McKenzie and all of the other Aggrieved Employees as set forth above at the end of employment, the Red Door Escape Room Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the other Aggrieved Employees, McKenzie seeks civil penalties from the Red Door Escape Room 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 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 Red Door Escape Room Employers failed to compensate McKenzie 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 minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, all earned wages subject to discount. As a result, the Red Door Escape Room Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to McKenzie and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, McKenzie 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)).

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Person Acting on Behalf of Employers who Violates Labor Code
(Labor Code § 558.1)

In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Kyle Maloy was an employer of McKenzie and all of the other Aggrieved Employees, and/or “owner,” “managing agent,” and/or “officer” of the Red Door Escape Room Employers and the other employers identified above. Kyle Maloy directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above. On behalf of herself and all of the other Aggrieved Employees, McKenzie seeks the same civil penalties against Kyle Maloy on the same grounds for which she seeks civil penalties against the Red Door Escape Room Employers.

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that McKenna McKenzie 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: McKenna McKenzie
Walter Haines, Esq.

Red Door Escape Room, LLC
c/o Agent for service of process
Kyle Maloy
Manager, Red Door Escape Room, LLC
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Encinitas, CA 92024

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11 Attorneys for Plaintiff,

12 MCKENNA MCKENZIE, and all others similarly situated

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF CONTRA COSTA**
15 **(UNLIMITED JURISDICTION)**

16 MCKENNA MCKENZIE, on behalf of herself,
17 all others similarly situated, and the general
18 public,

19 *Plaintiff,*

20 vs.

21 RED DOOR ESCAPE ROOM, LLC, a
22 California limited liability company;
23 KINGSMEN ESCAPE ENTERTAINMENT,
24 LLC, a California limited liability company;
25 KYLE MALOY, an individual; and DOES 1-
26 50, inclusive,

27 *Defendants.*

FILED

2021 AUG 27 A 10:17

KATE BIEKER
CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CA
BY: C. J. ALA CLERK

PER LOCAL RULE, THIS
CASE IS ASSIGNED TO
DEPT. 39 FOR ALL
PURPOSES

C21-01753-

Case No.:

CLASS ACTION

COMPLAINT FOR:

1. Failure to Provide Meal and Rest Periods (Lab. Code §§ 226.7, 512 and 1198);
2. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
3. Unlawful Deductions (Lab. Code §221);
4. Wage Statement Penalties (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code §§ 201, 202, and 203; and
6. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.).

JURY TRIAL DEMANDED



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

3 **INTRODUCTION**

4 1. Plaintiff brings this class action against Defendant RED DOOR ESCAPE ROOM,
5 LLC, a California limited liability company, KINGSMEN ESCAPE ENTERTAINMENT, LLC,
6 a California limited liability company, KYLE MALOY, an individual; and DOES 1–50, inclusive
7 (collectively “Defendants”) for alleged violations of the California Labor Code, Industrial
8 Welfare Commission Order No. 10–2001 (hereafter “the Wage Order”), and the Business and
9 Professions Code.

10 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her
11 and other similarly situated current and former employees in California for unpaid wages and
12 other related relief. These claims are based on Defendants’ failures to: (1) Provide all meal and
13 rest periods; (2) Pay all wages earned for all hours worked at the correct rates of pay; (3) Refrain
14 from unlawful deductions; (4) Issue accurate and complete itemized written wage statements; (5)
15 Timely pay all wages upon termination of employment; and (6) Fairly compete. Accordingly,
16 Plaintiff now seeks to recover unpaid wages, statutory penalties, interest, and related relief
17 through this class action.

18 **JURISDICTION AND VENUE**

19 3. This court has subject matter jurisdiction because the aggregate claims of
20 Plaintiff, inclusive of all relief, place more than \$25,000 in controversy.

21 4. There is no basis for federal question subject matter jurisdiction in this case.
22 Specifically, Plaintiff asserts claims that solely arise under California law, rather than federal
23 law.

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

25 6. Venue is proper in Contra Costa County pursuant to California Code of Civil
26 Procedure § 395(a) and § 395.5 in that liability arose in Contra Costa County because at least
27 some of the transactions that are the subject matter of this Complaint occurred therein and/or
28 because each defendant is found, maintains offices, transacts business, and/or has an agent
therein.

PARTIES

7. Plaintiff MCKENNA MCKENZIE is a resident of California.



1 8. Defendant RED DOOR ESCAPE ROOM, LLC, is a limited liability company
2 organized and existing under the laws of California and also a citizen of California based on
3 Plaintiff's information and belief.

4 9. Defendant KINGSMEN ESCAPE ENTERTAINMENT, LLC, is a limited liability
5 company organized and existing under the laws of California and also a citizen of California based
6 on Plaintiff's information and belief.

7 10. Defendant KYLE MALOY is an individual and also a citizen of California based
8 on Plaintiff's information and belief.

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

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

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

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

CLASS ALLEGATIONS

 15. This action has been brought and may be maintained as a class action pursuant to
California Code of Civil Procedure § 382 because there is a well-defined community of interest



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among the persons who comprise the readily ascertainable class defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

16. **Class Definition:** The Class is defined as follows: All individuals currently and formerly employed in California as non-exempt, hourly employees by Defendants, including but not limited to managers, gamemasters, gamemaster leads, front desk, and front desk leads, individuals performing work comparable to the aforementioned, and individuals in similar positions at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is entered in this action (“Class” or “Class Members”).

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

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

19. **Commonality and Predominance:** Common questions of law and fact exist as to all Class Members and predominate over any questions which affect only individual Class Members. These questions include, but are not limited to:

A. Whether Defendants failed to provide the Class Members with all meal and rest periods in compliance with California law;

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

C. Whether Defendants collected or received from the Class Members any part of their wages;

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

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

F. Whether persons acting on Defendants’ behalf violated the Labor Code;

G. Whether the Class Members are entitled to penalties under the Private



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1 Attorney General Act of 2004;

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

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

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

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

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

19 23. **Superiority:** A class action is vastly superior to other available means for fair and
20 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
21 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
22 and efficiently prosecute their common claims in a single forum without the unnecessary
23 duplication of effort and expense that numerous individual actions would entail. In addition, the
24 monetary amounts due to many individual Class Members are likely to be relatively small and
25 would thus make it difficult, if not impossible, for individual Class Members to both seek and
26 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
27 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
28 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

STATEMENT OF FACTS

24. On approximately May 11, 2019, Plaintiff began working for Defendants at their
escape room establishment located at 2075 Diamond Boulevard, Suite 275 in the city of Concord



1 California as an hourly front desk attendant and as a manager. Defendants continuously employed
2 her in that capacity until on or about June 18, 2021, when Plaintiff's employment ended.

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

7 26. At all relevant times, Defendants failed to provide Plaintiff and the Class
8 Members with all timely meal periods. Due to the workload and failure to hire sufficient staff
9 members, Defendants denied Plaintiff and the Class Members their 30-minute off-duty meal
10 period within the first five hours of work. Defendants also denied meal periods to Plaintiff and
11 the Class Members because there were insufficient employees to cover for them during rest
12 breaks and meal periods. On those seldom occasions when Plaintiff and the Class Members did
13 attempt to take their 30-minute meal periods, Defendants' management often interrupted them
14 with demands for help in assisting customers, cleaning, or other related job duties.

15 27. Moreover, Defendants failed to authorize and permit rest periods to Plaintiff and
16 the Class Members in violation of California law. Due to high workload and low staffing levels,
17 Defendants failed to authorize and permit Plaintiff and the Class Members to take ten-minute,
18 paid, duty-free rest breaks every four hours worked or major fraction thereof. Defendants did not
19 seek an exemption from the rest period protections of the Wage Order from the California
20 Divisions of Labor Standards Enforcement.

21 28. Defendants failed to hire sufficient staff members to cover and support Plaintiff
22 and the Class Members so they could take duty-free, ten-minute rest periods and duty-free, 30-
23 minute meal periods. Furthermore, Defendants failed to pay premium wages for days on which
24 they failed to provide Plaintiff and the other Class Members with timely meal periods.
25 Defendants also failed to pay premium wages for days on which they failed to provide Plaintiff
26 and the other Class Members with timely rest periods.

27 29. At all relevant times, Defendants required Plaintiff and the Class Members to
28 perform work while clocked-out and failed to compensate them for this time, including but not
limited to, repair and related duties. Defendants failed to compensate Plaintiff and the Class
Members for this work performed off-the-clock. Further, Defendants altered Plaintiff's and the
Class Members' time records to show that they received meal and rest periods even though



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1 Plaintiff and the Class Members were required to work during the alleged meal or rest period.
2 Defendants never compensated Plaintiff and the Class Members for the work performed during
3 meal or rest periods.

4 30. Defendants failed to issue to Plaintiff and the Class Members complete and
5 accurate wage statements as a result of their failure to state all hours worked at the correct rates
6 of pay, and all wages earned including rest period and meal period premium wages. Defendants
7 also failed to timely pay Plaintiff and the Class Members all earned wages described above at the
8 conclusion of employment.

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS**

11 **(Lab. Code §§ 226.7, 512, and 1198)**

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

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

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

17 33. In relevant part, California Labor Code § 1198 states:

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

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

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

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



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employee only if the first meal period was not waived.

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

Rest Periods

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

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

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

Meal Periods

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

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



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

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

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

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

21 39. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be
22 provided with net rest breaks of at least ten minutes for each four-hour period of work, or major
23 fraction thereof.

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

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

 42. Plaintiff is informed and believes and thereon alleges that, at all relevant times
within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy



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1 which resulted in Defendants not providing the Class with all off-duty meal periods and rest
2 breaks required by California law.

3 43. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members
4 have suffered damages in an amount, subject to proof, to the extent they were not paid additional
5 wages owed for all meal periods and rest breaks not provided to them.

6 44. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiff and
7 the Class Members are entitled to premium wages for workdays in which one or more off-duty
8 meal periods were not provided to them, and for workdays in which one or more rest breaks were
9 not provided to them.

10 **SECOND CAUSE OF ACTION**

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

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

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

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

15 46. At all relevant times, Plaintiff and the other Class Members have been non-exempt
16 employees of Defendants and entitled to the benefits and protections of California Labor Code
17 §§ 510, 1194, 1197, and 1198 and the Wage Order.

18 47. Section 2 of the Wage Order defines "hours worked" as "the time during which an
19 employee is subject to the control of an employer, and includes all the time the employee is
20 suffered or permitted to work, whether or not required to do so."

21 48. Section 3 of the Wage Order states:

22 **(A) Daily Overtime - General Provisions**

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



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(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.

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

50. Labor Code § 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 § 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.

51. 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.

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

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

54. In conjunction, these provisions of the Labor Code require employers to pay non-



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1 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
2 worked, including unrecorded hours when the employer knew or reasonably should have known
3 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
4 Cal.4th 575, 585.)

5 55. At all relevant times during the applicable limitations period, at Defendants'
6 direction, Plaintiff and the Class Members have worked off-the-clock without pay, including after
7 clocking-out at the end of their shifts. Such work included repairs and related duties.

8 56. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
9 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
10 failure to compensate Plaintiff and the other Class Members for all hours worked as required by
11 California law.

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

16 58. Pursuant to Labor Code § 1194, Plaintiff, on behalf of himself and Class Members,
17 seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid
18 wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts subject
19 to proof.

20 **THIRD CAUSE OF ACTION**

21 **UNLAWFUL DEDUCTIONS**

22 **(Lab. Code § 221)**

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

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

25 60. At all relevant times during the applicable limitations period, Plaintiff and the
26 Class Members have been employees of Defendants and entitled to the benefits and protections
27 of California Labor Code § 221 and the Wage Order.

28 61. Under Labor Code § 221, "It shall be unlawful for any employer to collect or
receive from an employee any part of wages theretofore paid by said employer to said employee."

62. Defendants unlawfully received and/or collected wages from Plaintiff and the
Class Members by arbitrarily deducting 30-minutes worth of wages earned by Plaintiff and the



1 Class Members in violation of Labor Code § 221.

2 63. As a direct and proximate cause of these unauthorized deductions, Plaintiff and
3 the Class Members have been damaged in an amount to be determined at trial.

4 **FOURTH CAUSE OF ACTION**

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

6 **(Lab. Code § 226)**

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

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

9 65. At all relevant times during the applicable limitations period, Plaintiff and the
10 other Class Members have been employees of Defendants and entitled to the benefits and
11 protections of California Labor Code § 226.

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

15 (1) Gross wages earned,

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

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

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

23 (5) Net wages earned,

24 (6) The inclusive dates of the period for which the employee is paid,

25 (7) The name of the employee and his or her social security number, except
26 that by January 1, 2008, only the last four digits of his or her social security number or an
27 employee identification number other than a social security number may be shown on the itemized
28 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.



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

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

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

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

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

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

22 69. "Promptly and easily determine," as stated in California Labor Code §
23 226(e), means a reasonable person would be able to readily ascertain the information without
24 reference to other documents or information.

25 70. As alleged herein, Defendants failed to provide Plaintiff and the other Class
26 Members with all meal and rest periods in compliance with California law. Defendants also failed
27 to provide Plaintiff and the other Class Members with premium wages on the workdays
28 Defendants failed to provide them with one or more meal and/or rest periods in compliance with
California law. Further, Defendants failed to compensate Plaintiff and the other Class Members
for all hours worked. Defendants deducted at least 30 minutes per day from the work time Plaintiff
and the Class Members had worked such time. As a result, Defendants have failed to properly



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1 itemize Plaintiff and the other Class Members' gross and net wages earned, total hours worked,
2 hourly rate of pay, the corresponding number of hours worked at each hourly rate, and other
3 requirements of California Labor Code § 226. As a result, Defendants have violated California
4 Labor Code § 226.

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

9 72. 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 73. 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 74. Accordingly, with respect to this cause of action, on behalf of himself and the other
26 Class, Plaintiff prays for the herein stated relief and for an award of all reasonable costs and
27 attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to proof.
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FIFTH CAUSE OF ACTION
WAITING TIME PENALTIES
(Lab. Code §§ 201, 202, and 203)

(By Plaintiff and the Class against all Defendants)

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

76. 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.

77. 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.

78. 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.

79. 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.

80. 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.

81. 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.

82. 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. In addition, Defendants failed to issue to Plaintiff and the Class Members whose employment ended their final paychecks until the next regular pay day following the termination.

83. Plaintiff is informed and believes that Defendants' failures to 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



1 the Labor Code and the Wage Order, even though at all relevant times, they have had the ability
2 to comply with those legal requirements.

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

6 **SIXTH CAUSE OF ACTION**

7 **UNFAIR COMPETITION**

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

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

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

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

14 87. The unlawful conduct of Defendants alleged herein amounts to and constitutes
15 unfair competition within the meaning of California Business & Professions Code §§ 17200, et
16 seq. Due to their unfair and unlawful business practices as alleged herein, Defendants have
17 unfairly gained a competitive advantage over other comparable companies doing business in
18 California that comply with their legal obligations to, among other things, pay their employees
19 premium wages for workdays in which they did not provide employees with one or more meal
20 and rest periods, and pay them all earned wages for all regular and overtime hours worked.
21 Defendants' unfair competitive advantage also includes the financial gains that resulted from
22 deducting at least 30 minutes from the work time Plaintiff and the Class Members had worked
23 per day.

24 88. As a result of Defendants' unfair competition as herein alleged, Plaintiff and the
25 other Class Members have suffered injuries in fact and lost money or property. Defendants
26 deprived Plaintiff and the other Class Members of minimum, overtime, off-the-clock, and missed
27 meal and missed rest period premium wages that Plaintiff and the other Class Members earned
28 during the course of performing their duties.

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



1 and unfair business practices.

2 90. Plaintiff and the other Class Members are entitled to reasonable attorneys' fees in
3 connection with their unfair competition claims pursuant to California Code of Civil Procedure
4 § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

5 **PRAYER FOR RELIEF**

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

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

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SPIVAK LAW

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

DEMAND FOR JURY TRIAL

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: August 18, 2021

By



DAVID SPIVAK,
SARA BROWN,
Attorneys for Plaintiff,
MCKENNA MCKENZIE, and all others
similarly situated



SPIVAK LAW

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EXHIBIT 4

1 DAVID G. SPIVAK (SBN 179684)
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2 CAROLINE TAHMASSIAN (SBN 285680)
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3 SARA BROWN (SBN 325763)
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8 Attorneys for Plaintiff,
9 MCKENNA MCKENZIE, and all others similarly situated
(Additional Counsel on Following Page)

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

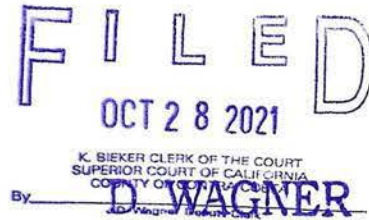
13 MCKENNA MCKENZIE, on behalf of herself,
all others similarly situated, and as an
14 "Aggrieved Employee" on behalf of other
15 "Aggrieved Employees" under the Private
Attorneys General Act of 2004,

16 *Plaintiff,*

17 vs.
18

19 RED DOOR ESCAPE ROOM, LLC, a
California limited liability company;
20 KINGSMEN ESCAPE ENTERTAINMENT,
LLC, a California limited liability company;
21 KYLE MALOY, an individual; and DOES 1-
22 50, inclusive,

23 *Defendants.*
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Case No.: CIVMSC21-01753

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Provide Rest Periods (Lab. Code §§ 226.7 and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
3. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
4. Unlawful Deductions (Lab. Code §221);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code §§ 201, 202, and 203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*); and
8. Civil Penalties (Lab Code §§2698, *et seq.*)

JURY TRIAL DEMANDED

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ADDITIONAL ATTORNEY FOR PLAINTIFF

WALTER L. HAINES (SBN 71075)
whaines@uelglaw.com
UNITED EMPLOYEES LAW GROUP, PC
4276 Katella Ave., Suite 301
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1 Plaintiff, MCKENNA MCKENZIE (hereafter “Plaintiff”) on behalf of herself and all
2 others similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action against Defendant RED DOOR
5 ESCAPE ROOM, LLC, a California limited liability company, KINGSMEN ESCAPE
6 ENTERTAINMENT, LLC, a California limited liability company, KYLE MALOY, an
7 individual; and DOES 1–50, inclusive (collectively “Defendants”) for alleged violations of the
8 California Labor Code, Industrial Welfare Commission Order No. 10–2001 (hereafter “the Wage
9 Order”), and the Business and Professions Code.

10 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
11 her, the State of California, and other similarly situated employees in California for unpaid wages
12 and other related relief. These claims are based on Defendants’ failures to: (1) Provide all rest
13 periods; (2) Provide all meal periods; (3) Pay all wages earned for all hours worked at the correct
14 rates of pay; (4) Refrain from unlawful deductions; (5) Issue accurate and complete itemized
15 written wage statements; (6) Timely pay all wages upon termination of employment; and (7)
16 Fairly compete. Accordingly, Plaintiff now seeks to recover unpaid wages, statutory and civil
17 penalties, interest, and related relief through this representative action.

18 **JURISDICTION AND VENUE**

19 3. This court has subject matter jurisdiction because the aggregate claims of
20 Plaintiff and the Class Members, inclusive of all relief, place more than \$25,000 in controversy.

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

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

25 6. Venue is proper in Contra Costa County pursuant to California Code of Civil
26 Procedure § 395(a) and § 395.5 in that liability arose in Contra Costa County because at least
27 some of the transactions that are the subject matter of this Complaint occurred therein and/or
28 because each defendant is found, maintains offices, transacts business, and/or has an agent



therein.

PARTIES

7. Plaintiff MCKENNA MCKENZIE is a resident of Contra Costa county, California. On or about May 11, 2019, Defendants employed Plaintiff to work as a front desk attendant and manager in California. Defendants terminated Plaintiff's employment on or about June 18, 2021. At all relevant times, Plaintiff was an "employee" within the meaning of Title 8 California Code of Regulations Section 11100, and an "aggrieved employee" within the meaning of California Labor Code § 2699(c).

8. Defendant RED DOOR ESCAPE ROOM, LLC, is a limited liability company organized and existing under the laws of California and also a citizen of California based on Plaintiff's information and belief.

9. Defendant KINGSMEN ESCAPE ENTERTAINMENT, LLC, is a limited liability company organized and existing under the laws of California and also a citizen of California based on Plaintiff's information and belief.

10. Defendant KYLE MALOY, is an individual and also a citizen of California based on Plaintiff's information and belief.

11. In relevant part, Labor Code section 558.1 states:

(a) Any employer or other person action on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the industrial welfare commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of section 3294 of the Civil Code.

12. Based on Plaintiff's information and belief, Defendant KYLE MALOY is an



owner, director, officer, and/or managing agent of Defendants RED DOOR ESCAPE ROOM, LLC and KINGSMEN ESCAPE ENTERTAINMENT, LLC, who directly or indirectly, or through an agent or any other person, employed or exercised control over the wages, hours, or working conditions of Plaintiff and the Class Members. Therefore, Defendant MALOY is liable to Plaintiff and the Class Members for his violations of, or causing Defendants to violate, Labor Code sections 203, 226, 226.7, and the wage order pursuant to Labor Code 558.1.

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

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

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

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

CLASS ALLEGATIONS

17. This action has been brought and may be maintained as a class action pursuant to



1 California Code of Civil Procedure § 382 because there is a well-defined community of interest
2 among the persons who comprise the readily ascertainable class defined below and because
3 Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class
4 action.

5 18. **Class Definition:** The Class is defined as follows: All individuals currently and
6 formerly employed in California as non-exempt, hourly employees by Defendants, including but
7 not limited to managers, gamemasters, gamemaster leads, front desk, and front desk leads,
8 individuals performing work comparable to the aforementioned, and individuals in similar
9 positions at any time during the period beginning four years prior to the filing of this action and
10 ending on the date that final judgment is entered in this action (“Class” or “Class Members”).

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

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

18 21. **Commonality and Predominance:** Common questions of law and fact exist as to
19 all Class Members and predominate over any questions which affect only individual Class
20 Members. These questions include, but are not limited to:

21 A. Whether Defendants failed to provide the Class Members with all meal and
22 rest periods in compliance with California law;

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

25 C. Whether Defendants collected, deducted, or received from the Class
26 Members any part of their wages;

27 D. Whether Defendants knowingly and intentionally failed to provide the
28 Class Members with accurate and complete written wage statements;



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

3 F. Whether persons acting on Defendants' behalf violated the Labor Code;

4 G. Whether the Class Members are entitled to penalties under the Private
5 Attorney General Act of 2004;

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

8 I. Whether the Class Members are entitled to restitution of money or property
9 that Defendants may have acquired from them through alleged Labor Code violations; and

10 J. Whether Defendants are liable for civil penalties pursuant to the Labor
11 Code Private Attorneys General Act of 2004.

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

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

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

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



1 duplication of effort and expense that numerous individual actions would entail. In addition, the
2 monetary amounts due to many individual Class Members are likely to be relatively small and
3 would thus make it difficult, if not impossible, for individual Class Members to both seek and
4 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
5 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
6 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

7 **STATEMENT OF FACTS**

8 26. On approximately May 11, 2019, Plaintiff began working for Defendants at their
9 escape room establishment located at 2075 Diamond Boulevard, Suite 275 in the city of Concord
10 California as an hourly front desk attendant and as a manager. Defendants continuously employed
11 her in that capacity until on or about June 18, 2021, when Plaintiff's employment ended.

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

16 28. At all relevant times, Defendants failed to provide Plaintiff and the Class
17 Members with all timely meal periods. Due to the workload and failure to hire sufficient staff
18 members, Defendants denied Plaintiff and the Class Members their 30-minute off-duty meal
19 periods within the first five hours of work. Defendants also denied meal periods to Plaintiff and
20 the Class Members because there were insufficient employees to cover for them during rest
21 breaks and meal periods. On those seldom occasions when Plaintiff and the Class Members did
22 attempt to take their 30-minute meal periods, Defendants' management often interrupted them
23 with demands for help in assisting customers, cleaning, or other related job duties.

24 29. Moreover, Defendants failed to authorize and permit rest periods to Plaintiff and
25 the Class Members in violation of California law. Due to high workload and low staffing levels,
26 Defendants failed to authorize and permit Plaintiff and the Class Members to take ten-minute,
27 paid, duty-free rest breaks every four hours worked or major fraction thereof. Defendants did not
28 seek an exemption from the rest period protections of the Wage Order from the California



Divisions of Labor Standards Enforcement.

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

31. At all relevant times, Defendants required Plaintiff and the Class Members to perform work while clocked-out and failed to compensate them for this time, including but not limited to, repair and related duties. Defendants failed to compensate Plaintiff and the Class Members for this work performed off-the-clock. Further, Defendants altered Plaintiff's and the Class Members' time records to show that they received meal and rest periods even though Plaintiff and the Class Members were required to work during the alleged meal or rest period. Defendants never compensated Plaintiff and the Class Members for the work performed during meal or rest periods.

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

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS

(Lab. Code §§ 226.7 and 1198)

(By Plaintiff and the Class against all Defendants)

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

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



1 35. In relevant part, California Labor Code § 1198 states:

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

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

7 **Rest Periods**

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

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

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

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

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

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

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

40. At all relevant times, Defendants failed to authorize and permit Plaintiff and the



1 Class Members to take 10-minute rest breaks every four hours worked or major fraction thereof
2 as required by the Wage Order. Furthermore, Defendants failed to pay premium wages for days
3 on which they failed to provide Plaintiff and the Class Members with rest periods.

4 41. Plaintiff is informed and believes and thereon alleges that, at all relevant times
5 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
6 which resulted in Defendants not providing the Class with all off-duty rest periods required by
7 California law.

8 42. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members
9 have suffered damages in an amount, subject to proof, to the extent they were not paid additional
10 wages owed for all rest periods not provided to them.

11 43. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiff and
12 the Class Members are entitled to premium wages for workdays in which one or more rest breaks
13 were not provided to them.

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PROVIDE MEAL PERIODS**

16 **(Lab. Code §§ 226.7, 512, and 1198)**

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

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

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

22 46. In relevant part, California Labor Code § 1198 states:
23 The maximum hours of work and the standard conditions of labor fixed by the
24 commission shall be the maximum hours of work and the standard conditions of
25 labor for employees. The employment of any employee for longer hours than those
26 fixed by the order or under conditions of labor prohibited by the order is unlawful.

27 47. In relevant part, California Labor Code § 512 states:
28 An employer shall not employ an employee for a work period of more than five
hours per day without providing the employee with a meal period of not less than
30 minutes, except that if the total work period per day of the employee is no more
than six hours, the meal period may be waived by mutual consent of both the
employer and employee.



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

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

Meal Periods

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

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

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

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

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

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

51. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty-free meal periods in accordance with the Wage Order.



1 52. At all relevant times, Defendants failed to provide Plaintiff and the Class
2 Members with all timely 30-minute duty-free meal periods within the first five hours of work.
3 Furthermore, Defendants failed to pay premium wages for days on which they failed to provide
4 Plaintiff and the Class Members with timely meal periods.

5 53. Plaintiff is informed and believes and thereon alleges that, at all relevant times
6 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
7 which resulted in Defendants not providing the Class with all off-duty meal periods required by
8 California law.

9 54. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members
10 have suffered damages in an amount, subject to proof, to the extent they were not paid additional
11 wages owed for all meal periods not provided to them.

12 55. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiff and
13 the Class Members are entitled to premium wages for workdays in which one or more off-duty
14 meal periods were not provided to them.

15 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

26 59. Section 3 of the Wage Order states:

27 (A) Daily Overtime - General Provisions

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



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

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

(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.

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

61. Labor Code § 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 § 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.

62. 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.

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

64. Labor Code § 1198 makes it unlawful for an employer to employ an employee



1 under conditions that violate the Wage Order.

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

7 66. At all relevant times during the applicable limitations period, at Defendants'
8 direction, Plaintiff and the Class Members have worked off-the-clock without pay, including after
9 clocking-out at the end of their shifts. Such work included repairs and related duties.

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

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

18 69. Pursuant to Labor Code § 1194, Plaintiff, on behalf of himself and Class Members,
19 seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid
20 wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts subject
21 to proof.

22 **FOURTH CAUSE OF ACTION**

23 **UNLAWFUL DEDUCTIONS**

24 **(Lab. Code § 221)**

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

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

27 71. At all relevant times during the applicable limitations period, Plaintiff and the
28 Class Members have been employees of Defendants and entitled to the benefits and protections



1 of California Labor Code § 221 and the Wage Order.

2 72. Under Labor Code § 221, “It shall be unlawful for any employer to collect or
3 receive from an employee any part of wages theretofore paid by said employer to said employee.”

4 73. Defendants unlawfully received and/or collected wages from Plaintiff and the
5 Class Members by arbitrarily deducting 30-minutes worth of wages earned by Plaintiff and the
6 Class Members in violation of Labor Code § 221.

7 74. As a direct and proximate cause of these unauthorized deductions, Plaintiff and
8 the Class Members have been damaged in an amount to be determined at trial.

9 **FIFTH CAUSE OF ACTION**

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

11 **(Lab. Code § 226)**

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

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

14 76. At all relevant times during the applicable limitations period, Plaintiff and the
15 Class Members have been employees of Defendants and entitled to the benefits and protections
16 of California Labor Code § 226.

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

20 (1) Gross wages earned,

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

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

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

28 (5) Net wages earned,



- 1 (6) The inclusive dates of the period for which the employee is paid,
- 2 (7) The name of the employee and his or her social security number, except
- 3 that by January 1, 2008, only the last four digits of his or her social security number or an
- 4 employee identification number other than a social security number may be shown on the itemized
- 5 statement,
- 6 (8) The name and address of the legal entity that is the employer, and
- 7 (9) All applicable hourly rates in effect during the pay period and the
- 8 corresponding number of hours worked at each hourly rate by the employee.
- 9 78. Pursuant to California Labor Code § 226(e), an employee suffering injury as a
- 10 result of a knowing and intentional failure by an employer to comply with subdivision (a) is
- 11 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
- 12 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
- 13 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and
- 14 is entitled to an award of costs and reasonable attorneys' fees.
- 15 79. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer
- 16 injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer
- 17 injury if the employer fails to provide accurate and complete information as required by California
- 18 Labor Code § 226(a) and the employee cannot "promptly and easily determine" from the wage
- 19 statement alone one or more of the following:
- 20 A. The amount of the gross wages or net wages paid to the employee during
- 21 the pay period or any of the other information required to be provided on the itemized wage
- 22 statement pursuant to California Labor Code § 226(a);
- 23 B. Which deductions the employer made from gross wages to determine the
- 24 net wages paid to the employee during the pay period;
- 25 C. The name and address of the employer and, if the employer is a farm labor
- 26 contractor, as defined in subdivision (b) of § 1682 of the California Labor Code, the name and
- 27 address of the legal entity that secured the services of the employer during the pay period; and
- 28 D. The name of the employee and only the last four digits of his or her social



1 security number or an employee identification number other than a social security number.

2 80. “Promptly and easily determine,” as stated in California Labor Code §
3 226(e), means a reasonable person would be able to readily ascertain the information without
4 reference to other documents or information.

5 81. As alleged herein, Defendants failed to provide Plaintiff and the Class Members
6 with all meal and rest periods in compliance with California law. Defendants also failed to provide
7 Plaintiff and the Class Members with premium wages on the workdays Defendants failed to
8 provide them with one or more meal and/or rest periods in compliance with California law.
9 Further, Defendants failed to compensate Plaintiff and the Class Members for all hours worked.
10 Defendants deducted at least 30 minutes per day from the work time Plaintiff and the Class
11 Members had worked such time. As a result, Defendants have failed to properly itemize Plaintiff
12 and the Class Members’ gross and net wages earned, total hours worked, hourly rate of pay, the
13 corresponding number of hours worked at each hourly rate, and other requirements of California
14 Labor Code § 226. As a result, Defendants have violated California Labor Code § 226.

15 82. Defendants’ failure to provide Plaintiff and the other Class Members with accurate
16 and complete wage statements was knowing and intentional. Defendants had the ability to provide
17 Plaintiff and the Class Members with accurate wage statements but intentionally provided wage
18 statements that Defendants knew were not accurate.

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



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

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

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(Lab. Code §§ 201, 202, and 203)

(By Plaintiff and the Class against all Defendants)

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

87. 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.

88. 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.

89. 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.

90. 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.

91. 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



1 final wages in accordance with Labor Code §§ 201 and 202 but have intentionally adopted
2 policies or practice that are incompatible with those requirements.

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

6 93. Defendants failed to pay Plaintiff and the Class Members whose employment
7 ended all of the earned, but unpaid wages described above by the conclusion of their employment.
8 In addition, Defendants failed to issue to Plaintiff and the Class Members whose employment
9 ended their final paychecks until the next regular pay day following the termination.

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

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

18 **SEVENTH CAUSE OF ACTION**

19 **UNFAIR COMPETITION**

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

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

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

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

26 98. The unlawful conduct of Defendants alleged herein amounts to and constitutes
27 unfair competition within the meaning of California Business & Professions Code §§ 17200, et
28 seq. Due to their unfair and unlawful business practices as alleged herein, Defendants have



1 unfairly gained a competitive advantage over other comparable companies doing business in
2 California that comply with their legal obligations to, among other things, pay their employees
3 premium wages for workdays in which they did not provide employees with one or more meal
4 and rest periods, and pay them all earned wages for all regular and overtime hours worked.
5 Defendants' unfair competitive advantage also includes the financial gains that resulted from
6 deducting at least 30 minutes from the work time Plaintiff and the Class Members had worked
7 per day.

8 99. As a result of Defendants' unfair competition as herein alleged, Plaintiff and the
9 Class Members have suffered injuries in fact and lost money or property. Defendants deprived
10 Plaintiff and the Class Members of minimum, overtime, off-the-clock, and missed meal and
11 missed rest period premium wages that Plaintiff and the Class Members earned during the course
12 of performing their duties.

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

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

20 **EIGHTH CAUSE OF ACTION**

21 **CIVIL PENALTIES**

22 **(Lab Code §§2698, et seq.)**

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

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

25 103. The "Aggrieved Employees" are all members of the Class defined above who
26 Defendants employed during the period beginning April 14, 2020 and ending on the date that
27 final judgment is entered in this action.

28 104. Labor Code § 204 states



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

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

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

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

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

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

106. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 558.1, 1194, 1197, and 1198.

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

108. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1194, 1197, and 1198 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars

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

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

8 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
9 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for
10 each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
11 established by California Labor Code § 558).

12 D. For violations of California Labor Code § 1197, one hundred dollars
13 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
14 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
15 (regardless of whether the initial violations were intentionally committed) (penalty amounts
16 established by California Labor Code § 1197.1).

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

21 F. For violations of California Labor Code § 221, one hundred dollars
22 (\$100.00) for each Aggrieved Employee for each initial and intentional violation (if found to be
23 neither willful nor intentional) and \$200 for each aggrieved employee for each initial violation of
24 California Labor Code § 221 (if found to be either willful or intentional) and for each subsequent
25 violation of California Labor Code § 221 (regardless of whether they are found to be either willful
26 or intentional) (penalties set by California Labor Code § 225.5).

27 109. Plaintiff has complied with the procedures for bringing suit specified in California
28 Labor Code § 2699.3. By letter dated August 2, 2021, Plaintiff filed written notice online with



1 the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified
2 mail to Defendants of the specific provisions of the California Labor Code alleged to have been
3 violated, including the facts and theories to support the alleged violations. A true and correct copy
4 of the notice to the LWDA dated August 2, 2021, is attached as Exhibit A. Plaintiff accompanied
5 her LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in
6 response within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff anticipates that the
7 LWDA will provide written notice to Plaintiff informing her that it does not intend to investigate
8 these allegations.

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

12 **PRAYER FOR RELIEF**

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

- 15 A. An order that the action be certified as a class action;
- 16 B. An order that Plaintiff be appointed class representative;
- 17 C. An order that counsel for Plaintiff be appointed class counsel;
- 18 D. Unpaid Wages;
- 19 E. Actual Damages;
- 20 F. Statutory Damages;
- 21 G. Liquidated Damages;
- 22 H. Civil Penalties;
- 23 I. Restitution;
- 24 J. Declaratory and injunctive relief;
- 25 K. Equitable relief;
- 26 L. Pre-judgment interest;
- 27 M. Statutory penalties;
- 28 N. Costs of suit;



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- O. Interest;
- P. Reasonable attorneys' fees; and
- Q. Such other relief as the Court deems just and proper.

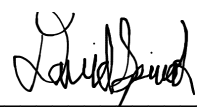
DEMAND FOR JURY TRIAL

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: October 27, 2021

By 

DAVID SPIVAK,
CAROLINE TAHMASSIAN
SARA BROWN,
Attorneys for Plaintiff, MCKENNA
MCKENZIE, and all others similarly situated



EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

August 2, 2021

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

Re: McKenna McKenzie / Red Door Escape Room

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, McKenna McKenzie (hereafter “McKenzie” or “Complainant”) provides notice that Red Door Escape Room, LLC, a California limited liability company, Kingsmen Escape Entertainment LLC, a California limited liability company, and related entities (collectively “the Red Door Escape Room Employers” or “the Employers”) violated his rights and those of all other individuals the Red Door Escape Room Employers have employed or otherwise contracted with in California as nonexempt, hourly workers and employees, including but not limited to managers, gamemaster, gamemaster leads, front desk, and front desk lead, 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, 226.7, 510, 512, 1174, 1194, 1197, and 1198. On behalf of herself and all other Aggrieved Employees, McKenzie hereby provides this notice to the Labor & Workforce Development Agency and the Red Door Escape Room Employers and their agents and representatives.

At all relevant times, the Red Door Escape Room Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. McKenzie and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 10-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately May 11, 2019, the Red Door Escape Room Employers began to employ McKenzie in Concord in the position of hourly, nonexempt fro. The Red Door Escape Room Employers continuously employed her in that capacity until on or about June 18, 2021 when her employment ended.

At all relevant times, the Red Door Escape Room Employers issued wages to McKenzie and all of the other Aggrieved Employees on a basis and paid them by the hour. At all relevant times, the Red Door Escape Room Employers classified McKenzie and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Red Door Escape Room Employers willfully misclassified McKenzie and all of the other Aggrieved Employees as independent contractors. At all relevant times with regard to McKenzie and all of the other Aggrieved Employees, the Red Door Escape Room Employers . At all relevant times, McKenzie and all of the other Aggrieved Employees were employees of the Red Door Escape Room Employers. The Red Door Escape Room Employers engaged, suffered, and permitted them to work. The Red Door Escape Room Employers knew or should have known their actions of misclassifying McKenzie and all of the other Aggrieved Employees as independent contractors violated California law. Kyle Maloy knowingly advised the Red Door Escape Room Employers to misclassify McKenzie and all of the other Aggrieved Employees as independent contractors.

The Red Door Escape Room Employers failed to compensate McKenzie and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Red Door Escape Room Employers

required McKenzie and the Aggrieved Employees to work through their meal periods and, from time to time, to perform repair and related duties after they were clocked out for the day. The Red Door Escape Room Employers did not pay McKenzie and the Aggrieved Employees for this worktime.

The Red Door Escape Room Employers failed to compensate McKenzie 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 Red Door Escape Room Employers required McKenzie and the Aggrieved Employees to work through their meal periods and, from time to time, to perform repair and related duties after they were clocked out for the day. This work was performed on workdays in which the employees concerned worked in excess of eight hours in a day and in workweeks that exceeded 40 hours. The Red Door Escape Room Employers did not pay McKenzie and the Aggrieved Employees for this work time (or other impacted work time) at overtime premium rates.

The Red Door Escape Room Employers failed to compensate McKenzie and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. The Red Door Escape Room Employers required McKenzie and the Aggrieved Employees to work through their meal periods and, from time to time, to perform repair and related duties after they were clocked out for the day. This work was performed on workdays in which the employees concerned worked in excess of 12 hours in a day. The Red Door Escape Room Employers did not pay McKenzie and the Aggrieved Employees for this work time (or other impacted work time) at doubletime premium rates.

At all relevant times, the Red Door Escape Room Employers failed to provide McKenzie and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Red Door Escape Room Employers required McKenzie and the Aggrieved Employees to work through their meal periods. The Red Door Escape Room Employers did not pay McKenzie and the Aggrieved Employees for this worktime. The Red Door Escape Room Employers also failed to pay premium wages for days on which it failed to

provide McKenzie and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Red Door Escape Room Employers failed to authorize and permit McKenzie and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Red Door Escape Room Employers required McKenzie and the Aggrieved Employees to work through their rest breaks. The Red Door Escape Room Employers also failed to pay premium wages for days on which it failed to authorize and permit McKenzie and all of the other Aggrieved Employees to take rest breaks as required by law.

The Red Door Escape Room Employers unlawfully deducted wages belonging to McKenzie and all of the other Aggrieved Employees. The Red Door Escape Room Employers deducted at least 30 minutes per day from the work time McKenzie and the Aggrieved Employees recorded even though McKenzie and the Aggrieved Employees had worked such time.

At all relevant times, the Red Door Escape Room Employers failed to issue to McKenzie 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 Red Door Escape Room Employers knowingly and intentionally failed to state on the wage statements they issued to McKenzie 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 minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, and all earned wages subject to discount.

The Red Door Escape Room Employers also failed to timely pay McKenzie and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Red Door Escape Room Employers failed to maintain accurate employee records of McKenzie and all of the other Aggrieved Employees. The Red Door Escape Room Employers did not maintain records of the minimum, regular, overtime, doubletime, rest period premium, meal period premium, deducted, and discounted wages McKenzie and the Aggrieved Employees earned (discussed above).

For the reasons stated herein, McKenzie 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 Red Door Escape Room Employers failed to pay McKenzie and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (b) The Red Door Escape Room Employers failed to provide McKenzie and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Red Door Escape Room Employers failed to authorize and permit McKenzie and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Red Door Escape Room Employers failed to compensate McKenzie and all of the other Aggrieved Employees at one hour's pay for each day in which the Red Door Escape Room Employers failed to provide them with one or more meal periods as required by law;
- (e) The Red Door Escape Room Employers failed to compensate McKenzie and all of the other Aggrieved Employees at one hour's pay for each day in which the Red Door Escape Room Employers failed to authorize and permit them to take one or more rest breaks as required by law;

- (f) The Red Door Escape Room Employers unlawfully deducted wages belonging to McKenzie and all of the other Aggrieved Employees;
- (g) The Red Door Escape Room Employers knowingly and intentionally failed to provide McKenzie and all of the other Aggrieved Employees with accurate wage statements;
- (h) The Red Door Escape Room Employers willfully failed to timely pay McKenzie and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Red Door Escape Room Employers and when their employment ended; and
- (i) The Red Door Escape Room Employers failed to maintain accurate employment records pertaining to McKenzie and all of the other Aggrieved Employees.

Accordingly, McKenzie now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees based on the Red Door Escape Room Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the amusement and recreation whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Amusement and Recreation industry" to mean

any industry, business, or establishment operated for the purpose of furnishing entertainment or recreation to the public, including but not limited to theaters, dance halls, bowling alleys, billiard parlors, skating rinks, riding academies, racetracks, amusement parks, athletic fields, swimming pools, gymnasiums, golf courses, tennis courts, carnivals, and wired music studios

Wage Order, § 2(A). At all relevant times during the applicable limitations period, the Red Door Escape Room Employers, McKenzie, and all of the Aggrieved Employees were covered by the Wage Order because the Red Door Escape Room Employers operated, and McKenzie, and all of the Aggrieved Employees worked for, one or more establishments operated as amusement parks. Accordingly, McKenzie 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)

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

In relevant part, section 2(H) 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.

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

The Red Door Escape Room Employers required McKenzie and the Aggrieved Employees to work through their meal periods and, from time to time, to perform repair and related duties after they were clocked out for the day. The Red Door Escape Room Employers did not pay McKenzie and the Aggrieved Employees for this worktime. The Red Door Escape Room Employers required McKenzie and the Aggrieved Employees to work through their meal periods and, from time to time, to perform repair and related duties after they were clocked out for the day. This work was performed on workdays in which the employees concerned worked in excess of eight hours in a day and in workweeks that exceeded 40 hours. The Red Door Escape Room Employers did not pay McKenzie and the Aggrieved Employees for this work time (or other impacted work time) at overtime premium rates. The Red Door Escape Room Employers required McKenzie and the Aggrieved Employees to work through their meal periods and, from time to time, to perform repair and related duties after they were clocked out for the day. This work was performed on workdays in which the employees concerned worked in excess of 12 hours in a day. The Red Door Escape Room Employers did not pay McKenzie and the Aggrieved Employees for this work time (or other impacted work time) at doubletime premium rates.

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. Merry Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Red Door Escape Room Employers, McKenzie and all of the other Aggrieved Employees earned during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates.

At all relevant times during the applicable limitations period, the Red Door Escape Room Employers failed to compensate McKenzie and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, overtime, and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, McKenzie 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));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and

4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

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

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

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

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

In relevant part, Labor Code section 512 states:

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

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

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

In addition, Labor Code section 226.7 states:

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

At all relevant times, the Red Door Escape Room Employers failed to provide McKenzie and all of the other Aggrieved Employees with all timely meal periods. The Red Door Escape Room Employers denied McKenzie and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Red Door Escape Room Employers required McKenzie and the Aggrieved Employees to work through their meal periods. The Red Door Escape Room Employers did not pay McKenzie and the Aggrieved Employees for this worktime. Furthermore, the Red Door Escape Room Employers failed to pay premium wages for days on which they failed to provide McKenzie and all of the other Aggrieved Employees with timely meal periods. Accordingly, McKenzie now seeks civil penalties for these Labor Code violations that the Red

Door Escape Room 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 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$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 Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(H) of the Wage Order states,

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

In relevant part, Labor Code section 1198 states,

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

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

Rest Periods:

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

In addition, Labor Code section 226.7 states:

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

employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The Red Door Escape Room Employers failed to authorize and permit McKenzie and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Red Door Escape Room Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Red Door Escape Room Employers required McKenzie and the Aggrieved Employees to work through their rest breaks. Moreover, the Red Door Escape Room Employers failed to pay McKenzie and all of the other Aggrieved Employees premium wages on workdays the Red Door Escape Room Employers failed to provide McKenzie and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, McKenzie now seeks civil penalties for these Labor Code violations that the Red Door Escape Room 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 226.7, 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)).

Unlawful Deductions
(Lab. Code § 221)

Under Labor Code § 221, "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." The Red Door Escape Room Employers deducted wages from the wages earned by McKenzie and all of the other Aggrieved Employees

for hours spent working or in on-duty meal periods in violation of Labor Code § 221. Accordingly, McKenzie seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code § 221, and \$200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of Labor Code § 221, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 225.5).

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

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

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

At all relevant times during the applicable limitations period, the Red Door Escape Room 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 Red Door Escape Room Employers failed to state in the wage statements they issued to McKenzie 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 Red Door Escape Room Employers knowingly and intentionally failed to state on the wage statements they issued to McKenzie 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 minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, all earned wages subject to discount.

Accordingly, McKenzie seeks civil penalties for the Labor Code violations that the Red Door Escape Room 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).

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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 Red Door Escape Room Employers failed to compensate McKenzie and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, deducted wages, discounted wages, at the intervals stated above. As a result, the Red Door Escape Room Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, McKenzie now seeks civil penalties for the Labor Code violations that the Red Door Escape Room 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 Red Door Escape Room Employers failed to pay McKenzie 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 McKenzie, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, deducted wages, discounted wages. Additionally, the Red Door Escape Room Employers failed to issue to McKenzie 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 McKenzie and all of the other Aggrieved Employees as set forth above at the end of employment, the Red Door Escape Room Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the other Aggrieved Employees, McKenzie seeks civil penalties from the Red Door Escape Room 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 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 Red Door Escape Room Employers failed to compensate McKenzie 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 minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, all earned wages subject to discount. As a result, the Red Door Escape Room Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to McKenzie and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, McKenzie 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)).

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Person Acting on Behalf of Employers who Violates Labor Code
(Labor Code § 558.1)

In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Kyle Maloy was an employer of McKenzie and all of the other Aggrieved Employees, and/or “owner,” “managing agent,” and/or “officer” of the Red Door Escape Room Employers and the other employers identified above. Kyle Maloy directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above. On behalf of herself and all of the other Aggrieved Employees, McKenzie seeks the same civil penalties against Kyle Maloy on the same grounds for which she seeks civil penalties against the Red Door Escape Room Employers.

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that McKenna McKenzie 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: McKenna McKenzie
Walter Haines, Esq.

Red Door Escape Room, LLC
c/o Agent for service of process
Kyle Maloy
Manager, Red Door Escape Room, LLC
1773 Crest Dr.
Encinitas, CA 92024

Kyle Maloy
1773 Crest Dr.
Encinitas, CA 92024

Kingsmen Escape Entertainment LLC
c/o Agent for service of process
Ross J. Schwartz Esq.
101 W Broadway, Ste 810
San Diego, CA 92101
ross@sscmlegal.com

1 **PROOF OF SERVICE**

2
3 State of California,
4 County of Los Angeles

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

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

10 On Wednesday, October 27, 2021, I served the foregoing document
11 described as **FIRST AMENDED COMPLAINT** on interested parties by placing a true
and correct copy thereof enclosed in a sealed envelope, with postage fully
prepaid, addressed as follows:

12 **Sarah Brite Evans, Esq.**
13 **SCHWARTZ SEMERDJIAN CAULEY & EVANS LLP**
14 **101 West Broadway, Ste. 810**
San Diego, CA 92101
15 sarah@sscelegal.com

16 XXXX (BY EMAIL) I caused the documents to be sent to the persons at the
17 electronic service addresses listed above from my electronic service address
breck@spivaklaw.com or boyama@spivaklaw.com.

18 EXECUTED on Wednesday, October 27, 2021, at Los Angeles, California.

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

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

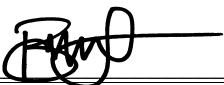
22 
23 _____
BRECK OYAMA

EXHIBIT 5

1 Sarah Brite Evans (SBN 210980)
sarah@sscelaw.com
2 Chad M. Thurston (SBN 339151)
chad@sscelaw.com
3 **SCHWARTZ SEMERDJIAN CAULEY & EVANS LLP**
101 West Broadway, Suite 810
4 San Diego, CA 92101
Telephone No. (619) 236-8821
5 Facsimile No. (619) 236-8827

6 Attorneys for Defendants
Red Door Escape Room, LLC, Kingsmen Escape
7 Entertainment, LLC, and Kyle Maloy

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF CONTRA COSTA**
11 **WAKEFIELD TAYLOR COURTHOUSE**

12 MCKENNA MCKENZIE, on behalf of herself,
all others similarly situated, and the general
13 public,

14 Plaintiff,

15 v.

16 RED DOOR ESCAPE ROOM, LLC, a
California limited liability company;
17 KINGSMEN ESCAPE ENTERTAINMENT,
LLC, a California limited liability company;
18 KYLE MALOY, an individual; and DOES 1-
50, inclusive,

19 Defendants.
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Case No. MSC21-01753

**DEFENDANTS RED DOOR ESCAPE
ROOM, LLC, KINGSMEN ESCAPE
ENTERTAINMENT, LLC, AND KYLE
MALOY'S ANSWER TO PLAINTIFF'S
FIRST AMENDED COMPLAINT**

Judge:	Hon. Edward Weil
Dept.:	39
Complaint Filed:	August 27, 2021
Trial Date:	Not Set

1 Defendants Red Door Escape Room, LLC, Kingsmen Escape Entertainment, LLC, and
2 Kyle Maloy (“Defendants”), in their answer to Plaintiff’s First Amended Complaint (hereinafter
3 “Complaint”), admits, denies and alleges as follows:

4 **GENERAL DENIAL**

5 Pursuant to Code of Civil Procedure section 431.30, Defendants deny, generally and
6 specifically, each and every allegation contained in Plaintiffs’ Complaint. In further answer to
7 Plaintiffs’ Complaint, and the whole thereof, these answering Defendants deny that Plaintiffs have
8 sustained, or will sustain, any injuries, damage or loss by reason of any act, omission, or
9 negligence, or any other conduct or absence thereof, on the part of these answering Defendants or
10 any agent, servant or employee of Defendants, and deny that Defendants were negligent, careless,
11 reckless, acted unlawfully and/or was guilty of any other wrongful act or omission whatsoever.

12 **AFFIRMATIVE DEFENSES**

13 Defendants have not completed their investigation of the facts of this case nor completed
14 discovery. The affirmative defenses asserted herein are based on Defendants’ knowledge,
15 information and belief at this time, and Defendants specifically reserve the right to modify, amend,
16 or supplement any affirmative defenses as information is gathered through investigation and
17 discovery. In asserting these defenses, Defendants do not allege or admit that they have the burden
18 of proof and/or persuasion with respect to any of these matters for which the law places such
19 burden and/or persuasion upon Plaintiffs:

20 **FIRST AFFIRMATIVE DEFENSE**

21 **(Failure to State a Cause of Action)**

22 1. The Complaint and each of its causes of action fail to state facts sufficient to
23 constitute a cause or causes of action against Defendants.

24 **SECOND AFFIRMATIVE DEFENSE**

25 **(Lack of Standing)**

26 2. The claims of Plaintiff, the putative class, and all Aggrieved Employees are barred,
27 in whole or in part, as Plaintiff’s lack standing to assert her claims and the class’ and Aggrieved
28 Employees’ lack of standing to assert their claims.

1 **THIRD AFFIRMATIVE DEFENSE**

2 **(Compliance)**

3 3. Defendants' wage and hour practices are not unlawful in that Defendants complied
4 with all applicable statutes and regulations.

5 **FOURTH AFFIRMATIVE DEFENSE**

6 **(Statute of Limitations)**

7 4. The Complaint and each of its causes of action are barred by the applicable statute
8 of limitations including, without limitation, those provided for in California Code of Civil
9 Procedure §§ 340, 335.

10 **FIFTH AFFIRMATIVE DEFENSE**

11 **(Waiver)**

12 5. Plaintiff's Complaint is barred to the extent Plaintiff and/or the putative class
13 and/or all Aggrieved Employees voluntarily waived their right to take the meal or rest breaks as
14 provided.

15 **SIXTH AFFIRMATIVE DEFENSE**

16 **(Laches)**

17 6. By reason of Plaintiff's own conduct, including unreasonable delay, Plaintiff is
18 barred under the doctrine of laches from obtaining any relief against Defendants.

19 **SEVENTH AFFIRMATIVE DEFENSE**

20 **(No Harm)**

21 7. The Complaint and each of its causes of action are barred because neither Plaintiff
22 nor the putative class or the Aggrieved Employees were harmed by any of the acts/omissions
23 alleged in those causes of action.

24 **EIGHTH AFFIRMATIVE DEFENSE**

25 **(Unclean Hands)**

26 8. All of Plaintiff's causes of action are barred by the doctrine of unclean hands due to
27 Plaintiff's own actions not in good faith.
28

1 **NINTH AFFIRMATIVE DEFENSE**

2 **(Not Willful Failure)**

3 9. To the extent Plaintiff's Complaint seeks statutory penalties for alleged willful
4 failure to comply with Labor Code requirements, such penalties are barred or must be reduced
5 because Defendants did not willfully violate the requirements of Labor Code sections 201, 202,
6 and 203, or any other applicable Labor Code section and a good faith dispute exists concerning
7 such alleged violations.

8 **TENTH AFFIRMATIVE DEFENSE**

9 **(De Minimis)**

10 10. Without admitting the allegations of the complaint, but rather expressly denying
11 them, Defendants maintain that any recovery for penalties, including but not limited to claims for
12 unpaid meal and rest periods for Plaintiff, the putative class, and all Aggrieved Employees is
13 barred because any missed breaks were *de minimis*.

14 **ELEVENTH AFFIRMATIVE DEFENSE**

15 **(No knowing/ intentional failure to provide proper wage statements)**

16 11. Even assuming *arguendo* Plaintiff, the putative class, or the Aggrieved Employees
17 were not provided with proper itemized statement of wages and deductions, they are not entitled to
18 recover damages because Defendants' alleged failure to comply with California Labor Code
19 section 226(a) was not a "knowing and intentional failure" under California Labor Code section
20 226(e).

21 **TWELFTH AFFIRMATIVE DEFENSE**

22 **(Avoidable Consequences)**

23 12. The Complaint and each cause of action contained therein is barred by the doctrine
24 of avoidable consequences, to the extent Plaintiff, the putative class, and all Aggrieved Employees
25 could have corrected any errors in wage payment by reporting them so that Defendants could
26 correct them promptly.

27 ///

28 ///

1 **THIRTEENTH AFFIRMATIVE DEFENSE**

2 **(Duty to Mitigate)**

3 13. The Complaint and each of its causes of action are barred either in whole or in part
4 by Plaintiff's, the putative class', and all Aggrieved Employees' failure to mitigate their alleged
5 damages.

6 **FOURTEENTH AFFIRMATIVE DEFENSE**

7 **(Failure to Take Advantage of Employer's Corrective Measures)**

8 14. Plaintiff, the putative class, and all Aggrieved Employees unreasonably failed to
9 take advantage of preventative or corrective measures provided by Defendants and/or to otherwise
10 avoid harm.

11 **FIFTEENTH AFFIRMATIVE DEFENSE**

12 **(No Individual Liability)**

13 15. As it relates to Defendant Kyle Maloy, all of Plaintiff's, the putative class', and
14 Aggrieved Employees' causes of action are barred because Kyle Maloy was not Plaintiff's, the
15 putative class', or any Aggrieved Employee's "employer" nor was he "personally involved in the
16 purported violation of one or more of the enumerated provisions; or, absent such personal
17 involvement, had sufficient participation in the activities of the employer, including, for example,
18 over those responsible for the alleged wage and hour violations, such that the [individual] may be
19 deemed to have contributed to, and thus for purposes of this statute, 'cause[d]' a violation" as
20 required by *Usher v. White* (May 28, 2021) 64 Cal.App.5th 883, 896-897 in order for personal
21 liability to attach.

22 **SIXTEENTH AFFIRMATIVE DEFENSE**

23 **(Additional Affirmative Defenses)**

24 16. Defendants presently have insufficient knowledge or information upon which to
25 form a belief whether there may be additional, as yet, unstated, affirmative defenses and reserve
26 the right to assert additional affirmative defenses which will be added by way of amendment to
27 this Answer.
28

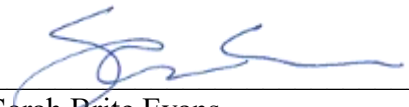
1 Defendants reserve all defenses under the laws of the State of California, and any other
2 defenses, at law or equity, that may now exist or in the future will be available based on discovery,
3 investigation, or analysis in this case.

4 WHEREFORE, Defendants pray for judgment as follows:

- 5 A. That Plaintiff takes nothing by way of her Complaint;
6 B. That Defendants be awarded costs of suit including any attorneys' fees that may be
7 recoverable under applicable law; and
8 C. For such other and further relief as the Court may deem just and proper.

9
10 DATED: December 13, 2021

SCHWARTZ SEMERDJIAN
CAULEY & EVANS LLP

11
12
13 By: 

Sarah Brite Evans
Chad M. Thurston
Attorneys for Defendants
Red Door Escape Room, LLC, Kingsmen
Escape Entertainment, LLC, and Kyle Maloy

EXHIBIT 6

Case name	McKenzie v. Red Door Escape Room	Defendants provided the data in green cells
Case #	CIVMSC21-01753	Blue cells contain data Plaintiff derived from Defendants' sample records
Court(s)	Contra Costa County Superior Court	Assumptions
Judge	Hon. Edward G. Weil	
Subject	Background data	
Relevant statutes	various	

LWDA notice date	08/02/21
Lawsuit filing date	08/27/21
UCL SOL begin	08/27/17
Lab. Code § 203 SOL begin	08/27/18
Lab. Code § 2698 (PAGA) SOL begin	08/02/20
Lab. Code § 226 begin	08/27/20
Red Door Escape Room opened first location in CA	02/01/19
Mediation date	08/31/22

Class size for Sacramento and Concord	139
Class size Oxnard (opened in October 2021)	40
Class size San Diego (opened in August 2021)	40
Class size San Mateo (opened in July 2021)	40
Total class size	259

	<u>LC §226</u>	<u>PAGA</u>	<u>LC §203</u>	<u>UCL</u>
Class size	150	150	90	259
Average hourly rate	\$ 14.45	\$ 14.45	\$ 14.45	\$ 14.45
Pay cycle	bi-weekly	bi-weekly	bi-weekly	bi-weekly
Pay periods per year	26	26	26	26
Average # of employees employed at a given time at all locations	50	50	50	50
Total # of pay periods	2,593	2,703		4,655
Total number of workweeks				2,328
Average number of days worked per workweek (for each employee)	3.96	3.96	3.96	3.96
Average number of hours worked per workday	7.19	7.19	7.19	7.19
Total number of workdays				9,217

Case name	<i>McKenzie v. Red Door Escape Room</i>
Case #	CIVMSC21-01753
Court(s)	Contra Costa County Superior Court
Subject	Unpaid Wages
Relevant statutes	Lab. Code §§ 510, 1194, 1771-1774

Total number of workdays	9,217
% of workdays >5	92.54%
% of workdays with unpaid off-the clock wages (meal periods and other OTC work)	49.5%
Average unpaid off-the-clock hours per workday	0.5
Average hourly rate	\$ 14.45
Unpaid wages	\$ 30,486.01

Case name	<i>McKenzie v. Red Door Escape Room</i>
Case #	CIVMSC21-01753
Court(s)	Contra Costa County Superior Court
Subject	Meal Periods - premium wages
Relevant statutes	Lab. Code §§ 226.7, 512

Total number of workdays	9,217
% of workdays >5 hours	92.5%
Violation rate (missed, late, or short based on the sample records)	49.5%
Average hourly rate (based on the sample)	\$ 14.45
Unpaid meal period premium wages	\$ 60,972.01

Case name

Case #

Court(s)

Subject

Relevant statutes

McKenzie v. Red Door Escape Room

CIVMSC21-01753

Contra Costa County Superior Court

Rest Periods-premium wages

Lab. Code §§ 226.7, 1198

Total number of workdays	9,217
% of shifts >3.5 hours	98%
Violation rate	100%
Average hourly rate (based on the sample)	\$ 14.45
Unpaid rest period premium wages	\$ 130,216.11

Case name

Case #

Court(s)

Subject

Relevant statutes

McKenzie v. Red Door Escape Room
CIVMSC21-01753
Contra Costa County Superior Court
Wage Statement Penalties
Lab. Code § 226

Total # of pay periods/paychecks		2,593
Statutory penalty per paycheck	\$	100.00
Wage statement penalties	\$	259,293.48

Case name

Case #

Court(s)

Subject

Relevant statutes

McKenzie v. Red Door Escape Room

CIVMSC21-01753

Contra Costa County Superior Court

Waiting Time Penalties

Lab. Code § 203

Class size		90
Average hourly rate	\$	14.45
Average hours per day		7.19
Wages per day	\$	103.90
Waiting time days		30
Waiting time penalties	\$	280,517.85

Case name	<i>McKenzie v. Red Door Escape Room</i>
Case #	CIVMSC21-01753
Court(s)	Contra Costa County Superior Court
Subject	Civil Penalties (Private Attorneys General Act)
Relevant statutes	Lab. Code §§ 2698, et seq.

Claim	Lab. Code § violated & Civil Penalty Statute	Initial penalty amount per pay period	Pay checks	violation rate	Civil penalties
Unpaid OT wages/Unprovided Meal Periods	510/558 \$	50.00	2,703	100% \$	135,164.38
Unprovided rest breaks	1198/2699 \$	100.00	2,703	100% \$	270,328.77
Unpaid min wage	1197/1197.1 \$	100.00	2,703	100% \$	270,328.77
Inaccurate wage statements	226/1198/2699 \$	100.00	2,703	100% \$	270,328.77
Untimely wages	201-204/210/2699 \$	100.00	2,703	100% \$	270,328.77
Civil penalties				\$	1,216,479.45

Case name	<i>McKenzie v. Red Door Escape Room</i>
Case #	CIVMSC21-01753
Court(s)	Contra Costa County Superior Court
Subject	Totals
Relevant statutes	various

Restitution/Wages/Damages		
Unpaid wages	\$	30,486.01
Unpaid meal period premium wages	\$	60,972.01
Unpaid rest period premium wages	\$	130,216.11
Interest	10% \$	22,167.41
Total	\$	243,841.54

Penalties		
Wage Statement Penalties	\$	259,293.48
Waiting time penalties	\$	280,517.85
Civil penalties	\$	1,216,479.45
Total	\$	1,756,290.78

GRAND TOTAL	\$	2,000,132.32
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EXHIBIT 7

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.

1 226.7 and 512, and Wage order 11.

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

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

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

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

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

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

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

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

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

10 **THIRD CLAIM FOR RELIEF**

11 **FORFEITURE OF VACATION PAY**

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

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

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

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

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

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

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

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

7 **FOURTH CLAIM FOR RELIEF**

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

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

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

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

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

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

1 worked.

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

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

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

21 **FIFTH CAUSE OF ACTION**

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

23 **(Cal. Lab. Code §§ 201-203)**

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

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

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

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

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

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

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

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

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

9 **SIXTH CLAIM FOR RELIEF**

10 **UNAUTHORIZED DEDUCTIONS**

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

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

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

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

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

1 Procedure § 1021.5.

2 **SEVENTH CLAIM FOR RELIEF**

3 **FAILURE TO INDEMNIFY**

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

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

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

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

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

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

6 **EIGHTH CLAIM FOR RELIEF**

7 **UNFAIR COMPETITION**

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

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

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

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

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

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

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

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

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

20 **NINTH CLAIM FOR RELIEF**

21 **CIVIL PENALTIES**

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

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

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

27 74. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
behalf of himself and other current or former employees, to bring a civil action to recover civil

1 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

2 75. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiffs and the other
3 aggrieved employees of Defendants are entitled to recover civil penalties for Defendants'
4 violations of California Labor Code §§ 200, 201, 202, 203, 204, 224, 226(a), 226.7, 227.3, 510,
5 512, 1194 and 2802 during the applicable limitations period in the following amounts:

6 A. For violations of California Labor Code §§ 200, 201, 202, 203, 224,
7 226.7, 1194, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay
8 period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee
9 per pay period for each subsequent violation (penalty amounts established by California Labor
10 Code § 2699(f)(2));

11 B. For violations of California Labor Code § 204, one hundred dollars
12 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
13 (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount
14 unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional
15 violation (penalty amounts established by California Labor Code § 210);

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

20 D. For violations of California Labor Code §§ 510 and 512, fifty dollars
21 (\$50.00) for each aggrieved employee for each initial violation for pay period for which the
22 employee was underpaid in addition to an amount sufficient to recover unpaid wages and one
23 hundred dollars (\$100.00) for each underpaid employee for each pay period for which the
24 employee was underpaid in addition to an amount sufficient to recover unpaid wages (penalty
25 amounts established by California Labor Code § 558).

26 76. Plaintiffs have complied with the procedures for bringing suit specified in
27 California Labor Code § 2699.3. By letters dated January 8 and February 19, 2010, Plaintiffs
gave written notice by certified mail to the Labor and Workforce Development Agency

1 (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to
2 have been violated, including the facts and theories to support the alleged violations. Plaintiffs
3 anticipate that the LWDA will soon provide Plaintiffs with written notice that it does not intend
4 to investigate the violations of the California Labor Code alleged herein.

5 77. Pursuant to California Labor Code § 2699(g), Plaintiffs and the other members of
6 the **All-Inclusive Class** are entitled to an award of reasonable attorney’s fees and costs in
7 connection with their claims for civil penalties.

8 **PRAYER FOR RELIEF**

9 78. WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly
10 situated, prays for relief and judgment against Defendants as follows:

11 A. An order that the action be certified as a class action with respect to
12 Plaintiffs’ claims for violations of California law;

13 B. An order that Plaintiffs be appointed class representatives;

14 C. An order that counsel for Plaintiffs be appointed class counsel;

15 D. Declaratory relief;

16 E. Injunctive relief;

17 F. Actual damages;

18 G. Liquidated damages;

19 H. Restitution;

20 I. Civil penalties;

21 J. Statutory penalties;

22 K. Pre-judgment interest;

23 L. Costs of suit;

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Date: February 23, 2010

By:



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

EXHIBIT 8

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

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

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

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

21 (A PAUSE IN THE PROCEEDINGS.)

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

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

1 (A PAUSE IN THE PROCEEDINGS.)

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

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

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

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

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

28 I SAY THAT BECAUSE THE CASE OF WHITTINGTON

1 VERSUS MCKINNEY -- WHITTINGTON IS SPELLED

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

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

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

19 IT READS NOW, (READING:)

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

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

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

28 (4) DIRECT THAT THE TENTATIVE DECISION

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

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

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

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

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

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

8 MR. SABZEVAR: DEFENSE PREFERENCE IS NUMBER ONE.

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

12 MR. SABZEVAR: YES, YOUR HONOR.

13 THE COURT: PLAINTIFF?

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

16 THE COURT: ALL RIGHT.

17 MR. SPIVAK: BY "WE" I MEAN WE BELIEVE IT SHOULD BE
18 PREVAILING PARTY.

19 THE COURT: UH-HUH. I'M GOING TO USE -- I
20 APPRECIATE -- I'M GOING TO USE METHOD (4). THIS TENTATIVE
21 DECISION WILL BECOME THE STATEMENT OF DECISION UNLESS WITHIN
22 TEN DAYS AFTER ANNOUNCEMENT, AND SO FORTH. THAT'S
23 3.1590(C)(4).

24 SO WHAT I'M GOING TO DO NOW IS ANNOUNCE A
25 TENTATIVE WHICH, AS YOU CAN SEE, IS ALSO A CONDITIONAL
26 STATEMENT OF DECISION.

27 THIS CASE CAME BEFORE ME PRESIDING IN THIS
28 DEPARTMENT 41 ON THE 10TH OF APRIL, 2012, FOR TRIAL WITHOUT

1 JURY. DAVID G. SPIVAK, STATE BAR 179684, APPEARED AS
2 ATTORNEY FOR PLAINTIFFS ALINA GHRDILYAN AND EVGENIA
3 SULTANIAN, AND F. MICHAEL SABZEVAR, STATE BAR 172312 APPEARED
4 AS ATTORNEY FOR DEFENDANT, RAMIL ABALKHAD.

5 THE CASE WAS SUBMITTED FOR DECISION TODAY, THE
6 23RD OF APRIL, 2012.

7 IN THIS CASE, TWO PLAINTIFFS CLAIM THAT
8 DEFENDANT ABALKHAD IS LIABLE TO THEM ON VARIOUS
9 EMPLOYMENT-DERIVED THEORIES INCLUDING AND ESPECIALLY FOR
10 PENALTIES AND THAT THEY CAN ENFORCE VARIOUS REMEDIES AGAINST
11 THEM UNDER THE LABOR CODE PRIVATE ATTORNEY GENERAL ACT, WHICH
12 IS AT LABOR CODE 2698, AND FOLLOWING.

13 IN OPEN COURT ON THE 10TH OF APRIL, 2012, THE
14 ATTORNEYS CONFIRMED THAT THE OPERATIVE PLEADINGS ARE THE
15 PLAINTIFFS'S FIRST AMENDED COMPLAINT, ET CETERA, FILED
16 FEBRUARY 24, 2010, AND THE DEFENDANT'S ANSWER TO THEIR FIRST
17 AMENDED COMPLAINT FILED SEPTEMBER 13, 2010. I WILL MAKE A
18 COUPLE OF QUICK COMMENTS ABOUT THOSE TWO DOCUMENTS NOW.

19 THE FULL NAME OF THE PLAINTIFFS'S OPERATIVE
20 PLEADING IS FIRST AMENDED COMPLAINT FOR -- AND THEN THERE ARE
21 NINE THEORIES LISTED: FAILURE TO COMPENSATE EMPLOYEES FOR
22 ALL HOURS WORKED; NUMBER TWO IS FAILURE TO PROVIDE BOTH REST
23 AND MEAL PERIODS; NUMBER THREE IS FORFEITURE OF VESTED
24 VACATION BENEFITS; NUMBER FOUR IS FAILURE TO PROVIDE ACCURATE
25 WRITTEN WAGE STATEMENTS; NUMBER FIVE IS FAILURE TO TIMELY PAY
26 ALL FINAL WAGES; NUMBER SIX IS UNAUTHORIZED DEDUCTIONS;
27 NUMBER SEVEN IS FAILURE TO INDEMNIFY; NUMBER EIGHT IS UNFAIR
28 COMPETITION; AND NUMBER NINE IS CIVIL PENALTIES.

1 THE DEFENDANT'S ANSWER TO THE FIRST AMENDED
2 COMPLAINT WAS ON A JUDICIAL COUNCIL FORM PLEADING.

3 INSOFAR AS IT'S PERTINENT TO THIS PORTION OF
4 MY ANALYSIS, LABOR CODE 2699 READS, (READING:)

5 SUBSECTION (A), NOTWITHSTANDING ANY OTHER
6 PROVISION OF LAW, ANY PROVISION OF THIS CODE
7 THAT PROVIDES FOR A CIVIL PENALTY TO BE
8 ASSESSED AND COLLECTED BY THE LABOR AND
9 WORKFORCE DEVELOPMENT AGENCY OR ANY OF ITS
10 DEPARTMENTS, DIVISIONS, COMMISSIONS, BOARDS,
11 AGENCIES, OR EMPLOYEES FOR A VIOLATION OF THIS
12 CODE MAY, AS AN ALTERNATIVE, BE RECOVERED
13 THROUGH A CIVIL ACTION BROUGHT BY AN AGGRIEVED
14 EMPLOYEE ON BEHALF OF HIMSELF OR HERSELF AND
15 OTHER CURRENT OR FORMER EMPLOYEES PURSUANT TO
16 THE PROCEDURES SPECIFIED IN SECTION 2699.3.

17 THE PLAINTIFFS HAD ORIGINALLY DENOMINATED THIS
18 CASE AS A CLASS ACTION AND THEY CONTINUED THAT DESIGNATION
19 THROUGH VARIOUS OTHER FILINGS, BUT THEY HAVE NEVER OBTAINED
20 AN ORDER CERTIFYING THE CLASS. THEY CLAIM, THOUGH, THAT THEY
21 ARE ENTITLED TO PROCEED ON BEHALF OF OTHERS PURSUANT TO THE
22 CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL ACT AS TO
23 DEFENDANT ABALKHAD.

24 THE PLAINTIFFS HAD TRIED THIS CASE BEFORE ME
25 SOLELY AS TO CAUSE OF ACTION NINE. THEY CONCEDE THAT THIS
26 CASE IS STAYED IN THIS COURT IN PART BECAUSE OF THE FACT THAT
27 DEFENDANT RJ FINANCIAL, INC., ORIGINALLY THE ONLY NAMED
28 DEFENDANT, BUT BY VIRTUE OF THE FIRST AMENDED PLEADING, A

1 CODEFENDANT, THAT CORPORATION IS A DEBTOR IN CHAPTER 11
2 PROCEEDING, WHICH IS STILL PENDING.

3 PURSUANT TO 11 U.S.C. 362, THIS CASE WOULD BE
4 STAYED AS TO THAT PARTY. BUT MR. ABALKHAD HAS NOT BEEN SHOWN
5 TO BE A DEBTOR IN A BANKRUPTCY PROCEEDING AND DURING CLOSING
6 ARGUMENT OF THE 17TH OF APRIL, 2012, MR. SPIVAK CONFIRMED HIS
7 CLIENTS HAVE CLAIMS PENDING IN THE BANKRUPTCY CASE. THAT
8 WILL MEAN THAT THE CASE CAN PROCEED AND HAS PROCEEDED ON THE
9 BASIS PLEADED AGAINST MR. ABALKHAD AS AN INDIVIDUAL.

10 ALTHOUGH BECAUSE OF 11 U.S.C. 362, IT IS STAYED AS TO THE
11 CORPORATION.

12 THE PERSONS WHO GAVE TESTIMONY AT THE TRIAL
13 WERE JOSEPH HARSANY, H-A-R-S-A-N-Y, AN EMPLOYEE OF PAYROLL
14 CHECK WRITING SERVICE USED BY THE DEFENDANTS; BREK OYAMA --
15 BREK IS SPELLED B-R-E-K; AND OYAMA IS O-Y-A-M-A, MR. SPIVAK'S
16 PARALEGAL; RAMIL ABALKHAD, ONE OF THE DEFENDANTS, THE
17 PRESIDENT AND CHIEF EXECUTIVE OFFICER OF DEFENDANT RJ
18 FINANCIAL AND, INDEED, THAT -- APPARENTLY THAT COMPANY'S ONLY
19 OFFICER AND ONLY DIRECTOR. THE FOURTH WITNESS WAS ALINA
20 GHRDILYAN, ONE OF THE PLAINTIFFS, AND THE FIFTH WAS EVGENIA
21 SULTANIAN, ONE OF THE PLAINTIFFS, THE OTHER PLAINTIFF.

22 I'M GOING TO REFER TO THE LABOR CODE PRIVATE
23 ATTORNEY GENERAL ACT IN THE WAY THE ATTORNEYS HAVE -- IT
24 SEEMS TO ME TO BE SERVICEABLE -- AND I'M GOING TO REFER --
25 I'M GOING TO USE THE ACRONYM PAGA, P-A-G-A.

26 PAGA ACTIONS DO NOT HAVE BEEN MAINTAINED AS
27 CLASS ACTIONS. THEY CAN BE, BUT THEY ARE NOT REQUIRED TO BE.
28 THE AUTHORITY ON THAT IS ARIAS VERSUS SUPERIOR COURT, (2009),

1 46 CALIFORNIA 4TH, 969, 981 TO 982.

2 WE WILL GO INTO RECESS NOW. COME BACK AT
3 1:30, PLEASE.

4 (AT 11:58 A.M., A LUNCH RECESS WAS TAKEN.)

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1 (THE FOLLOWING PROCEEDINGS WERE HELD AT 1:47 P.M.)
2 THE COURT: NOW, WE WILL GO BACK TO THE GHRDILYAN
3 AGAINST RJ CASE.

4 OKAY. WHEN WE LEFT, I HAD, I THINK, TALKED
5 ABOUT SOME GENERAL POINTS OF LAW HAVING TO DO WITH PAGA
6 ACTIONS, AND I WILL JUST OVERLAP SLIGHTLY.

7 I WAS SAYING THAT PAGA ACTIONS DO NOT HAVE TO
8 BE HAVE MAINTAINED AS CLASS ACTIONS. THEY CAN BE, BUT ARE
9 NOT REQUIRED TO BE. AND ONE OF AUTHORITIES ON THAT IS ARIAS,
10 A-R-I-A-S, VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH
11 969 FROM PAGES 981 TO 982. PAGA IS NOT THE EMPLOYEE'S
12 EXCLUSIVE REMEDY. THEY MAY SEPARATELY OR CONCURRENTLY SEEK
13 OTHER REMEDIES. LABOR CODE 2699(G) AND CALIBER BODY WORKS
14 VERSUS SUPERIOR COURT, (2005) 134 CALIFORNIA APPELLATE 4TH
15 365 AT 375.

16 THE KINDS OF PENALTIES THAT PAGA PLAINTIFFS
17 CAN SEEK TO RECOVER, ASSUMING THAT THE FACTS SUPPORT IT, ARE
18 THOSE FOR FAILURE TO PAY STATUTORILY PRESCRIBED WAGES --
19 THAT'S LABOR CODE 210 -- UNLAWFULLY WITHHELD WAGES -- THAT'S
20 LABOR CODE 225.5 -- OR FOR VIOLATING, FOR EXAMPLE, AN
21 INDUSTRIAL WELFARE COMMISSION ORDER -- THAT'S LABOR CODE 558.
22 AN AGGRIEVED EMPLOYEE -- THAT WOULD MEAN ANYONE EMPLOYED BY
23 THE ALLEGED VIOLATOR AND AGAINST WHOM ONE OR MORE VIOLATIONS
24 WAS COMMITTED -- AND I PICKED UP THAT DEFINITION FROM LABOR
25 CODE 2699(C) AND FROM THE COMMENTS IN AMALGAMATED TRANSIT
26 UNION VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH 993 AT
27 1004 TO 1005 -- AN AGGRIEVED EMPLOYEE CAN SUE TO RECOVER
28 CIVIL PENALTIES FOR VIOLATIONS OF THE LABOR CODE ON BEHALF OF

1 HIMSELF, OR HERSELF, AND OTHER CURRENT OR FORMER EMPLOYEES
2 AGAINST WHOM ONE OR MORE OF THE ALLEGED VIOLATIONS WAS
3 COMMITTED. THAT'S LABOR CODE 2699(G)(1).

4 THE ATTORNEYS HAVE FROM TIME TO TIME REFERRED
5 TO WHAT THEY HAVE CALLED THE BRINKER CASE.

6 NOW, WHAT THEY ARE REFERRING TO IS THE CASE
7 ENTITLED BRINKER RESTAURANT CORPORATION VERSUS SUPERIOR
8 COURT, REAL PARTY IN INTEREST, HOHNBAUM H-O-H-N-B-A-U-M. THE
9 VERSION OF THAT THAT I HAVE USED IN MY ANALYSIS AND
10 PREPARATION IS THE VERSION THAT WAS PRINTED AT 2012 DAILY
11 JOURNAL, DAILY APPELLATE REPORT, PAGE 4615, AND FOLLOWING.

12 I HAVE BEEN REQUIRED TO EVALUATE THE TESTIMONY
13 OF THE PARTY WITNESSES IN THIS CASE, THAT IS, MS. GHRDILYAN,
14 MS. SULTANIAN, AND MR. ABALKHAD WITH SOME CAUTION AND
15 RESERVATIONS. THOSE THREE PERSONS IN THEIR CAPACITIES AS
16 WITNESSES ARGUED AND WRANGLLED WITH THE QUESTIONERS DURING
17 TRIAL, AND SOME OF THAT WAS PROVOKED BY THE QUESTIONERS; SOME
18 OF IT WAS NOT. THAT BECOMES AN IMPORTANT FACTOR IN
19 EVALUATING RELATIVE CREDIBILITIES UNDER EVIDENCE CODE 780(A).
20 THOSE THREE PARTIES ALL HAVE AN INTEREST, BIAS, AND OTHER
21 MOTIVE FOR SLANTING THEIR TESTIMONY, OBVIOUSLY, AND THAT
22 BECOMES SIGNIFICANT UNDER EVIDENCE CODE 780(F) AND EVIDENCE
23 CODE 780(J).

24 MR. ABALKHAD HAS SUFFERED FELONY CONVICTIONS
25 ON HIS PLEA OF NOLO CONTENDERE AS TO PERJURY AND TAX EVASION
26 AND DID NOT OWN UP TO THAT COMPLETELY IN DISCOVERY. THAT'S
27 EVIDENCE -- THAT BECOMES PERTINENT UNDER EVIDENCE CODE 780(E)
28 AND EVIDENCE CODE 780(H), AND EVIDENCE CODE 780(I) AND IS

1 COMMENTED ON IN THE CASE OF RUSHEEN, R-U-S-H-E-E-N, VERSUS
2 DREWS, D-R-E-W-S, (2002) 99 CALIFORNIA APPELLATE 4TH 279 AT
3 PAGES 283 TO 284.

4 ASPECTS OF THE TESTIMONY OF THESE WITNESSES,
5 THESE THREE PEOPLE AS WITNESSES, WERE EXAGGERATED AND
6 OVERSTATED. THAT BECOMES PERTINENT UNDER EVIDENCE CODE
7 780(B).

8 FURTHERMORE, EVIDENCE CODE SECTION 412
9 PROVIDES THAT IF WEAKER AND LESS SATISFACTORY EVIDENCE IS
10 OFFERED WHEN IT WAS IN -- WHEN IT WAS WITHIN THE POWER OF THE
11 PARTY TO PRODUCE STRONGER AND MORE SATISFACTORY EVIDENCE, THE
12 EVIDENCE ACTUALLY OFFERED SHOULD BE VIEWED WITH DISTRUST.
13 THIS, OF COURSE, IS A PERMISSIBLE INFERENCE AND NOT A
14 MANDATORY ONE, BUT THIS COURT HAS, AS THE LAW INDICATES,
15 TAKEN THIS INTO CONSIDERATION.

16 BUT ALL THAT HAVING BEEN SAID, THE COURT DOES
17 NOT ACCEPT MR. SABZEVAR'S INVITATION TO REJECT THE ENTIRETY
18 OF THE PLAINTIFFS'S TESTIMONY. INSTEAD, THIS COURT HAS HAD
19 TO ACCEPT THE PART OF THE TESTIMONY OF THE WITNESSES WHICH
20 THIS COURT FOUND -- HAS FOUND TO BELIEVE TRUE AND -- AND WILL
21 REJECT THE REST. THIS IS PRECISELY WHAT THE COURT -- PARDON
22 ME -- IS AUTHORIZED TO DO OR ANY FINDER OF FACT WOULD BE
23 AUTHORIZED TO DO. ONE MODEL FOR THAT IS CACI INSTRUCTION
24 107, FOURTH PARAGRAPH.

25 THE DATES INVOLVED IN THIS CASE -- AND THE
26 DATES BECOME SIGNIFICANT -- ARE AS FOLLOWS. MS. SULTANIAN
27 WAS HIRED ON -- IN NOVEMBER, 2007, AND WAS FIRED ON NOVEMBER
28 19, 2009. MS. GHRDILYAN WAS HIRED IN AUGUST, 2008, AND WAS

1 FIRED ON DECEMBER 3, 2009. ONE OF THE QUESTIONS WHICH I HAVE
2 BEEN CALLED UPON TO ANSWER IS WHETHER MR. ABALKHAD AS AN
3 INDIVIDUAL WAS AN EMPLOYER OF PLAINTIFFS AND -- UNDER WAGE
4 ORDER 7. I FIND THAT HE WAS NOT. BUT I FIND THAT THE
5 THEORIES OF LIABILITY UNDER -- I SHOULD BACK OFF. BUT I FIND
6 THAT THE OTHER BASES FOR ASSERTING LIABILITY ON THE PART OF
7 MR. ABALKHAD DO HAVE MERIT, AND LIABILITY DOES ATTACH TO HIM
8 UNDER THOSE THEORIES.

9 THE THEORIES I'M REFERRING TO ARE LABOR CODE
10 558 TO WHICH LABOR CODE 510 AND 512 ARE APPENDED OR INCLUDED
11 SUBSTANTIVE PROVISIONS AND LABOR CODE 1197.1 TO WHICH THE
12 SUBSTANTIVE PROVISIONS OF LABOR CODE 1198 AND THE WAGE ORDER
13 ARE ASSOCIATED THEORIES OF LIABILITY.

14 IN OTHER WORDS, I AM FINDING THAT UNDER 558
15 LABOR CODE AND 1197.1 LABOR CODE FOR THE SUBSTANTIVE REASONS
16 REFERRED TO IN THE OTHER TWO SOURCES AS TO EACH OF THOSE
17 SECTIONS, THAT IS 510 AND 512 LABOR CODE, AND 1193 AND WAGE
18 ORDER, LIABILITY CAN ATTACH TO MR. ABALKHAD AND UNDER THE
19 CIRCUMSTANCES OF THIS CASE, WILL ATTACH.

20 I'M GOING TO MAKE A FINDING ON THAT, AS YOU
21 WILL SEE, IN FAVOR OF -- PARDON ME -- OF THE PLAINTIFFS'S
22 POSITION.

23 NOW, I SAY IN FAVOR OF THE PLAINTIFFS'S
24 POSITION BECAUSE THAT MEANS NOT JUST IN FAVOR OF THE
25 PLAINTIFFS BUT SINCE WE HAVE A PAGA ACTION, I AM REFERRING TO
26 THE PLAINTIFFS'S POSITION.

27 NOW -- PARDON ME. I WILL SAY THIS.

28 AS YOU CAN TELL, I AM AT SOME PAINS TO GO

1 THROUGH THE LEGAL REASONING AND STEPS PREPARATORY TO REACHING
2 A DECISION IN THIS CASE WITH SOME CARE BECAUSE IT MAY VERY
3 WELL BE THAT THIS CASE WILL REACH ITS WAY INTO THE APPELLATE
4 COURTS AND THAT IT IS ALSO POSSIBLE THAT THE APPELLATE COURTS
5 MAY DECIDE THIS CASE IN A PUBLISHED OPINION, AND I WILL SAY
6 THAT THE DETERMINATION I HAVE MADE ABOUT ABALKHAD AS AN
7 EMPLOYER -- I SAID THAT HE'S NOT -- OR ABALKHAD AS A
8 POTENTIALLY LIABLE PARTY UNDER LIABILITY-ENHANCING STATUTES
9 OTHER THAN LABOR CODE 558 AND LABOR CODE 1197.1, THAT IS, THE
10 ABALKHAD-FAVORING DETERMINATIONS I HAVE MADE ON THOSE POINTS,
11 ARE NOT BEYOND REASONABLE ARGUMENT.

12 MY DECISION IS, AS I HAVE EXPRESSED IT, AND I
13 BELIEVE THAT I AM CORRECT -- BUT I -- BUT I DO RECOGNIZE THAT
14 THERE ARE ARGUMENTS THAT CAN BE MADE -- AND THEY HAVE BEEN
15 MADE HERE IN THIS COURTROOM -- ON THOSE POINTS.

16 I HAVE COMPARED THE EMPLOYEE HANDBOOKS,
17 EXHIBIT 3 AND EXHIBIT D. IT APPEARS TO ME THAT EXHIBIT D
18 FROM THE EVIDENCE IN THIS CASE WAS NOT SUPPLIED BY ABALKHAD
19 DURING THE DISCOVERY PHASE OF THIS CASE. THE PARTICULAR
20 PROVISIONS THAT I AM DEALING WITH ARE THOSE HAVING TO DO WITH
21 OVERTIME AND LUNCH AND EXHIBIT 3 IS COMMENTED ON BY THE
22 PLAINTIFFS AS BEING DEFICIENT BECAUSE THEY SAY THAT A LUNCH
23 PERIOD MUST BE PROVIDED AFTER FIVE HOURS OF WORK, NOT SIX
24 HOURS OF WORK, AND THE PLAINTIFFS'S POSITION IS THAT THAT WAS
25 THE ONLY PERTINENT EMPLOYEE HANDBOOK.

26 I THINK THE PLAINTIFFS ARE RIGHT AS TO BOTH
27 THOSE CONTENTIONS. EXHIBIT 3 BEARS THE DATE OF JANUARY,
28 2003. PLAINTIFFS ADMIT THAT THIS IS THE CORRECT DATE. THAT

1 IS, IT SEEMS TO ME, THE OPERATIVE EMPLOYEE HANDBOOK. EXHIBIT
2 D WHICH HAS DIFFERENT PROVISIONS IN IT CONCERNING THE SAME
3 TOPICS WAS, IN MY VIEW, FIRST NOT PRODUCED DURING DISCOVERY;
4 SECOND, A WRITING THAT CAME INTO EXISTENCE IN AUGUST, 2010,
5 SUBSTANTIAL PERIOD OF TIME AFTER THE PLAINTIFFS HAD ALREADY
6 HAD THEIR EMPLOYMENT TERMINATED AND INDEED AUGUST, 2010, IS
7 EVEN AFTER THE PRESENT SUIT WAS FILED. THIS CAN BE SEEN FROM
8 EXHIBIT D PAGE 17, SECOND FULL PARAGRAPH.

9 AS I HAVE SAID, THIS SUIT WAS FILED ON THE
10 28TH OF JANUARY, 2010.

11 ONE OF THE COMPLICATING FACTORS IN THIS
12 CASE -- AND THE LAWYERS HAVE RECOGNIZED IT, AND IT'S OBVIOUS
13 TO ANYONE WITH ANY LEGAL EXPERIENCE -- IS THAT ALTHOUGH THE
14 LAWSUIT ORIGINALLY NAMED RJ FINANCIAL, INC., THAT DEFENDANT
15 IS A DEBTOR IN A CHAPTER 11 BANKRUPTCY. AS I HAVE SAID, THE
16 CASE IS OBVIOUSLY STAYED AS TO THAT PARTY, BUT THE PLAINTIFFS
17 HAVE HAD TO REORGANIZE THEIR CASE TO PRESS IT AGAINST
18 MR. ABALKHAD WHO IS NOT IN BANKRUPTCY AND IT SEEMS TO ME THEY
19 HAVE DONE SO SUCCESSFULLY.

20 THERE IS NO SERIOUS QUESTION BETWEEN THE SIDES
21 CONCERNING THE FOLLOWING PROPOSITIONS OF LAW. AN EMPLOYEE IS
22 ENTITLED TO OVERTIME COMPENSATION FOR WORK IN EXCESS OF EIGHT
23 HOURS IN ONE WORKDAY, FOR WORKING IN EXCESS OF 40 HOURS IN
24 ONE WORKWEEK, AND FOR WORK ON THE SEVENTH DAY IN ONE WORK
25 WEEK. THE OVERTIME COMPENSATION DIFFERS, BUT THOSE ARE
26 OVERTIME ITEMS.

27 IT IS ALSO TRUE -- BY THE WAY, THIS IS
28 PROVIDED FOR UNDER LABOR CODE 510(A). IT'S ALSO TRUE THAT

1 EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EMPLOYEES WHO ARE
2 SPECIFICALLY EXEMPTED BY THE CALIFORNIA INDUSTRIAL WELFARE
3 AND COMMISSION ARE EXEMPT FROM THE HOURS WORKED AND DAYS
4 WORKED PER WEEK LIMITATIONS AS PROVIDED FOR IN LABOR CODE 515
5 BUT -- PARDON ME -- THE PLAINTIFFS IN THIS CASE DO NOT FALL
6 INTO THAT EXEMPTED CATEGORY AND INDEED THE DEFENDANT DOES NOT
7 CLAIM THAT THEY DO.

8 FOR THE REASONS THAT I HAVE MENTIONED EARLIER
9 ABOUT THE RESERVATIONS WITH WHICH THE TESTIMONY OF THE
10 WITNESSES HAVE TO BE INTERPRETED WITH, I DO NOT ATTEMPT TO
11 SUMMARIZE ALL THE TESTIMONY OF ALL THE WITNESSES.

12 IT IS ALSO TRUE THAT SUCCESSFUL EMPLOYEE
13 PLAINTIFFS WHO ARE AWARDED UNPAID OVERTIME ARE ENTITLED TO
14 INTEREST ACCRUING FROM THE DATE ON WHICH THE RIGHT TO RECOVER
15 THEIR OVERTIME VESTS. THIS WOULD BE ON THE MODEL INDICATED
16 IN CIVIL CODE 3287(A) COMPUTED TO THE DATE OF ENTRY OF
17 JUDGMENT. THIS IS LABOR CODE 1194(A), AND IT'S ALSO
18 DISCUSSED IN ESPINOSA VERSUS CLASSIC PIZZA, WHICH IS A CASE
19 THAT APPEARS IN 114 CALIFORNIA APPELLATE 4TH. THE PARTICULAR
20 PASSAGE THAT I'M MAKING REFERENCE TO IS AT PAGE 975.

21 THE TERM "WILLFUL" UNDER THE LABOR CODE --
22 THIS APPEARS IN LABOR CODE 203 -- IT MEANS ONLY THAT AN
23 EMPLOYER INTENTIONALLY FAILED OR REFUSED TO PERFORM AN ACT
24 THAT WAS REQUIRED TO BE DONE. THAT POINT IS MADE IN BARNHILL
25 VERSUS ROBERT SAUNDERS & COMPANY, (1981) 125 CALIFORNIA
26 APPELLATE 3D 1 AT PAGES 7 AND 8.

27 OBVIOUSLY, IN THE CURRENT CASE, UNLIKE THE
28 SITUATION IN BARNHILL, THERE'S NO EVIDENCE OF OFFSET. I'M

1 CITING BARNHILL JUST FOR THE PURPOSE OF THE DEFINITION OF THE
2 WORD "WILLFUL."

3 I WILL MAKE A COUPLE OF OTHER POINTS.

4 I RECOGNIZE THE INTENSITY WITH WHICH THE
5 DEFENSE HAS MAINTAINED THAT THIS IS A CASE DRIVEN BY
6 ATTORNEYS AND ATTORNEY'S FEES ON THE PLAINTIFFS'S SIDE. FOR
7 THE REASONS THAT I HAVE MENTIONED PREVIOUSLY, THAT IS, THAT
8 ONE OF THE PURPOSES OF PAGA IS PRECISELY TO INCENTIVIZE
9 ATTORNEYS TO -- TO FILE AND TO PROSECUTE SUCH CASES -- THAT
10 ARGUMENT EXISTS AND IT DOES HAVE A CERTAIN AMOUNT OF
11 OCCURRENCE, BUT I DO NOT REGARD IT AS BEING A STRONG
12 ARGUMENT. IT IS THE PURPOSE OF THE LAW PRECISELY TO PROVIDE
13 AN INCENTIVE FOR ATTORNEYS WHO MIGHT OTHERWISE BE UNABLE TO
14 HANDLE CASES OF THIS TYPE TO BE ABLE TO HANDLE CASES OF THIS
15 TYPE.

16 I WILL SAY THAT APPLICATIONS FOR ATTORNEYS'S
17 FEES, IF ANYBODY CLAIMS ENTITLEMENT TO ANY, CAN BE MADE BY
18 POST-JUDGMENT MOTION FOR ALLOWANCE OF ATTORNEY'S FEES AS
19 PARTS OF COSTS UNDER CIVIL CODE 1717(A), IF THAT'S WHAT
20 APPLIES, OR UNDER THE CORRESPONDING STATUTE IN THE LABOR
21 CODE. AND THE METHOD OF MAKING A POST-JUDGMENT MOTION FOR
22 ALLOWANCE IS REFERRED TO IN SUCH CASES AS ALLSTATE INSURANCE
23 VERSUS LEW, (1996) 46 CALIFORNIA APPELLATE 4TH 174 -- 1794 AT
24 1797, AND BANKES VERSUS LUCAS -- BANKES IS SPELLED
25 B-A-N-K-E-S, VERSUS LUCAS -- (1992) 9 CALIFORNIA --
26 9 CALIFORNIA APPELLATE 4TH, 365 AT 370.

27 I CITE THOSE TWO CASES NOT FOR THE PROPOSITION
28 THAT THEY APPLY IN LABOR CASES OR THAT THEY ARE DISPOSITIVE

1 ON THE ISSUE OF THE AMOUNT OF LEGAL FEES BUT JUST TO SHOW
2 THAT THAT IS AN APPROPRIATE TIME TO MAKE APPLICATIONS FOR
3 FEES.

4 IN THE PREMISES OF THIS CASE, THOUGH, FOR
5 REASONS THAT I WILL EXPLAIN IN JUST A SECOND, THE APPLICATION
6 FOR ATTORNEY'S FEES, IF THERE IS GOING TO BE ONE ON THE PART
7 OF THE PLAINTIFFS'S ATTORNEY, SHOULD BE, IT SEEMS TO ME, MADE
8 AFTER DISTRIBUTION OF ALL THE FUNDS THAT WILL BE DISTRIBUTED
9 UNDER MY AWARD WHICH I'M GOING TO MAKE UNDER PAGA SO THAT WE
10 DON'T HAVE THE SITUATION WHERE THE ATTORNEY IS PAID,
11 PLAINTIFFS'S ATTORNEY IS PAID FIRST OR SEEKS PAYMENT FIRST
12 WITHOUT ALSO DOING ALL THE, IT SEEMS TO ME, RATHER LABORIOUS
13 WORK THAT'S GOING TO BE REQUIRED UNDER PAGA, AND IT'S 25
14 PERCENT, 75 PERCENT SHARING ARRANGEMENT WITH THE PLAINTIFFS
15 TO GET 25 PERCENT AND WITH THE STATE OF CALIFORNIA TO GET THE
16 75 PERCENT.

17 SO I'M GOING TO TREAT THAT ASPECT OF THIS CASE
18 AS CALLING FOR ATTORNEY FEE MOTIONS, IF ANY ARE TO BE MADE,
19 AT A TIME AFTER THAT STEP OF CONCURSUS OF CLAIMS AND
20 DISTRIBUTION OF FUNDS HAS EITHER BEEN COMPLETELY FINISHED OR
21 HAS BEEN FINISHED WITH THE EXCEPTION OF A FEW SMALL
22 MINISTERIAL ACTS.

23 PARDON ME.

24 WITH RESPECT TO THE -- TO THE REMEDIES, IT
25 SEEMS TO ME THAT THE EVIDENCE STRONGLY SUPPORTS THE
26 PLAINTIFFS'S ARGUMENTS AS TO WHAT I WILL CALL THE 558-510-512
27 THEORY AND THE 1197.1-1198-WORK ORDER THEORY.

28 I THINK THAT THE EVIDENCE ESTABLISHES

1 VIOLATIONS OF THOSE SUBSTANTIVE PROVISIONS AND THAT THE
2 EVIDENCE ESTABLISHES A RIGHT TO RECOVER ON BEHALF OF THE
3 PAGA-AGGRIEVED EMPLOYEES AND ON BEHALF OF THE PLAINTIFFS BUT
4 IN AMOUNTS THAT ARE DIFFERENT FROM THOSE -- THE THEORIES ARE
5 THOSE ADVOCATED BY MR. SPIVAK AND HIS CLIENTS. THE AMOUNTS
6 ARE AMOUNTS THAT I AM GOING TO ALTER, THOUGH, AS WILL BE
7 CLEAR.

8 WITH RESPECT TO THE GHRDILYAN 558-510-512
9 LABOR CODE RECOVERY, I AM GOING TO AWARD \$7,654.60 -- THAT'S
10 EXACTLY AS CALCULATED BY MR. SPIVAK AND THOSE ARE -- THAT'S
11 IN FAVOR OF MS. GHRDILYAN AND AGAINST MR. ABALKHAD.

12 WITH RESPECT TO THE 1197.1 THEORY, WITH 1198
13 AND WORK ORDER BEING THE SUBSTANTIVE BASES, I AGREE WITH
14 MR. SPIVAK THAT MS. GHRDILYAN'S RECOVERY SHOULD BE \$14,218
15 AND THAT COMES OUT TO A TOTAL OF 21,872.60 FOR GHRDILYAN.

16 WITH RESPECT TO SULTANIAN, MY DETERMINATION IS
17 THAT REGARDING THE LABOR CODE 558-510-512 THEORY,
18 MS. SULTANIAN IS ENTITLED TO RECOVERY AGAINST MR. ABALKHAD OF
19 \$5,264.19, AND WITH RESPECT TO HER THEORY UNDER 1197.1 LABOR
20 CODE, MS. SULTANIAN IS ENTITLED TO RECOVER AGAINST
21 MR. ABALKHAD \$13,936.50. TOTAL IS \$19,200.69, AND THAT'S THE
22 AMOUNT THAT SULTANIAN IS ENTITLED TO RECOVER ON HER ACCOUNT
23 AGAINST MR. ABALKHAD.

24 THIS NOW BRINGS US TO THE AWARD IN FAVOR OF
25 THE SO-CALLED AGGRIEVED EMPLOYEES.

26 MY DETERMINATION IS THAT THE AGGRIEVED
27 EMPLOYEES'S CLAIMS ARE VALID AND MERITORIOUS CLAIMS; THAT
28 THEY CAN BE AND HAVE BEEN VALIDLY ASSERTED BY, PROSECUTED BY

1 THE TWO PLAINTIFFS IN OUR CASE.

2 I AM GOING, HOWEVER, NOT TO ACCEPT THE DOLLAR
3 FIGURES IN THE ULTIMATE SENSE THAT MR. SPIVAK AND HIS CLIENTS
4 HAVE ADVOCATED. IN DOING THIS, I AM GOING TO SPECIFICALLY
5 EXERCISE MY POWERS, WHICH IT SEEMS TO ME ARE IN THE NATURE OF
6 JUDICIAL DISCRETION, TO REDUCE THE AMOUNT OF RECOVERY FROM
7 THE AMOUNTS ADVOCATED BY MR. SPIVAK AND HIS CLIENTS.

8 WITH RESPECT TO THE LABOR CODE 558, 510, AND
9 512 THEORIES, AS TO THE AGGRIEVED EMPLOYEES, MY DETERMINATION
10 IS THAT THE AMOUNT WHICH MR. ABALKHAD MUST PAY IS NOT THE
11 \$2,164,278 AMOUNT THAT MR. SPIVAK ARGUED FOR BUT RATHER
12 \$125,000.

13 WITH RESPECT TO THE 1197.1-1198-WAGE-ORDER
14 CLAIM, MY DETERMINATION IS THAT THE AMOUNT THAT MR. ABALKHAD
15 WILL BE REQUIRED TO PAY IS NOT \$3,269,490, WHICH WAS THE
16 AMOUNT ADVOCATED BY MR. SPIVAK ON BEHALF OF HIS CLIENTS BUT
17 RATHER \$200,000.

18 NOW, THAT COMES OUT TO A TOTAL THEN OF
19 \$325,000.

20 NOW, IN DOING THIS, I HAVE EXERCISED MY
21 DISCRETION TAKING INTO CONSIDERATION THE FOLLOWING POINTS. I
22 AGREE WITH MR. SPIVAK'S CHARACTERIZATION OF MR. ABALKHAD AS A
23 PERSON WHO WAS INADEQUATELY OBSERVANT OF CALIFORNIA LAW.
24 MR. SPIVAK REFERS TO HIM AS A "SCOFFLAW." THAT'S A
25 JOURNALISTIC RATHER THAN A -- A LEGAL TERM. BUT I THINK HE
26 DID HAVE THE INTENTION SIMPLY OF TRYING TO RUN THINGS THROUGH
27 AND GET OFF AS CHEAPLY AS HE COULD WHILE HE WAS RUNNING HIS
28 BUSINESSES.

1 BUT I ALSO FIND THAT ONE OF THE PROBLEMS IN
2 THE OPERATION OF HIS BUSINESS WAS THAT HE GOT IN WAY OVER HIS
3 HEAD. HE SIMPLY EXPANDED BEYOND HIS OR HIS CORPORATION'S
4 CAPACITY PROPERLY TO RUN THESE BUSINESSES. HE RAN THEM AS
5 THOUGH HE WERE RUNNING A KIND OF SMALL OPERATIONS OUT OF HIS
6 HIP POCKET, AND I RECOGNIZE THAT THAT IS NOT A PRAISEWORTHY
7 BEHAVIOR, BUT IT SEEMS TO ME THAT IT IS NOT BEHAVIOR OF A
8 HIGHLY BLAMEWORTHY SENSE AND THAT IT IS BEHAVIOR WHICH MERITS
9 A REDUCTION OR SOFTENING OF THE PENALTIES.

10 NOW, I WILL ALSO SAY THE FOLLOWING. IF ON
11 APPEAL, THE APPELLATE COURT DETERMINES THAT I AM MISTAKEN
12 CONCERNING THE POTENTIAL OTHER THEORIES OF LIABILITY ASSERTED
13 BY MR. SPIVAK AND HIS CLIENTS AGAINST MR. ABALKHAD, I WILL
14 TELL YOU WHAT I WOULD HAVE AWARDED ON THOSE THEORIES SO THAT
15 IT MAY BE THAT THE APPELLATE COURT CAN SIMPLY TAKE WHAT I
16 HAVE SAID HERE AND RATHER THAN MAKING A DISPOSITION WHICH
17 REMANDS THE CASE FOR FURTHER CALCULATION OF DAMAGES, THE
18 APPELLATE COURT CAN SIMPLY INSERT THE MONETARY REMEDY THAT I
19 WOULD HAVE INSERTED MYSELF HAD I NOT BEEN PERSUADED THAT
20 MR. ABALKHAD WAS NOT LIABLE EXCEPT UNDER THE THEORIES THAT I
21 HAVE MADE REFERENCE TO.

22 HAD THAT BEEN DONE, I WOULD HAVE AWARDED AN
23 ADDITIONAL \$200,000 AS TO THE AGGRIEVED EMPLOYEES.

24 NOW, I WILL SAY THAT THESE AMOUNTS ARE, I
25 RECOGNIZE, EXTREMELY LENIENT AND PERMISSIVE TO MR. ABALKHAD.
26 IN OTHER WORDS, THIS IS NOT A CASE WHERE THE COURT HAS TRIED
27 TO SOCK IT TO HIM. IT IS, RATHER, A CASE IN WHICH I HAVE
28 TREATED IT AS A SERIES OF OFFENSES BUT ONE AS TO WHICH

1 MR. ABALKHAD SHOULD BE GIVEN AT LEAST SOME LENIENCY IN THE
2 FASHIONING OF A REMEDY. I THINK THAT'S IT. LET ME ASK THE
3 LAWYERS.

4 FIRST OF ALL, PLAINTIFFS'S LAWYER. ARE THERE
5 OTHER MATTERS AS TO WHICH YOUR CLIENTS CONTEND I SHOULD MAKE
6 A STATEMENT OF SOME KIND OR A FINDING OF SOME KIND?

7 MR. SPIVAK: WAS THERE SOME FINDING AS TO THE
8 ADDITIONAL \$200,000 WITH RESPECT TO THE INDIVIDUAL
9 PLAINTIFFS, YOUR HONOR?

10 YOU SPOKE TO THE OTHER CLAIMS WHICH PERHAPS
11 WOULD AFFECT THE APPELLATE COURT SHOULD IT SEND BACK FOR
12 CALCULATION.

13 THE COURT: YEAH.

14 MR. SPIVAK: I KNOW YOU GAVE AN AGGRIEVED EMPLOYEE
15 NUMBER BUT NOT FOR THE TWO PLAINTIFFS.

16 THE COURT: SHOW ME -- JUST A SECOND. COULD YOU,
17 PLEASE, TURN BACK TO -- OH, I GUESS I OUGHT TO SAY THAT. LET
18 ME DO THAT NOW.

19 THE PLAINTIFFS CONTEND THAT THERE WERE THESE
20 WRONGS AS TO BOTH THEMSELVES AND AS TO THE AGGRIEVED
21 EMPLOYEES, AND I WILL JUST REFER TO THEM IN SHORT, COMPRESSED
22 TERMS. AND ESSENTIALLY IT BOILS DOWN TO I THINK NINE
23 THEORIES AND I WILL ENUMERATE THEM NOW: OVERTIME, REST AND
24 MEAL PERIODS, WAGE STATEMENT, IN OTHER WORDS, LABOR CODE 226,
25 UNPAID TRAVEL EXPENSES AND MILEAGE -- THAT'S FOUR --
26 OFF-THE-CLOCK WORK, UNTIMELY PAYMENT OF WAGES, VACATION PAY
27 AT TERMINATION, AND FAILURE FAIRLY TO ADVISE THE EMPLOYEES OF
28 CHANGE IN THE COMMISSION STRUCTURE SO THAT WHAT HAPPENED WAS

1 THAT THEY WERE MADE TO DO WORK WITHOUT KNOWING -- WITHOUT, AS
2 IT TURNED OUT, WHAT THE ULTIMATE PAYMENT FOR IT WAS GOING TO
3 BE.

4 EACH OF THOSE CONTENTIONS -- EACH OF THOSE
5 THEORIES IS A THEORY THAT WOULD BE DECIDED IN FAVOR OF THE
6 PLAINTIFFS AND AGAINST THE -- AND AGAINST THE DEFENDANT
7 ABALKHAD EXCEPT FOR MY DETERMINATION THAT HE INDIVIDUALLY IS
8 NOT LIABLE. BUT IF HE IS LIABLE, THAT IS, IF THE APPELLATE
9 COURT DECIDES THAT I HAVE MADE AN ERROR REGARDING EXCESSIVELY
10 NARROW INTERPRETATION OF THE LABOR CODE PROVISIONS, I WOULD
11 AWARD EACH OF THE PLAINTIFFS AS PENALTIES \$60,000 EACH; 60
12 PLUS 60 IS 120.

13 NOW, I WILL SAY, AGAIN, I RECOGNIZE THAT THIS
14 IS WAY BELOW THE PLAINTIFFS'S TARGET NUMBER, BUT IT IS A
15 NUMBER THAT I THINK IS APPROPRIATE.

16 NOW, I WANT TO SAY SOMETHING ELSE ABOUT THIS,
17 AND THIS IS A COMPLICATION CREATED BY FACTORS THAT I HAD
18 REFERRED TO PREVIOUSLY. THIS IS THE BANKRUPTCY OF THE
19 CORPORATION.

20 WHAT I AM SAYING CONCERNING THESE OTHER
21 PENALTIES AND OTHER AMOUNTS, THAT IS, AMOUNTS I AM NOT
22 ACTUALLY AWARDING ARE FOR THE BENEFIT OF THE APPELLATE COURT
23 IN ASSISTING IT TO FRAME A DISPOSITIONAL ORDER IF THE CASE IS
24 SENT BACK TO THE SUPERIOR COURT UPON A REVERSAL IN PART OR IN
25 WHOLE.

26 I WANT TO PUT THESE PEOPLE IN A POSITION SO
27 THEY WILL HAVE A REMEDY ON BOTH SIDES WITHOUT THE NECESSITY
28 OF THE SUPERIOR COURT HAVING TO REVISIT THIS AND BY THE

1 SUPERIOR COURT TELLING THE APPELLATE COURT WHAT THE SUPERIOR
2 COURT WOULD HAVE DONE HAD THE SUPERIOR COURT'S REASONING NOT
3 FORECLOSED IT.

4 I AM EXTREMELY CONCERNED TO STATE THIS IN THAT
5 WAY SO THAT THE BANKRUPTCY PROCEEDINGS ARE NOT IN SOME WAY
6 SPOILED OR IMPROPERLY AFFECTED BY THE WORK DONE HERE IN THE
7 -- IN THE TRIAL COURT. AND I AM TRYING TO SUPPLY ALL OF THE
8 INFORMATION THAT I CAN WHILE STILL BEING TRUE TO AND
9 OBSERVANT OF THE NECESSITY FOR TRYING TO ACHIEVE AS MUCH
10 FINALITY AS I CAN WHILE STILL ASSISTING IN THE LITIGATION
11 PROCESS AS MUCH AS THIS COURT CAN.

12 NOW, I HAVE PREVIOUSLY DISCUSSED AND I WILL
13 MAKE A PART OF MY STATEMENT OF DECISION HERE THE SET OF DATES
14 THAT PIVOT AROUND THE APPEAL. AS I HAVE SAID PREVIOUSLY, THE
15 CASE THAT I HAVE BEEN TRYING, THIS CASE, WAS FILED ON THE
16 26TH OF JANUARY, 2010. THE DEFENDANT WAS AT THAT TIME ONLY
17 RJ FINANCIAL, AND THE CASE WAS DENOMINATED A CLASS ACTION. A
18 LITTLE LESS THAN MONTH AFTER THAT, ON THE 24TH OF FEBRUARY,
19 2010, THE PLAINTIFFS FILED A FIRST AMENDED COMPLAINT. THEY
20 ADDED MR. ABALKHAD AS A NAMED DEFENDANT. THEY CONTINUED WITH
21 THE DESIGNATION OF THIS CASE AS A CLASS ACTION.

22 ON THE 8TH OF MARCH, 2010, THE PLAINTIFFS
23 FILED A 170.6 AS TO JUDGE WILLIAM FAHEY OF THIS COURT.

24 ON THE 22ND OF MARCH, 2010, THE LAWYER WHO THE
25 TESTIMONY HAS IDENTIFIED AS MR. SANFORD FREY, F-R-E-Y -- THAT
26 NAME ALSO APPEARS ON THE DOCUMENT I'M GOING TO DESCRIBE --
27 FILED A NOTICE OF STAY AS TO THE CORPORATE DEFENDANT,
28 REFERRING TO THE CHAPTER 11 BANKRUPTCY. THAT BANKRUPTCY

1 PETITION APPEARS TO HAVE BEEN FILED ON THE 7TH OF JANUARY,
2 2010, THAT IS, BEFORE THE CASE WAS EVER FILED.

3 THAT ACCOUNTS FOR THE MODIFICATION OF THE NAME
4 OF THE PARTIES TO INCLUDE ABALKHAD AS AN INDIVIDUAL. I THINK
5 IT IS THAT OBVIOUS THAT -- BUT I WANT TO MAKE IT VERY, VERY
6 CLEAR THAT THIS IS NOT ONLY OBVIOUS, BUT IT IS A FACT THAT --
7 THIS CASE IS STAYED AS TO THE RJ FINANCIAL CORPORATION UNDER
8 THE STATUTORY CITATION I HAVE GIVEN, 11 U.S.C. 362.

9 MR. ABALKHAD'S DEFAULT WAS TAKEN IN THIS CASE
10 AND IN AUGUST OF 2010, HE MOVED TO SET ASIDE THE DEFAULT. IN
11 THAT SET OF PAPERS, THERE WAS THE CLAIM MADE THAT PLAINTIFFS
12 ADDED ABALKHAD ON THE 26TH OF MARCH, 2010. AS I HAVE
13 INDICATED, THAT WAS NOT TRUE. IT WAS ON THE 26TH -- 24TH OF
14 FEBRUARY, 2010, BUT THAT WAS NOT A SIGNIFICANT INACCURACY
15 BECAUSE IN THE COURT'S VIEW, ABALKHAD WAS ENTITLED TO HAVE
16 THE DEFAULT SET ASIDE.

17 NOW IS THERE ANYTHING THAT I AM SUPPOSED TO
18 SAY?

19 MR. SPIVAK: I DON'T THINK SO, YOUR HONOR.

20 THE COURT: OKAY. HOW ABOUT YOU, MR. SABZEVAR?

21 MR. SABZEVAR: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT. HERE'S WHAT I'M GOING TO DO
23 THEN.

24 I'M GOING TO SET A HEARING OUT IN THE FUTURE.
25 FIRST OF ALL, THE STATEMENT OF DECISION IS SUFFICIENT IF IT
26 STATES ALL THE FACTS. IT NEED NOT STATE EVIDENTIARY FACTS.
27 I THINK THE STATEMENT OF DECISION I HAVE MADE DOES THAT.

28 SECONDLY, I'M GOING TO ORDER THE PLAINTIFFS

1 THROUGH COUNSEL TO PREPARE, SERVE, OBTAIN APPROVAL AS TO FORM
2 FROM DEFENDANT ABALKHAD. THIS MAY REQUIRE A MEET AND CONFER
3 AND COURT EXPECTS COUNSEL TO BE ATTENTIVE AND COOPERATIVE IN
4 THIS REGARD. SO SUBMIT THAT TO DEFENSE COUNSEL AND LODGE
5 WITH THE COURT A JUDGMENT SUITABLE FOR COURT'S SIGNATURE IN
6 CONFORMITY WITH THE FOREGOING.

7 I AM GOING TO ORDER ALSO THAT THE PARTIES
8 AND/OR COUNSEL PICK UP ALL EXHIBITS LODGED WITH THE CLERK AND
9 ALL EXHIBITS MARKED AND/OR RECEIVED IN EVIDENCE, EACH SIDE TO
10 PICK UP THE ITEM PROFFERED BY THAT SIDE FOR RECEIPT INTO
11 EVIDENCE WITHIN FIVE DAYS FROM THE COURT'S SIGNING OF THE
12 JUDGMENT.

13 NOW, TODAY IS THE 23RD OF APRIL, 2010 -- 2012,
14 I SHOULD SAY. I WANT TO HAVE A HEARING AT WHICH THE JUDGMENT
15 IS PRESENTED TO ME FOR SIGNATURE AND I WANT TO DO THESE
16 THINGS AT THAT HEARING. I WANT TO SETTLE THE FORM AND
17 SUBSTANCE OF THE DECISION -- OF THE JUDGMENT. IF THERE'S ANY
18 OTHER WORK THAT NEEDS TO BE DONE, I WANT TO DO THAT AT THIS
19 HEARING. I WANT TO DETERMINE WHAT, IF ANYTHING, REMAINS TO
20 BE DONE REGARDING FUTURE PROCEEDINGS IN THIS CASE, AND I WANT
21 TO DETERMINE WHAT THE STATUS OF THIS CASE IS AND I WANT TO
22 HAVE THE LAWYERS FOR THE PARTIES PERSONALLY PRESENT.

23 MY IDEA WOULD BE THE JUDGMENT SHOULD BE
24 SUBMITTED BEFORE THE HEARING BUT THAT PLAINTIFFS'S COUNSEL
25 SHOULD BRING WITH HIM A DUPLICATE ORIGINAL OF THE JUDGMENT IN
26 CASE THE PAPERWORK HANDLING PRODUCES A SITUATION WHERE I
27 CAN'T LAY MY HANDS ON THE JUDGMENT THAT I AM SUPPOSED TO SIGN
28 IMMEDIATELY. I LOOK TO THE ATTORNEYS NOW FOR SOME

1 SUGGESTIONS AS TO THE DATE WHEN THAT HEARING SHOULD BE
2 SCHEDULED.

3 MR. SABZEVAR, DO YOU HAVE ANY IDEAS ABOUT WHEN
4 I SHOULD SCHEDULE IT?

5 MR. SABZEVAR: FORTY-FIVE DAYS, YOUR HONOR?

6 THE COURT: FORTY-FIVE DAYS.

7 MR. SPIVAK: THAT'S FINE FOR PLAINTIFFS.

8 THE COURT: SO TODAY IS THE 23RD. LET'S SET IT FOR
9 HEARING ON THE -- LET'S GO OUT MORE THAN 45 DAYS.

10 AS YOU CAN SEE, FROM THE 4TH TO THE 8TH, I
11 WON'T BE ABLE TO WORK WITH YOU -- OF JUNE. I WON'T BE ABLE
12 TO WORK WITH YOU. SO WOULD IT ALL RIGHT WITH YOU LAWYERS IF
13 I PICK THE 21ST OF JUNE, 2012, 8:30, THIS DEPARTMENT?

14 MR. SABZEVAR: THAT'S FINE, YOUR HONOR.

15 THE COURT: ARE YOU GOING TO BE AVAILABLE ON THOSE
16 DATES?

17 MR. SPIVAK: YES, YOUR HONOR.

18 THE COURT: ARE YOU GOING TO BE ABLE TO DO THE
19 THINGS I TALKED ABOUT, SETTLING THE FORM AND SUBSTANCE OF THE
20 JUDGMENT?

21 MR. SPIVAK: YES, YOUR HONOR.

22 MR. SABZEVAR: THAT'S FINE.

23 THE COURT: THANK YOU VERY MUCH. I APPRECIATE YOUR
24 PARTICIPATION AND -- AND YOUR ADVOCACY, AND I WILL SEE YOU
25 WHEN WE NEXT HAVE TO WORK ON THE CASE.

26 NOW, I WILL TELL YOU SOMETHING ELSE. PLEASE
27 STAY ALERT AND PLEASE LOOK IN ADVISES TO ATTORNEYS, OR
28 NOTICES, OR WHATEVER WE ARE GOING TO DO IN THE NEXT THREE OR

1 FOUR WEEKS. HERE'S OUR SITUATION.

2 AS OF 15TH OF MAY, WE WON'T HAVE REPORTERS IN
3 THESE DEPARTMENTS ANYMORE FOR TRIAL MATTERS -- THEY WILL HAVE
4 TO BE SUPPLIED BY THE PARTIES -- AND WE WON'T HAVE THE
5 REPORTERS EXCEPT TWO LAW AND MOTION SESSIONS A WEEK. THE
6 IDEA IS IT WILL BE ONE MORNING AND ONE AFTERNOON. THAT WILL
7 BE ALL THE REPORTERS WE ARE GOING TO HAVE SUPPLIED BY THE
8 COURT.

9 MOREOVER, THEY ARE GOING TO, AS I MENTIONED TO
10 YOU PREVIOUSLY, THEY ARE GOING TO REDUCE THE STAFF.

11 SO I HAD GIVEN YOU DATE, BUT I AM NOT ONE
12 HUNDRED PERCENT CERTAIN ABOUT HOW THAT DATE IS GOING TO WORK.
13 PLEASE KEEP YOUR EYES AND EARS OPEN. IF THERE'S SOME FOUL UP
14 OR SOMETHING, DO WHATEVER YOU NEED TO DO TO MAKE IT RIGHT. I
15 MEAN, WE ARE -- I WISH I COULD SAY SOMETHING THAT SOUNDED
16 MORE EMPHATIC AND MORE DEFINITIVE, BUT I CAN'T. I JUST DON'T
17 KNOW WHAT'S GOING TO HAPPEN.

18 WHAT I WANT TO DO IS TO FINISH UP YOUR CASE
19 AND GET YOU ALONG FOR THE NEXT STEP FOR OBVIOUS REASONS. AND
20 I DON'T WANT THE COLLAPSE OF THE SYSTEM'S ABILITY TO HANDLE
21 MATTERS TIMELY TO REDOUND TO YOUR DISADVANTAGE OR TO
22 ADDITIONAL EXPENSE ON THE PART OF EITHER SIDE THAT MIGHT
23 OTHERWISE BE AVOIDED IF YOU LAWYERS KEPT YOUR EYES PEELED FOR
24 WHAT'S HAPPENING IN THE COURTS AND IF I WERE ABLE TO PREDICT
25 A LITTLE BIT, I JUST CAN'T PREDICT THAT. I DON'T EVEN KNOW.
26 BUT KEEP YOUR EYES OPEN. TRY TO DO WHAT'S RIGHT, AND I WILL
27 TRY TO DO WHAT'S RIGHT. IT'S ABOUT THE BEST I CAN DO FOR
28 YOU.

1 ALL RIGHT. THANK YOU ALL VERY MUCH.

2 MR. SPIVAK: THANK YOU, YOUR HONOR.

3 MR. SABZEVAR: THANK YOU, YOUR HONOR.

4 THE COURT: SEE YOU WHEN WE NEXT HAVE TO WORK ON
5 THE CASE.

6 (PROCEEDINGS CONCLUDED.)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE

ALINA GHRDILYAN, ET AL.,
PLAINTIFFS,
VS.
RJ FINANCIAL, ET AL.,
DEFENDANTS,

CASE NO. BC430633
CERTIFIED COPY

REPORTER'S TRANSCRIPT OF PROCEEDINGS
MONDAY, APRIL 23, 2012

APPEARANCES:

FOR THE PLAINTIFFS: DAVID SPIVAK,
ATTORNEY AT LAW
LOUIS BENOWITZ,
ATTORNEY AT LAW
FOR THE DEFENDANTS: MICHAEL SABZEVAR,
ATTORNEY AT LAW

REPORTED BY:
ANGELA ZARATAN PARADELA
OFFICIAL COURT REPORTER
CSR NO. 9659

EXHIBIT 9



3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Estimate #:	15328V2	Prepared By:	Michael Sutherland
Estimate Date:	10/20/2022	Direct Dial #	321-223-5067
		Email:	ksutherland@simpluris.com

Attorney/Client:	<u>Plaintiff Attorney</u> Breck Oyama	Attorney/Client:	<u>Defense Attorney</u>
Firm:	Spivak Law	Firm:	
Email:	<boyama@spivaklaw.com>	Email:	

Case Name: McKENZIE/RED DOOR: Opt Out Settlement.Two distributions

Capped Fee*	\$9,000
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Terms:

- 1) Capped Fees assume that Simpluris will receive data in a Single Excel file with no substantial change in class size or response rate.
- 2) Case setup and Notification fees to be invoiced prior to mailing.

Total Possible Class Size:	240	Undeliverable Rate:	10%
Response Rate:	N/A	Call Rate:	5%
Mailing Document Language:	English	Redistribution:	One
Reminder Post Card	N/A	State	Single
Uncashed Funds	State	Tax Reporting Years	Two

Case Setup

Data Compilation - Develop Case Specific Response Tracking - Error Reports			
Category	Unit Value	# of Units	Total
Project Manager - Case Setup	\$125.00	3	\$375.00
Live call support and Toll Free number	\$250.00	1	\$250.00
Database Manager - Initial Data Analysis	\$140.00	3	\$420.00
		Total	\$1,045.00

Distribution

Setup a Disbursement Account.			
Print & Mail Checks to Class Members-W-2, 1099's-- File Reports with Appropriate Federal & State Taxing Authorities			
Account Management & Reconciliation			
Category	Unit Value	# of Units	Total
Disbursement Data Preparation	\$140.00	1	\$140.00
Disbursement Manager - Data Validation	\$75.00	1	\$75.00
Setup Banking Account/QSF	\$750.00	1	\$750.00
NCOA Prior to Mailing	\$25.00	1	\$25.00
Print & Mail-Check, 1099 Only, 1/2 Pg. Notice	\$5.00	240	\$1,200.00
Postage	\$0.57	240	\$136.80
Process Returned Checks	\$0.25	24	\$6.00
Skip Trace Search Undeliverable Checks	\$3.00	24	\$72.00
Postage	\$0.57	24	\$13.68
QSF Reporting/Declaration	\$300.00	1	\$300.00
QSF Annual Tax Preparation Fee	\$1,350.00	1	\$1,350.00
Reissuing Checks/Mailing	\$3.00	4	\$10.80
Postage	\$0.57	4	\$2.05
Escheat management	\$300.00	1	\$300.00
Disbursement Manager	\$125.00	1	\$125.00
		Total	\$4,506.33

Distribution

Disbursement Data Preparation	\$140.00	1	\$140.00
Disbursement Manager - Data Validation	\$75.00	1	\$75.00
Setup Banking Account/QSF	\$750.00	1	\$750.00
NCOA Prior to Mailing	\$25.00	1	\$25.00
Print & Mail-Check, 1099 Only, 1/2 Pg. Notice	\$5.00	240	\$1,200.00
Postage	\$0.57	240	\$136.80
Process Returned Checks	\$0.25	24	\$6.00
Skip Trace Search Undeliverable Checks	\$3.00	24	\$72.00
Postage	\$0.57	24	\$13.68
QSF Reporting/Declaration	\$300.00	1	\$300.00
QSF Annual Tax Preparation Fee	\$1,350.00	1	\$1,350.00
Reissuing Checks/Mailing	\$3.00	4	\$10.80
Postage	\$0.57	4	\$2.05
Escheat management	\$300.00	0	\$0.00
Disbursement Manager	\$125.00	1	\$125.00
		Total	\$4,206.33



3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Case Wrap Up

Send Final Reports to Counsel			
Category	Unit Value	# of Units	Total
Data Manager-Final Reporting	\$125.00	1	\$125.00
Clerical-Clean Up Any Misc	\$50.00	1	\$50.00
Project Manager-Wrap-up Final Issues	\$125.00	1	\$125.00
		Total	\$300.00

Total Case Costs \$10,057.66

Postage \$136.80

All administration services to be provided by Simpluris to Client, are provided subject to the following terms and conditions:

1. **Services.** Simpluris agrees to provide Client those services set forth in the Bid (the "Services") to which these terms and conditions are attached and which has been provided to Client. As compensation for such Services, Client agrees to pay the fees for Services outlined in the Bid. However, Client such fees for Services are estimated based on the requirements provided by Client and actual fees charged by Simpluris may be greater or less than such estimate and Client will be responsible for the payment of all such fees.
2. **Billing and Payment.** Simpluris will invoice Client on a regular basis unless a specific timeframe is otherwise set forth in the Bid. Client shall pay all invoices within 30 days of receipt. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Services are not provided on a contingency basis and Client shall remain liable to Simpluris for all fees for the Services, regardless of any court decisions, and/or actions by the parties, including disapproval or withdrawal of a settlement.
3. **Retention of Documents.** Unless directed otherwise in writing by the Client, Simpluris will destroy all undeliverable mail (except for undeliverable checks) on the date that it is processed and retained in Simpluris' system. Simpluris will maintain records to establish that the subject mail is undeliverable. Simpluris will retain undeliverable checks until the Qualified Settlement Fund is closed. Simpluris will also retain all other class member and putative class member correspondence (including without limitation, claims forms and opt out forms) 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. Lastly, Simpluris will retain bank & tax documents for such period of time as it determines is required to maintain compliance with various federal and state requirements.
4. **Limitation of Liability; Disclaimer of Warranties.** Simpluris warrants that it will perform the Services diligently, with competence and reasonable care. Simpluris' only obligation will be to correct any non-conformance with the foregoing warranty. In no event will Simpluris be liable for any lost profits/opportunities, business interruption or delay or, special, consequential, or incidental damages incurred by Client relating to the performance of the Services, regardless of whether Client's claim is for breach of contract, tort (including negligence and strict liability) or otherwise. Under no circumstances will Simpluris be liable to Client for any claims, losses, costs, penalties, fines, judgment or damages, including court costs and reasonable attorney's fees (collectively, "Losses"), whether direct or indirect, arising out of, related to, or in connection with Services in an amount in excess of the total fees charged or chargeable to Client for the particular portion of the Services affected by Simpluris' omission or error. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.
5. **Force Majeure.** To the extent performance by Simpluris of any of its obligations hereunder is substantially prevented by reason of any act of God or because of any other matter beyond Simpluris' reasonable control, then such performance shall be excused and this Agreement, at Simpluris' option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.
6. **Rights in Data.** Client agrees that it will not obtain, nor does Simpluris convey, any rights of ownership in the programs, system data, or materials provided or used by Simpluris in the performance of the Services.
7. **Electronic Communications.** During the provision of the Services the parties may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each party agrees to use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.
8. **Notice.** Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier 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. Notice should be addressed to an officer or principal of Client and Simpluris, as the case may be.
9. **Waiver.** Failure or delay on the part of a party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof or any of other subject, right, power or privilege.
10. **Termination.** Client may terminate the Services at anytime upon 30 days prior written notice to Simpluris. Termination of Services shall in no event relieve Client of its obligation make any payments due and payable to Simpluris in respect of Services rendered up to the effective date of Termination. Simpluris may terminate this Agreement (i) for any reason upon no less than 90 days prior written notice to the Client; or (ii) upon 15 calendar days' prior written notice, if the Client is not current in payment of fees.
11. **Jurisdiction.** The parties hereto irrevocably and unconditionally 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 irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding in such Court.
12. **Survival.** Any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 4 - Limitation of Liability; Disclaimer of Warranties, Section 6 – Rights in Data, and Section 12- Jurisdiction, 14 -Confidentiality, and Section 15 – Indemnification.
13. **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.
14. **Confidentiality.** Simpluris maintains reasonable and appropriate safeguards to protect the confidentiality and security of data provided by Client to Simpluris in connection with the Services. If, pursuant to a court order or other proceeding, a third party requests that Simpluris to disclose any confidential data provided by or for Client, Simpluris will promptly notify the Client unless prohibited by applicable law. Client will then have the option to provide Simpluris with qualified legal representation at Client's expense to defend against such request. If, pursuant to a court order, Simpluris is required to disclose data, produce documents, or otherwise act in contravention of the obligation to maintain confidentiality set forth in these terms and conditions, Simpluris will not be liable for breach of said obligation.
15. **Indemnification.** Client will indemnify and hold Simpluris (and the officers, employees, affiliates and agents harmless against any Losses incurred by Simpluris, 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 Simpluris 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 Simpluris pursuant to Client's instructions.
16. **Severability.** If any term or condition or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
17. **Database Administration.** Simpluris' database administration for Client assumes that Client will provide complete data that includes all information required to send notifications and calculate and mail settlement payments. Data must be provided in a complete, consistent, standardized electronic format. Simpluris' standardized format is Microsoft Excel, however, Simpluris may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by Simpluris on a time and materials basis according to Simpluris' Standard Rates.

Simpluris Security Summary – White Paper

Simpluris is committed to the security and overall protection of not only our data and information but our client's data and information, as well. As a demonstration of our commitment, we maintain SOC 2 Certification which requires strict adherence to policies and procedures surrounding information security, including processing and storage of confidential customer data. Simpluris supports a comprehensive, written Information Security Program that complies with all applicable laws and regulations (e.g. HIPAA, Gramm-Leach-Bliley Act, MA 201 CMR 17.00) and is designed to (a) ensure the security, privacy and confidentiality of Client and Class Member Information, (b) protect against any reasonably anticipated threats or hazards to the security or integrity of Client or Class Member Information, and (c) protect against unauthorized access to, use, deletion, or modification of Class Member Information. Simpluris has designated specific employees to be responsible for the administration of its Information Security Program. Also, Simpluris regularly and routinely monitors, tests, and updates our Information Security Program.

Simpluris uses Client and Class Member Information only for the purposes for which its' clients provide it, as described in any Agreements or Court Orders governing the provision of Simpluris' services in any particular case. Simpluris maintains a process for identifying, assessing, and mitigating the risks to Class Member Information in each relevant area of Simpluris' operations. At Simpluris, we continuously evaluate the effectiveness of the safeguards for controlling these risks to data and bank accounts. Simpluris restricts access to Class Member Information only to those employees, agents, or subcontractors who need to know the information to perform their jobs. Simpluris performs background checks of all its employees that will have access to Sensitive Personal Information, including a review of their references, employment eligibility, education, and criminal history to ensure they do not pose a risk to the security of Client or Class Member Information.

Simpluris adheres to the following industry best practices to safeguard its systems which process, store or transmit Client and Class Member Information:

- Identity and Access Management;
- Complex passwords are routinely and regularly changed;
- Role-based access control systems to limit individual employee access to network applications and systems based on their particular job role and function;
- Data Loss Prevention and Intrusion Prevention System software at multiple layers to prevent from internal and external threats of data leaks, malicious activity, and policy violations
- Encryption of Class Member Information if transmitted over public or wireless networks (e.g., via email, FTP, the Internet, etc.);
- Implementation of a Secure File Transfer system (using SSL encryption) for transmitting documents back and forth to clients;
- Encryption of servers, portable media, laptops, desktops, smartphones, mobile devices, and new technologies that store Class Member Information;
- Complex password authentication for remote access to Company's networks;
- Upon hire and annually after that, training of all employees with access to Class Member Information, (including any agents, and subcontractors with access to Class Member Information) about their obligations to implement the Information Security Program;
- Strict disciplinary measures for employees who violate the Information Security Program;
- Preventing terminated employees from accessing Class Member Information;
- Appropriately configured and updated firewall, antivirus, and spyware software;
- Prompt application of vendor-recommended security patches and updates to systems and other applications to avoid any adverse impact on Class Member Information;
- Separation of Duties;
- Infrastructure and Physical Security;
- Business Continuity Planning;
- Disaster Recovery Planning

EXHIBIT 10

CASE NAME: MCKENZIE v RED DOOR ESCAPE ROOM

Date: October 26, 2022

All-In Settlement

Requesting Attorney: Breck Oyama

Class Size: 240

Plaintiff or Defense: Plaintiff

Opt-Out Rate: 1.5%

Firm Name: Spivak Law

No. of Checks Issued: 236

Telephone: (818) 582-3039

Postage Total: \$489.74

Email: boyama@spivaklaw.com

Grand Total: \$19,227.58

DISCOUNTED FLAT FEE: \$12,750.00

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. Class Members will be Assigned a Unique Mailing ID which will be Used Throughout Administration. CPT will Establish and Manage a Static Website.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Case Intake & Review	\$95.00	2	\$190.00
Programming: Data Base Setup	\$150.00	2	\$300.00
Static Website	\$500.00	1	\$500.00
TOTAL			\$990.00

DIRECT MAIL NOTICE

To Ensure Mailing to the Most Current Address Possible, CPT will Perform an Address Update via NCOA. CPT will Mail a Full-Length Notice & Information Sheet

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Format Documents	\$95.00	2	\$190.00
National Change of Address Search (NCOA)	\$135.00	1	\$135.00
Print & Mail Notice Packets	\$1.00	240	\$240.00
First-Class Postage (up to 1 oz.)*	\$0.60	240	\$144.00
TOTAL			\$709.00

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

PROCESS RETURNED UNDELIVERABLE MAIL

Based On CPT's Historical Data, 6% of the Notices will be Returned Undeliverable. Upon Receipt, CPT will Perform a Skip Trace in an Attempt to Obtain a Current Address; Thus, 91% of the Notice Packets are Remaild.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Clerical Staff	\$60.00	1	\$60.00
Update Undeliverable Mail Database	\$0.50	14	\$7.00
Skip Trace for Best Address	\$1.00	12	\$12.00
Print & Remail Notice Packets	\$1.00	11	\$11.00
First-Class Postage (up to 1 oz.)	\$0.60	11	\$6.60
TOTAL			\$96.60

OPT-OUT PROCESSING

CPT will Process and Validate all Opt-Outs and Other Responses from Class Members. Deficient Opt-Outs will Receive a Deficiency Notice by Mail and Provide an Opportunity to Cure. CPT will Scrub the Filed Opt-Outs to Eliminate Duplicates, Fraudulent, and Otherwise Invalid.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: De-duplication/Scrubbing	\$150.00	1	\$150.00
Project Manager: Validate Opt-Out Requests	\$95.00	1	\$95.00
Clerical Staff	\$60.00	1	\$60.00
Opt-Out & Change of Address Processing	\$2.00	4	\$7.20
Print & Mail Deficiency/Dispute Notices	\$1.50	1	\$1.50
First-Class Postage (up to 1 oz.)	\$0.60	1	\$0.60
Review & Process Deficiency Responses	\$10.00	1	\$10.00
TOTAL			\$324.30

TELEPHONE SUPPORT

CPT will Maintain a Toll-Free Phone Number with IVR Capabilities and Live Class Member Support Representatives During Normal Business Hours, Monday-Friday, 9:00 AM - 5:30 PM, PT. The Dedicated Case Phone Number will Remain Active Up to 120 Days After Disbursement.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Toll-Free Number Establish/Setup	\$150.00	2	\$300.00
Live Call Center Support Reps.	\$3.00	48	\$144.00
TOTAL			\$444.00

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	\$0.10	236	\$23.64
TOTAL			\$458.64

DISTRIBUTION-PHASE 1

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 to Valid Class Members. 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	3	\$450.00
Project Supervisor: Review of Distribution	\$150.00	3	\$450.00
Project Manager: Correspondence w/Parties	\$95.00	2	\$190.00
Programming: Setup & Printing of Checks	\$150.00	3	\$450.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Print & Mail Notice, Checks & W2/1099	\$2.50	236	\$591.00
First-Class Postage (up to 1 oz.)*	\$0.60	236	\$141.84
TOTAL			\$2,722.84

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

POST-DISTRIBUTION & TAX REPORTING - YEAR 1

Any Check Returned Undeliverable is Skip Traced to Locate a Current Address and Remaild Accordingly. CPT will Process Requests for Check Reissues Continuously. CPT Prepares Annual Tax Reporting on Behalf of the QSF and Federal and State Taxes in Accordance with Current State and Federal Regulations. Upon the Conclusion of the Settlement, a Final Report and Declaration will be Provided to all Parties.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Supervisor: Account Reconciliation	\$150.00	10	\$1,500.00
Update Undeliverable Checks Database	\$0.50	19	\$9.50
Skip Trace for Best Address	\$1.00	19	\$19.00
Remail Undeliverable Checks	\$2.50	17	\$42.50
First-Class Postage (up to 1 oz.)	\$0.60	17	\$10.20
Re-Issue Checks as Required	\$5.00	12	\$60.00
First-Class Postage (up to 1 oz.)	\$0.60	12	\$7.20
Project Supervisor: Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming: Weekly Reports	\$150.00	2	\$300.00
Project Manager: Account Files Sent to Atty	\$95.00	2	\$190.00
CA Tax Preparation*	\$600.00	1	\$600.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
TOTAL			\$4,388.40

*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.

DISTRIBUTION-PHASE 2

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 to Valid Class Members. CPT Uses a Payee Positive Pay System to Reconcile Checks Cash and Conducts Monthly Account Reconciliations for the QSF.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: Calculation Totals	\$150.00	3	\$450.00
Project Supervisor: Review of Distribution	\$150.00	3	\$450.00
Project Manager: Correspondence w/Parties	\$95.00	2	\$190.00
Programming: Setup & Printing of Checks	\$150.00	3	\$450.00
Print & Mail Notice, Checks & W2/1099	\$2.50	236	\$591.00
First-Class Postage (up to 1 oz.)*	\$0.60	236	\$141.84
TOTAL			\$2,272.84

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

POST-DISTRIBUTION & TAX REPORTING - YEAR 2

Any Check Returned Undeliverable is Skip Traced to Locate a Current Address and Remaild Accordingly. CPT will Process Requests for Check Reissues Continuously. CPT Prepares Annual Tax Reporting on Behalf of the QSF and Federal and State Taxes in Accordance with Current State and Federal Regulations. Upon the Conclusion of the Settlement, a Final Report and Declaration will be Provided to all Parties.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Supervisor: Account Reconciliation	\$150.00	10	\$1,500.00
Update Undeliverable Checks Database	\$0.50	19	\$9.50
Skip Trace for Best Address	\$1.00	19	\$19.00
Remail Undeliverable Checks	\$2.50	17	\$42.50
First-Class Postage (up to 1 oz.)	\$0.60	17	\$10.20
Re-Issue Checks as Required	\$5.00	12	\$60.00
First-Class Postage (up to 1 oz.)	\$0.60	12	\$7.20
Project Supervisor: Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming: Weekly Reports & Final Reports	\$150.00	2	\$300.00
Project Supervisor: Final Declaration	\$150.00	2	\$300.00
Project Manager: Account Files Sent to Atty	\$95.00	2	\$190.00
CA Tax Preparation*	\$600.00	1	\$600.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
TOTAL			\$4,688.40

*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	50	\$7.50
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	5	\$25.00
First-Class Postage (up to 1 oz.)	\$0.60	5	\$3.00
Project Supervisor: June Remittance	\$150.00	1	\$150.00
Project Manager: June Remittance	\$95.00	2	\$190.00
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			\$2,132.56

GRAND TOTAL \$19,227.58

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 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)

- 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, 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

- 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

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 11

Case Name: McKenzie v. Red Door Escape Room, LLC

Monday, October 17, 2022

Requesting Law Firm:	The Spivak Law Firm
Law Firm Contact:	Breck Oyama
E-Mail Address:	boyama@spivaklaw.com
ILYM Contact:	Sean Hartranft
E-Mail Address:	Sean@ilymgroup
Contact Number:	949.690.2564

ESTIMATE FOR ADMINISTRATION SOLUTIONS

Opt-Out & PAGA Class

ASSUMPTIONS	
Total Number of Class Members	240
Estimated Percentage of Undeliverable Mail	20%
Reminder Postcard	No
Static Website	Yes
Certified Spanish Translations	No

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	2	\$300.00
Programming of Class Database	Hourly	\$175.00	2	\$350.00

**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 \$650.00

PROJECT MANAGEMENT				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	7	\$840.00
Staff Hours for Processing Opt-Outs, Disputes & Objections via Mail and Email	Hourly	\$70.00	1	\$70.00
Staff Hours for Processing Returned Mailed	Hourly	\$70.00	0	\$0.00
Report Processing	Hourly	\$70.00	2	\$140.00
NCOA	Per Piece	\$45.00	1	\$45.00
Toll-Free Call Center	Flat Fee	\$75.00	1	\$75.00
ILYM Group Static Website, Includes Hosting	Flat Fee	\$750.00	1	\$750.00
Weekly Reports	Flat Fee	\$500.00	1	Waived

Subtotal \$1,920.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity	Rate Type	Unit Cost	Volume	Amount
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NOTIFICATION/MAILING				
Fulfillment of Notice	Per Piece	\$2.00	240	\$480.00
USPS First Class Postage	Per Piece	\$0.60	240	\$144.00
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.50	48	\$120.00
Storage, Photocopies, Deliveries	Flat Fee	\$300.00	1	\$300.00

Subtotal \$1,044.00

DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	5	\$750.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	5	\$625.00
Check, Print & Mail (Including W2/1099)	Per Check	\$1.50	240	\$360.00
USPS First Class Postage	Per Piece	\$0.60	240	\$144.00
Check, Print & Mail (Including W2/1099)	Per Check	\$1.50	240	\$360.00
USPS First Class Postage	Per Piece	\$0.60	240	\$144.00
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.00	24	\$48.00
Preparation of Taxes	Hourly	\$120.00	12	\$1,440.00
Annual Filing of Tax Return	Per Year	\$1,250.00	1	\$1,250.00

***Additional Bank fees may apply*

Subtotal \$5,121.00

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	3	\$300.00
Project Manager Final Reporting	Hourly	\$120.00	3	\$360.00
Process Unclaimed Funds to Government Recipient	Flat Fee	\$750.00	1	\$750.00
Declaration	Hourly	\$125.00	3	\$375.00

Subtotal \$1,785.00

Discounted Will Not Exceed: \$10,000.00

Terms and Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT 12



October 26, 2022

CASE ASSUMPTIONS

Class Members	240
Opt Out Rate	1%
Opt Outs Received	2
Total Class Claimants	238
Subtotal Admin Only	\$9,771.31

Flat Fee Total \$9,000.00

For 240 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Two Installments & Two Disbursements (1 Tax Year)

Case: McKenzie v. Red Door Escape Room, LLC, Opt-Out Administration

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

Requesting Attorney: David G. Spivak
 Firm: The Spivak Law Firm
 Contact Number: (213) 725-9094
 Email: david@spivaklaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly. Estimate is based on **240** Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

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

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	2		\$200.00
Programming Database & Setup	\$100.00	2		\$200.00
Toll Free Setup*	\$150.00	1		\$150.00
Call Center & Long Distance	\$2.00	41		\$82.00
NCOA (USPS)	\$60.00	1		\$60.00
Total				\$692.00

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Reminder Postcard / Website

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	2		\$200.00
Data Merge & Duplication Scrub	\$0.10	240		\$24.00
Notice Packet & Opt-Out Form	\$1.30	240		\$312.00
Estimated Postage (up to 2 oz.)*	\$0.61	240		\$146.40
Static Website	\$100.00	1		\$100.00
Check Cashing Reminder Postcard	\$0.60	50		\$29.99
Postage Included				
Total				\$812.39

* 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	4		\$220.00
Skip Tracing Undeliverables	\$0.85	60		\$51.00
Remail Notice Packets	\$0.75	57		\$42.75
Estimated Postage	\$0.61	57		\$34.77
Programming Undeliverables	\$50.00	1		\$50.00
			Total	\$398.52

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Claims Database	\$150.00	2		\$300.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	3		\$165.00
Opt-Outs/Deficiency/Dispute Letters	\$10.00	8		\$80.00
Case Manager	\$85.00	3		\$255.00
			Total	\$1,000.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	3		\$405.00
Disbursement Review	\$135.00	3		\$405.00
Programming Manager	\$95.00	2		\$190.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	9		\$1,215.00
Mail Class Checks * (x 2)	\$1.00	238		\$476.00
Estimated Postage (x 2)	\$0.61	238		\$290.00
			Total	\$3,116.00

* 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	4		\$460.00
Remail Checks & Tax Forms (Postage Included)	\$1.70	72		\$122.40
Case Associate	\$55.00	6		\$330.00
Reconcile Uncashed Checks	\$85.00	6		\$510.00
Conclusion Reports	\$115.00	3		\$345.00
Case Manager Conclusion	\$85.00	4		\$340.00
Final Reporting & Declarations	\$115.00	3		\$345.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting Included)	\$1,000.00	1		\$1,000.00
Check to Cy-Pres	\$150.00	1		Included
Uncashed Checks to the State of California Controllers Office	\$300.00	1		\$300.00
Estimated <u>29</u> Total Class Members				
Total				\$3,752.40

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

Estimate Total: \$9,771.31



TERMS AND CONDITIONS

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

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

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

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

Tax Reporting Requirements

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

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

EXHIBIT 13