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JORGE L. LEON, and all others similarly situated

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

13 JORGE L. LEON, on behalf of himself, all others
14 similarly situated, the general public, and as an
15 “aggrieved employee” on behalf of other
“aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

16 *Plaintiff(s),*

17 vs.

18
19 DAVIS & ROBERTS CONSTRUCTION, INC.,
20 a California corporation; and DOES 1–50,
inclusive,

21 *Defendant(s).*
22

Case No. 22CECG00407

**DECLARATION OF DAVID SPIVAK
IN SUPPORT OF PLAINTIFF JORGE
L. LEON’S RENEWED MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Hearing Date:

Hearing Time:

Hearing Dept.: 501, The Honorable D.
Tyler Tharpe

Action filed: February 08, 2022



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DECLARATION OF DAVID SPIVAK IN SUPPORT OF PLAINTIFF JORGE L. LEON'S RENEWED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I, DAVID SPIVAK, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California and am an attorney of record for Plaintiff Jorge L. Leon ("Plaintiff") in his lawsuit against Defendant Davis & Roberts Construction, Inc. ("Defendant"). Plaintiff and Defendant are collectively referred to as the "Parties."

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

3. The Class Action and PAGA Settlement Agreement and Class Notice (the "Settlement") is attached hereto as **Exhibit 1**. The Settlement Class consists of all current and former hourly, nonexempt employees of Defendant in California. The "Class Period" means the period from February 08, 2018 through the date of preliminary approval of this Settlement. *Id.* The "Aggrieved Employees" are all Class Members employed by Defendant in California and classified as an hourly, non-exempt who worked for Defendant during the PAGA Period. The "PAGA Period" is December 23, 2020 through the date of preliminary approval of this Settlement. *Id.* The Settlement is written, signed by all necessary Parties, and attached to this declaration as stated above.

The Release Provisions

4. **Released Persons.** Under the Settlement, the release to be given by the participating Class Members (other than the Class representative) is limited to Defendant named in the Operative Complaint, together with its officers, directors, employees, agents, and related entities. Settlement ¶ 1.42.

5. **Released Claims.** Under the Settlement, the release to be given by the participating Class Members (other than the Class representative) is limited to the claim stated in the Operative Complaint, and those based solely upon the facts alleged in the Operative Complaint.

6. **Release Period.** Under the Settlement, the release to be given by the participating Class Members (other than the Class representative) is limited to liability that arose during the Class Period. See above.

7. **PAGA Release.** Under the Settlement, Plaintiff releases all claims for civil penalties that could have been sought by the Labor Commissioner for the violations identified



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1 in Plaintiff's pre-filing letter to the LWDA; Plaintiff does not release the claim for wages or
2 damages of any Aggrieved Employee unless such Aggrieved Employee is a participating Class
3 Member. The PAGA Release states as follows: Plaintiff releases all claims for civil penalties that
4 could have been sought by the Labor Commissioner for the violations identified in Plaintiff's pre-
5 filing letter to the LWDA; Plaintiff does not release the claim for wages or damages of any
6 Aggrieved Employee unless such Aggrieved Employee is a Participating Class Member.
Settlement ¶ 6.3.

7 ***No Reversion***

8 8. The Settlement does not provide that any portion of the consideration paid or
9 deposited by the Defendant may revert to the Defendant.

10 ***Taxes***

11 9. The Settlement provides that Defendant will separately pay the employer's
12 share of any applicable payroll taxes. 20.00% of each Participating Class Member's Individual
13 Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage
14 Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The remaining
15 80.00% of each Participating Class Member's Individual Class Payment will be allocated to
16 settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions
17 are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class
18 Members assume full responsibility and liability for any employee taxes owed on their Individual
Class Payment. Settlement ¶ 3.2.4.1.

19 10. The Settlement provides as follows with regard to the tax treatment of
20 settlement shares: 20.00% of each Participating Class Member's Individual Class Payment will
21 be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject
22 to tax withholding and will be reported on an IRS W-2 Form. The remaining 80.00% of each
23 Participating Class Member's Individual Class Payment will be allocated to settlement of claims
24 for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to
25 wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume
26 full responsibility and liability for any employee taxes owed on their Individual Class Payment.
Settlement ¶ 3.2.4.1.



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Factual and Procedural Background

11. **Plaintiff's Employment with Defendant.** Defendant is a construction business. Defendant employed Plaintiff as a finisher in California from about December 30, 2020, until March 21, 2021.

12. **LWDA Notice.** On December 23, 2021, Plaintiff notified Defendant and the California Labor and Workforce Development Agency ("LWDA"), pursuant to the California Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* ("PAGA"), of alleged Labor Code violations committed by Defendant. A true and correct copy of the letter to the LWDA dated December 23, 2021 is attached hereto as **Exhibit 2**.

13. **Lawsuit.** On February 08, 2022, Plaintiff filed a Class Action Complaint in the Fresno County Superior Court, Case No. 22CECG00407, against Defendant on behalf of himself and others similarly situated, alleging causes of action on a class-wide basis for: (1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198); (2) Failure to Provide Rest Breaks (Lab. Code §§226.7 and 1198); (3) Failure to Provide Meal Periods (Lab. Code §§226.7, 512 and 1198); (4) Failure to Indemnify (Lab. Code §§ 1198 and 2802); (5) 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 March 7, 2022, Plaintiff filed his First Amended Complaint adding a claim under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* ("PAGA"). On April 8, 2022, Defendant filed an answer to Plaintiff's First Amended Complaint. Defendant denies all of Plaintiff's allegations and strongly contends that its wage and hour policies, practices and procedures are fully compliant with all applicable laws. On August 21, 2023 Plaintiff filed his Second Amended Complaint adding a claim a cause of action for "Failure to Indemnify", Plaintiff's Unfair Competition. and "Civil Penalties" Causes of Action revised to add the Lab. Code § 2802 violation. On October 3, 2023, Defendant filed an answer to Plaintiff's Second Amended Complaint. A true and correct copy of the complaint is attached hereto as **Exhibit 3**. A true and correct copy of Plaintiff's First Amended Complaint is attached hereto as **Exhibit 4**. A true and correct copy of Plaintiff's Second Amended Complaint is attached hereto as **Exhibit 5**. A true and correct copy of Defendant's Answer to Plaintiff Second's Amended Complaint is attached hereto as **Exhibit 6**.



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1 14. **Investigation.** On May 25, 2022, Plaintiff requested that Defendant informally
2 disclose documents and data to enable Plaintiff to prepare for settlement discussions, including
3 the number of putative class members and aggrieved employees, the number of paychecks and
4 workweeks for the various limitations periods applicable to Plaintiff's claims. Plaintiff also
5 requested a reasonable, randomly selected sample of Defendant's time, payroll, and expense
6 records, and related personnel records. *Id.* Finally, Plaintiff requested Defendant's written policies
7 applicable to the claims at hand and asked Defendant identify any and all comparable claims
8 against it.

9 15. The Parties thereafter engaged in an informal, voluntary exchange of information
10 in the context of privileged settlement discussions to facilitate an early mediation. Defendant
11 produced Plaintiff's entire personnel file (including policies and agreements he signed and
12 acknowledged) and copies of its relevant company written policies. Attached collectively as
13 **Exhibit 22** are true and correct copies of "Daily Time Sheets" that Defendant utilized to record
14 the employees' hours worked regardless of their job positions. As part of its production,
15 Defendant also produced different versions of its Employee Handbook that were in effect during
16 the Class Period. Attached as **Exhibit 23** to this declaration is a true and correct copy of
17 Defendant's 2004-2005 Employee Handbook. This handbook provided all employees with the
18 policies Defendant required all its non-exempt employees to follow.

19 16. **Sampling.** Defendant contends that it employed 119 putative class members
20 during the period of November 29, 2018 to May 18, 2022. Defendant produced the records of
21 51.00% of the putative class members for the period of November 29, 2018 to May 18, 2022.
22 There were records for 61 employees in the sample. Plaintiff chose the sample. The sample was
23 randomly selected. The sample consisted of handwritten time sheet and paystubs in Microsoft
24 Excel, and related records.

25 17. **Plaintiff's Data Analyst.** Plaintiff retained Sridhar Srinivasan, a data analyst, to
26 analyze the sample. Plaintiff also employed the Raosoft⁶ Sample Size calculator

27 ⁶ Raosoft advertises, "Raosoft, Inc. produces EZSurvey for the
28 Internet, InterForm, SurveyWin, EZReport and Rapid Report innovative survey software
programs for information gathering and analysis. The family of survey software supports data
collection and reporting for any form-based data. Support is for web-surveys and forms, email
distribution, diskette, PDA, laptop or pen-based: all types of distribution." The Raosoft webpage
advertises that is it "database web survey software for gathering information."



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(<http://www.raosoft.com/samplesize.html>) to determine if the sample size selected is statistically reliable. *Bell v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715 and *Duran v. U.S. Bank* (2014) 59 Cal.4th 1. The *Bell* court found a relative margin of error of 32.4 percent was unacceptable whereas the *Duran* court found a relative margin of error of 43.3 percent was unacceptable. Using a margin of error of 32%, a confidence level of 95%, and a population size of 119, the Raosoft Sample Size Calculator recommended a sample of 9. A true and correct copy of the results from the Raosoft Sample Size Calculator are attached as **Exhibit 7** (Raosoft Sample Size Calculator results print-out). Thus, the sample population that Plaintiff's data analyst evaluated is statistically reliable. *Id.*

18. **Mediation.** On November 3, 2022, following much of the foregoing informal discovery and exchange of information, the Parties participated in a mediation session presided over by The Honorable Howard R. Broadman, Ret., an experienced class action mediator. The parties did not reach a settlement.

19. After the first mediation, Defendant sought releases from the putative class members. This campaign was highly successful for Defendant. 84 of the putative class members released the claims at issue in this lawsuit. *See* Davis Decl., ¶ 5, Exs. A-B. Defendant represented that it settled 8,560 of the 9,686 potential workweeks.

20. On May 19, 2023, the Parties participated in another mediation session presided over by The Honorable Howard R. Broadman. During the mediation, the Parties had a full day of productive negotiations and reached agreement on a class-wide settlement during the mediation session. During the mediation sessions, each side, represented by his/its respective counsel, recognized the risk of an adverse result in the Action and agreed to settle the Action and all other matters covered by the Settlement Agreement pursuant to the terms and conditions of the Settlement Agreement.

21. **Defendant's Financial Condition.** At the mediation, it became clear that Defendant had insufficient resources to cover the full extent of liability. As part of the settlement negotiations, Defendant disclosed its financial documents, profit and loss, bank statements, and tax returns. I reviewed the financial records the aid of an accountant. The information provided was sufficient to demonstrate the financial condition of the Defendant and that it will unlikely be

<http://www.raosoft.com/> . It also advertises, "The parameters of the sample size calculation are something that you choose." <http://www.raosoft.com/suggestreading.html>.



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1 able to afford payment of a larger amount than the Settlement amount. Based on such records,
2 Plaintiff, on his own behalf and on behalf of the Class Members, has agreed to settle the lawsuit
3 on the terms set forth in the Settlement. *See also* Davis Decl., ¶ 6

4 *Similar Actions*

5 22. **Relevant Litigation and Claims.** I am not aware of any class, representative,
6 or other collective action in any other court, in this, or any other jurisdiction, that asserts
7 claims similar to those asserted in this action, on behalf of the class or group of individuals,
8 some or all of whom would also be members of the class to find in this action. I have made
9 a reasonable inquiry of the other members of my law firm and my counsel to determine
10 whether they are aware of any such similar actions. Based on these inquiries, I am aware of
11 no such similar actions.

12 *Uncashed Checks*

13 23. **Unclaimed Property Fund.** The Settlement provides for the disposition of
14 uncashed checks as follows: For any Class Member whose Individual Class Payment check or
15 Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator
16 shall transmit the funds represented by such checks to the California Controller's Unclaimed
17 Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to
18 the requirements of California Code of Civil Procedure Section 384, subd. (b). Settlement ¶ 4.4.3.
19 In my view, sending funds represented by uncashed checks to the Unclaimed Property Fund
20 instead of a *cy pres* recipient is the best way to insure that the Class Members and Aggrieved
21 Employees actually receive their portions of the Settlement.

22 *Ascertainable and Numerous Class*

23 24. **Ascertainability.** A class is ascertainable when it may be readily identified
24 without unreasonable expense or time by reference to official records. Here, Plaintiff maintains
25 that the above-defined Class is ascertainable because its members may be identified by reference
26 to Defendant's records and Defendant has agreed to share the relevant information from its
27 records to facilitate the settlement process. As Defendant explained, the Class Members can be
28 identified based on its payroll records and employee personnel files. Davis Decl., ¶ 3. Therefore,
the Settlement Class is ascertainable.

25 25. **Numerosity.** The Settlement Class has sufficiently numerous members to render
26 joinder impractical. No set number is required as a matter of law to maintain a class action. The



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1 California Supreme Court has upheld a class of as few as 10 individuals. Defendant estimates that
2 there are approximately 119 Class Members for the Class Period of February 08, 2018 to May
3 16, 2023. Davis Decl., ¶ 3; *see also* Settlement, ¶ 4.1. Plaintiff maintains that it would be
4 impractical and economically inefficient to require each Settlement Class Member to separately
5 maintain an individual action or be joined as a named plaintiff in this action. In light of these
6 considerations, the Settlement Class' membership is sufficiently numerous. Additionally, there
7 are 58 Aggrieved Employees for the PAGA Period of December 23, 2020 to May 16, 2023.

8 ***Predominant Common Questions***

9 26. A question of law or fact is common to the members of a class if it may be resolved
10 through common proof. In this case, there are many predominant common questions. Plaintiff
11 asserts all class members were subject to the same or similar operations and employment policies,
12 practices, and procedures. The claims arise from Defendant's alleged policy-driven failure to
13 provide meal periods, failure to authorize and permit rest periods, failure to indemnify for
14 business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to
15 maintain required payroll records, failure to pay wages, unauthorized and unlawful wage
16 deductions, and related labor law violations, all of which Plaintiff claims constitute unfair
17 business practices and give rise to PAGA penalties. As discussed above, Defendant provided all
18 its hourly employees, regardless of their positions, the same employee handbooks and required
19 them all to follow the same policies described in these handbooks and used the same methods and
20 procedures to record their hours worked and to pay them. Plaintiff asserts that common questions
21 include, but are not limited to: (1) Whether Defendant failed to pay all wages earned to class
22 members for all hours worked at the correct rates of pay; (2) Whether Defendant failed to provide
23 the class with all meal and rest periods in compliance with California law; (3) Whether Defendant
24 failed to pay the class one additional hour of pay on workdays it failed to provide the class with
25 one or more meal or rest periods in compliance with California law; (4) Whether Defendant failed
26 to indemnify the class for all necessary business expenditures incurred during the discharge of
27 their duties; (5) Whether Defendant knowingly and intentionally failed to provide the class with
28 accurate wage statements; (6) Whether Defendant willfully failed to provide the class with timely
final wages; and (7) Whether Defendant engaged in unfair competition within the meaning of
Business and Professions Code section 17200, *et seq.*, with respect to the class.



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Typicality

27. Plaintiff contends that his claims are typical for the purposes of certifying the Settlement Class. Plaintiff asserts that he, like absent Class Members was subject to the same relevant policies and procedures governing his compensation, hours of work and meal and rest periods. Defendant recorded his hours the same way it did for the rest of the Class and Plaintiff was subject to the same policies and procedures stated in Defendant's employee handbooks. Because Plaintiff contends that he was subject to the same general course of conduct as absent Class Members, resolving the common questions as they apply to Plaintiff will determine Defendant's *prima facie* liability to all Class Members. Moreover, Plaintiff's claims could potentially be subject to the same primary affirmative defenses as those of absent Class Members. Plaintiff is typical of the class members because he must prove the same elements as the absent class members, his claims are based on the same allegedly unlawful practices as those of absent class members and are potentially subject to the same defenses. Moreover, Plaintiff suffered the same injuries as those of Class Members in the form of unpaid wages, and unprovided meal and rest periods. Despite their different schedules, departments, and duties, Plaintiff and Class Members worked under the same policies, used the same timekeeping system, and suffered the same injuries. Accordingly, Plaintiff's claims are typical of the Class.

Adequacy

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

29. To the best of my knowledge, neither Plaintiff nor I have any conflicts of interest with the absent Settlement Class Members. Plaintiff contends that he is an adequate class representative. Plaintiff and the Class Members have strong and co-extensive interests in this litigation because they all worked for Defendant during the relevant time period, allegedly suffered the same alleged injuries from the same alleged course of conduct, and there is no evidence of any conflict of interest between Plaintiff and the Class Members. Moreover, Plaintiff has demonstrated his commitment to the Settlement Class by, among other things, retaining experienced counsel, providing counsel with documents and extensively speaking with them to



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1 assist in identifying the claims asserted in this case, assisting them in identifying witnesses, as
2 well as exposing himself to the risk of attorneys' fees and costs awards against him if this lawsuit
3 had been unsuccessful. Thus, Plaintiff is adequate to serve as settlement class representative. The
4 declaration of Plaintiff Jorge L. Leon on this subject will be filed concurrently with this
5 declaration.

6 ***Background of Class Counsel***

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

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

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

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

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

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



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

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

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

23 e. *Rick Pierce v. Department of Treasury*, Merit Systems Protection Board
24 (1999). Administrative Judge awarded compensatory damages to wrongfully terminated Customs
25 Agent, followed by an award of Attorneys' fees and costs.

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



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

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

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

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

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

25 b. *Cuellar v. Lovin Oven*, Orange County Superior Court, Case No. 30-2010-
26 000382146 (appointed Class Counsel and granted final approval of class action settlement by the
27 court on behalf of nonexempt employees).

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



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

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

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

11 g. *Huynh v. Carefusion Resources, LLC, et al.*, San Diego Sup.Ct., Case No.
12 37-2009-00103277-CU-OE-CTL (appointed Class Counsel and granted final approval of class
13 action settlement on behalf of medical devices employees).

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

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

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

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

26 l. *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-
27 1500-CV-282679 (appointed Class Counsel and granted final approval of class action settlement
28 on behalf of dairy and agricultural laborers).

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



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1 LP, Tulare County Superior Court, Case No. VCU-248370 (appointed Class Counsel and granted
2 final approval of class action settlement by the court on behalf of hourly employees).

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

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

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

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

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

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

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

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



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

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

7 ***Class Action Treatment Is Superior***

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

17 ***The Settlement is Presumptively Fair***

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

Exposure & Risk Analysis

40. Plaintiff prepared “damages” estimates in advance of the mediation. Plaintiff
determined Defendant’s maximum possible exposure for restitution and penalties to be



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1 approximately \$5,668,574.79 (consisting of \$572,900.00 in unpaid wages, \$286,450.00 in missed
2 meal period premium wages, \$572,900.00 in missed rest break premium wages, \$0.00 in
3 unreimbursed expenses, \$32,316.61 for wage statement penalties, \$151,487.23 for waiting time
4 penalties, and \$5,482,853.84 for civil penalties under PAGA. True and correct copies of the
5 spreadsheets I prepared for mediation of this Action are collectively attached to this declaration
as **Exhibit 8**.

6 41. The estimates are in essence “home run” projections that omit data points that will
7 undoubtedly reduce the maximum possible damages award and do not factor in any of the risks
8 involved in litigating this Action. Plaintiff calculated the damages based on the number of
9 workweeks and pay periods provided by Defendant, Plaintiff’s reports, and the sample data. *Id.*
10 Plaintiff also considered the possibility that Defendant could complete its *Pick Up Stix* campaign
11 and obtain individual release agreements from the remaining Class Members. Plaintiff’s Counsel
12 applied discounts to the maximum possible exposure to account for all other risks discussed
13 below. While it is difficult to assign anything but crudely-determined percentages of risk to any
14 of the claims, it is safe to say that the risk that a *Pick Up Stix* campaign would preclude recovery
15 for such employees is substantial and alone justifies a significant discount because Defendant
16 would likely by trial have gathered releases from the majority of the Class Members. A settlement
17 for approximately 2.94% of the potential recovery is a proportion substantially in excess of
recovery proportions sanctioned by existing case law.⁷

18 42. My initial estimates do not realistically account for the risks outlined below or the
19 risk that a class will not be certified. Therefore, I believe a class settlement for \$166,713.47 is fair
20 and reasonable.

21 43. **Risks Associated with Defendant’s Financial Condition.** As stated above,
22 Defendant’s financial condition was the key factor in reaching this Settlement. Due to

23
24 ⁷ See, e.g., *In re Newbridge Networks Sec. Litig.*, 1998 WL 765724 at *2 (D.D.C. Oct. 23, 1998)
25 (“[A]n agreement that secures roughly six to twelve percent of a total trial recovery . . . seems to
26 be within the targeted range of reasonableness.”); *Wise v. Ulta Salon, Cosmetics & Fragrance,*
27 *Inc.* 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the
28 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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1 Defendant's financial condition, even if Plaintiff prevailed on all claims at trial, he may never
2 recover the damages due to the risk of insolvency. During the first mediation, Defendant
3 explained that its business was in dire shape and had to lay off all but 12 employees due to a
4 significant drop in revenue. A very large class action judgment would almost certainly put the
5 company out of business and/or would interfere with the company's ability to carry out its
6 contractual obligations.

6 **44. Risks Associated with Unpaid Wages Claim.** There is a risk that Plaintiff's
7 recovery for unpaid wages would be extremely limited at best, largely because Defendant's
8 written policies throughout the relevant time period prohibited off-the-clock work. Off-the-clock
9 claims are difficult where a defendant requires in its written policies that all work must take place
10 while clocked in. *See Jong v. Kaiser Foundation Hospital* (2014) 226 Cal.App.4th 391 (employer
11 must have notice of off-the-clock work for it to be compensable). *Id.* In its written employment
12 policies, Defendant mandates that employees must record all time worked accurately on their time
13 records and strictly prohibit employees from performing any work off-the-clock. Moreover, while
14 Defendant disputes that off-the-clock work occurred, it contends that any time spent off the clock
15 was *de minimis*. The California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th
16 829, 835 suggested that irregular and minute periods of time may still be subject to a *de minimis*
17 defense even if compensable. (Stating that "We do not decide whether there are circumstances
18 where compensable time is so minute or irregular that it is unreasonable to expect the time to be
19 recorded."). Following *Troester*, Defendant contends that the *de minimis* doctrine may apply here
20 because the time spent off the clock were minute and insignificant. Accordingly, a large award of
21 penalties seems unlikely with respect to this claim.

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



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

3 46. **Risks Associated with the Meal Period Claims.** There are risks to Plaintiff's
4 meal period claim. Defendant contends 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 employee
10 of all control. *Id.* "Thus, the crucial issue with regard to the meal break claim is the reason that a
11 particular employee may have failed to take a meal break." *Washington v. Joe's Crab Shack* (N.D.
12 Cal. 2010) 271 F.R.D. 629, 641. *Id.*

13 47. Defendant contends it did not impede or discourage Plaintiff, or any other
14 employees, from taking their meal or rest periods. Defendant's 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. The time records that comprise the random
17 sample Defendant produced to Plaintiff for purposes of mediation show that meal periods were
18 taken the vast majority of the time. Of the time records that show a late, short or no lunch,
19 individualized evidence may be necessary to determine whether they occurred due to conduct of
20 the Defendant or each of the employees concerned. Accordingly, there is a significant risk that
21 the value of Plaintiff's meal period claim would be substantially reduced at trial.

22 48. **Risks Associated with the Rest Break Claims.** There are risks to Plaintiff's rest
23 period claim. Employers are not required to record rest periods and such periods are paid.
24 Defendant contends it provided non-exempt employees the opportunity to take rest periods in
25 accordance with California law. Further, Defendant's written policies on meal and rest periods
26 are consistent with the Wage Order. Thus, unlike meal periods, where there are often records
27 showing whether an employee clocked out or not, there is no such evidence to prove a missed rest
28 period or that the employer refused to authorize and permit one. *Id.* Managing such claims at trial
has become exceedingly difficult. Plaintiff will depend on sample witness testimony and surveys
to prove the claims. While a victory with such evidence is certainly possible, relevant caselaw
makes such claims risky from a trial management and due process perspective. *See Duran v. U.S.*



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1 *Bank National Assn.* (2014) 59 Cal. 4th 1, 31 (explaining “[I]f sufficient common questions exist
2 to support class certification, it may be possible to manage individual issues through the use of
3 surveys and statistical sampling.”); *Tyson Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382;
4 *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426.

5 49. **Risks Associated with the Failure to Indemnify Claim.** There is a risk that the
6 Court may consider Plaintiff’s claims as to Defendant’s alleged failure to indemnify for business
7 expenses to be individual in nature and thus decline to certify the class. Plaintiff investigated
8 whether Defendant required Plaintiff and the Class Members to use their personal items including
9 cellular phones, tools and automobiles, and failed to indemnify them for these business expenses.
10 Defendant presented evidence that it has supplied its employees with tools, equipment, and other
11 supplies and had an expense reimbursement policy. As such, there is a risk that the Court may
12 consider Plaintiff’s claims to be individual in nature and unfit for class wide resolution.

13 50. **Risks Associated with the Waiting Time Penalty Claims.** Plaintiff also asserts
14 claims for wage statement violations, untimely wage violations, and PAGA penalties. Under
15 Labor Code section 226, wage statements must include various information, including the
16 applicable rates of pay, corresponding hours worked, and gross pay. Here, Plaintiff’s wage
17 statement claim has the same underlying risks as the above claims, as it is derivative of them. On
18 their face, the wage statements issued by Defendant comply with the requirements of Labor Code
19 section 226.

20 51. **Risks Associated with the Waiting Time Penalties Claims.** Without proof
21 willful behavior, Plaintiff will be unable to recover these penalties.

22 52. **Risks Associated With the PAGA Claim.** As the Operative Complaint makes
23 clear, Plaintiff predicates his PAGA claim on the same Labor Code violations as his other
24 claims. Plaintiff’s “damages” spreadsheet, **Exhibit 8**, states the length of the relevant time period
25 for the PAGA claim and the number of employees allegedly employed during that time period.
26 Plaintiff’s “damages” spreadsheet, **Exhibit 8**, also states the total amount of civil penalties for
27 which the Defendant is potentially liable if all allegations are proven. As I state above in
28 connection with Plaintiff’s claims for statutory penalties with regard to proof Defendant’s intent,
knowledge and willfulness, there are serious risks to proving Defendant acted intentionally,
knowingly, and willfully in violating the rights of Class Members under the Labor Code. Plaintiff
calculated the agreed-upon amount of civil penalties by considering the risks outlined above and



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1 that the Settlement already provides substantial payments for the Labor Code violations that the
2 civil penalties claim is predicated on.

3 53. Regarding PAGA, a court has discretion to award a lesser amount than the
4 maximum penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.*
5 (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendant has
6 posed valid defenses to the Labor Code claims underlying Plaintiff's PAGA allegations. Thus,
7 the PAGA claims likewise face significant uncertainty. There is a risk that the Court would
8 consider the maximum civil penalty available to be confiscatory.

9 54. This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and
10 required a significant discount for settlement purposes. For mediation purposes, Plaintiff's
11 counsel estimated a maximum possible exposure of approximately \$5,482,853.84 in civil
12 penalties. This estimate did not take into account any of the risks discussed above and assumed a
13 violation for every single pay period. *Id.* Plaintiff's counsel also assessed multiple penalties for
14 the same pay period for the same alleged violations of different Labor Code provisions and
15 derivative violations. Although two federal district court decisions held that "stacking" PAGA
16 penalties in this fashion may be appropriate to determine the amount in controversy for purposes
17 of removal jurisdiction, Plaintiff's counsel is not aware of any California state courts awarding
18 plaintiffs multiple PAGA penalties for the same violation for the same pay period under different
19 Labor Code provisions. This may be because the PAGA does not provide for what many
20 employers characterize as claim splitting and not merely stacking.



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1 55. I am aware of only two significant awards under the PAGA in a contested
2 proceeding, both issued by federal district courts.⁸ PAGA penalty awards are often small even for
3 egregious, intentional violations of the Labor Code.⁹

4 56. 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 ⁸ 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.*, fn. 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 Defendant's failures to
comply with the requirements of California Labor Code section 226.

29 ⁹ In 2012, I tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number
30 BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. A true and
31 correct copy of the first amended complaint in *Ghrdilyan* is attached as **Exhibit 9**. The plaintiff
32 sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial, the
33 Honorable Judge Ronald M. Sohigian awarded approximately \$325,000 in civil penalties under
34 the PAGA. A true and correct copy of the judgment transcript in *Ghrdilyan* is attached as **Exhibit**
35 **10**, 19:8-20:19. Also, on October 24, 2017, the Los Angeles Superior Court awarded a prevailing
36 PAGA plaintiff civil, represented by very experienced counsel, penalties totaling only \$50.00.
37 *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828. A similar
38 result could occur here.



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1 estimate to be approximately and will be no more than \$20,000.00 at the conclusion of matters
2 related to the Settlement. In view of my efforts and risks in pursuing this case these amounts are
3 well within the range of reasonableness and thus warrant this Court's preliminary approval. In
4 addition, based on my experience in wage and hour class action matters, fee awards of
5 approximately one-third of the settlement fund are routinely approved as reasonable. Based on
6 my knowledge of my co-counsel and my retainer agreement with the Plaintiff, our request for
7 attorneys' fees of \$55,571.00 (one-third of the GSA), is less than the amount that we would
8 receive if we individually represented each class member under our regular contingency fee
9 agreements that authorize fees of up to 40% of the ultimate recovery. Attached as **Exhibit 24** is a
10 true and correct copy of my retainer agreement with Plaintiff. Attorneys' fees requests of one-
11 third of the fund are commonly approved. This is also consistent with my experience in wage and
12 hour class actions. I have been awarded attorneys' fees equaling approximately one-third of the
13 fund in several recent wage and hour class actions, including: *Alvarez v. Gary Grace Enterprises,*
14 *LP*, Marin County Superior Court, Case No. CIV1002553 (one-third of fund); *Calderon v.*
15 *Greatcall, Inc.*, San Diego Superior Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third
16 of fund); *Butler v. Lexxiom, Inc.*, San Bernardino County Superior Court, Case No.
17 CIVRS1001579 (one-third of fund); *Perez v. Southwest Dealer Services, Inc.*, Los Angeles
18 County Superior Court, Case No. BC439253 (one-third of fund); *O'Brien v. Optima Network*
19 *Services, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1107056 (one-third of
20 fund); *Noyd v. The Cristcat Group, et al.*, Los Angeles County Superior Court, Case No.
21 BC439558 (one-third of fund); *Huynh v. Carefusion Resources, LLC, et al*, San Diego Sup.Ct.,
22 Case No. 37-2009-00103277-CU-OE-CTL (one-third of fund); *Cunningham v. DPI Specialty*
23 *Foods West, Inc.*, Los Angeles Sup.Ct., Case No. BC465017 (one-third of fund); *Stucker v.*
24 *L'Oreal USA S/D, Inc.*, Los Angeles Sup. Ct., Case No. BC456080 (one-third of fund); *Valdez v.*
25 *Healthcare Services Group, Inc.*, Los Angeles Sup.Ct., Case No. BC462917 (one-third of fund);
26 *Hernandez, et al v. HSBC*, U.S. District Court, Central District of California, Case No. 10-CV-
27 4753 (one-third of fund); *Sandoval, et al. v. Thrifty Payless, Inc.*, et al. Los Angeles Sup.Ct., Case
28 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*,



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1 *Inc.*, Los Angeles Sup.Ct., Case No. BC483920 (one-third of fund); *King v. Build.com*, Butte
2 Sup.Ct., Case No. 159985 (one-third of fund); *Clifford v. Anderson Hay & Grain*, Los Angeles
3 Sup.Ct., Case No. BC517625 (one-third of fund); *Nichols, et al. v. Vitamin Shoppe*, Contra Costa
4 Sup.Ct., Case No. CIVMSC13-01136 (one-third of fund); *Clarke v. Insight Global*, U.S. District
5 Court, Southern District of California, Case No. 13-CV-0357 (one-third of fund); *Fischer, et al.*
6 *v. National Distribution Centers LP, et al.*, Riverside Sup.Ct., Case No. RIC1114952 (one-third
7 of fund); *Shaw, et al. v. Interthinx, Inc.*, United States District Court for the District of Colorado,
8 Case No. 13-CV-01229-REB-BNB (one-third of fund); *Ogbuehi v. Comcast of California/*
9 *Colorado/ Florida/ Oregon, Inc.*, United States District Court, Eastern District of California, Case
10 No. EDCV13-00672-KJM-KJN (one-third of fund); *Lynch, et al. v. American Guard Services*,
11 Los Angeles Superior Court, Case No. BC462681 (one-third of fund); *Volney-Parris v. Southern*
12 *California Edison Company*, Los Angeles Superior Court, Case No. BC493038 (one-third of
13 fund); *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior Court, Case No. BC480808 (one-third of
14 fund); *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-1500-CV-282679
15 (one-third of fund); *Linder, et al. v. Warehouse Services, Inc.*, San Bernardino Superior Court,
16 Case No. CIVDS1500146 (one-third of fund). Attached hereto as **Exhibit 25** is a true and correct
17 copy of the Declaration of G. Arthur Meneses in Support of Motion for a Class Representative
18 Enhancement Payment and an Award of Attorneys' Fees and Costs from *Acheson v. Express,*
19 *LLC*, Santa Clara County Superior Court, Case No. 109CV135335. Mr. Meneses reports court
20 awarded attorney's fees equaling approximately one third of the common fund in the following
21 class action settlements involving his law firm: *Chin v. Countrywide Home Loans, Inc.* (San
22 Joaquin Super. Ct. No.: 39-2010-00252741-CU-OE-STK) (30% award); *Ethridge v. Universal*
23 *Health Servs.*, (L.A. Super. Ct. No. BC391958) (33% award); *Magee v. Am. Residential Servs.*
24 *LLC*, (L.A. Super. Ct. No. BC423798) (33% award); *Blue v. Coldwell Banker Residential*
25 *Brokerage Co., et al.* (L.A. Super. Ct. No. BC417335) (33% award); *Aguiar v. Cingular Wireless*
26 *LLC et al.* (C.D. Cal. No. 05-02907) (30% award); *Silva v. Catholic Mortuary Servs., Inc.*, No.
27 BC408054 (L.A. Super. Ct.) (33% award); *Chin v. Wachovia Financial Services Inc. et al.*, No.
28 08-00684 (N.D. Cal.) (33% award); *Burrows v. Combined Ins. Co. of Am.*, No. 08-01752 (E.D.
Cal.) (33% award); *Mares v. BFS Retail & Comm. Operations LLC et al.*, No. BC375967 (L.A.
Super. Ct.) (33% award); *Bejarano v. Amerisave Mortgage Corp.*, No. CV 08-00599 (E.D. Cal.)
(33% award); *Blair et al. v. Jo-Ann Stores, Inc.*, BC394795 (L.A. Super. Ct.) (33% award);

1 *Weisbarth and List v. HR Block Financial Advisors, Inc.*, No. 07-00236 (C.D. Cal.) (33% award);
2 *Perez and Comeaux v. Standard Concrete*, No. 30-2008-00211820 (Orange County Super. Ct.)
3 (33% award); *Ward v. Doyon Sec. Servs., LLC*, BS 9000517 (San Bernardino Super. Ct.) (33%
4 award); *Winzelberg v. Liberty Mutual Ins. Co.*, No. CV 07-460 (C.D. Cal.) (33% award); *Perry v.*
5 *SunAmerica*, No. CV 07-1193 (C. D. Cal.) (33% award); *Barrett v. The St. John Companies*, No.
6 BC354278 (L.A. Super. Ct.) (33% award); *Simpson v. e*Trade*, No. CV 06-156 (C. D. Cal.) (33%
7 award); *Clymer and Benton v. Candle Acquisition Co.*, No. BC328765 (L.A. Super. Ct.) (33%
8 award); *Dunlap v. Bank of America, N.A.*, No. BC328934 (L.A. Super Ct.) (33% award); *Taylor*
9 *v. Ross Stores, Inc.*, No. RCV 065453, JCCP 4331 (San Bernardino Super. Ct.) (33% award);
10 *Case et al. v. Toyohara America Inc.*, No. BC328111 (L.A. Super. Ct.) (33% award); *Sunio v.*
11 *Marsh USA, Inc.*, No. BC328782 (L.A. Super Ct.) (33% award); and *Kenemixay v. Nordstroms,*
12 *Inc.*, No. BC318850 (L.A. Super. Ct.) (50% award). Mr. Meneses also reports as follows:

13 ...California courts regularly approve attorneys' fees equaling one-third of the common
14 fund or higher: *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008) (numerous
15 studies have shown that "fee awards in class actions average around one-third of the
16 recovery"); *Weber v. Einstein Noah Restaurant Group, Inc.*, No. 37-2008-00077680 (San
17 Diego Super. Ct.) (40% award); *Chalmers v. Elecs. Boutique*, No. BC306571 (L.A. Super.
18 Ct.) (33% award); *Boncore v. Four Points Hotel ITT Sheraton*, No. GIC807456 (San
19 Diego Super. Ct.) (33% award); *Vivens, et al. v. Wackenhut Corp.*, No. BC290071 (L.A.
20 Super. Ct.) (31% award); *Crandall v. U-Haul Intl., Inc.*, No. BC178775 (L.A. Super. Ct.)
21 (40% award); *Albrecht v. Rite Aid Corp.*, No. 729219 (San Diego Super. Ct.) (35% award);
22 *Marroquin v. Bed Bath & Beyond*, No. RG04145918 (Alameda Super. Ct.) (33% award);
23 *In re Milk Antitrust Litig.*, No. BC070061 (L.A. Super. Ct.) (33% award); *Sandoval v.*
24 *Nissho of California, Inc.*, No. 37-2009-00097861 (San Diego Super. Ct.) (33% award);
25 *In re Liquid Carbon Dioxide Cases*, No. J.C.C.P. 3012 (San Diego Super. Ct.) (33%
26 award); *In re California Indirect-Purchaser Plasticware Antitrust Litigation*, Nos.
27 961814, 963201, and 963590 (San Francisco Super. Ct.) (33% award); *Bright v. Kanzaki*
28 *Specialty Papers*, No. CGC-94-963598 (San Francisco Super. Ct.) (33% award); *Parker*
v. City of L.A., 44 Cal. App. 3d 556, 567-68 (1974) (33% award); *Kritz v. Fluid*
Components, Inc., No. GIN057142 (San Diego Super. Ct.) (35% award); *Benitez, et al. v.*



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1 Wilbur, No. 08-01122 (E.D. Cal.) (33% award); and *Chavez, et al. v. Petrissans, et al.*,
2 No. 08-00122 (E.D. Cal.) (33% award); *Vasquez v. Aartman*, No. 02-05624 (E.D. Cal.)
3 (30% award); and *Leal v. Wyndham Worldwide Corp.*, No. 37-2009-00084708 (San Diego
4 Super. Ct.) (38% award).

5 61. The amount of fees and costs requested are commensurate with (1) the risk Class
6 Counsel took in bringing the case, (2) the extensive time, effort and expense dedicated to the case,
7 (3) the skill and determination Class Counsel has shown, (4) the results Class Counsel achieved,
8 (5) the value of the Class Counsel achieved for the class, and (6) the other cases Class Counsel
9 turned down to devote time to this matter. Class Counsel also interviewed and obtained
10 information from putative class members, met and conferred with Defendant's counsel on
11 numerous occasions, reviewed and analyzed hundreds of pages of data and documents provided
12 by Defendant and obtained through other sources, researched applicable law, and estimates of
13 "damages" for purposes of settlement discussions, among other tasks. Class Counsel's request
14 for attorneys' fees will also be justified under the lodestar method. I spent over 23.14 hours
15 litigating this case. I also expect to perform additional work on this case if the Court grants final
16 approval of the Settlement, including supervision of the Administrator's disbursement of the
17 settlement funds to the participating Class Members. Class Counsel's requested attorneys' fees
18 will also be justified under the lodestar method. In this case, Class Counsel have a total lodestar
19 of approximately \$109,287.25 without the use of any multiplier, which results in a multiplier of
20 0.508 when compared against the \$55,571.00 request for attorneys' fees. A general summary
21 showing of the pre-multiplier lodestar by Class Counsel and the number of hours of work
22 performed by each attorney and paralegal of my firm are set forth below with a total lodestar of
23 approximately \$84,456.00 for my firm and a total lodestar of approximately \$109,287.25 for
24 Class Counsel. Based on the experience and credentials of Class Counsel, which have been set
25 forth in our previously filed declarations, these rates are well within the range charged by
26 attorneys with comparable experience and qualifications and thus are reasonable:

Firm	Total Hours	Pre-Multiplier Lodestar
The Spivak Law Firm	227.85	\$84,456.00
United Employees Law Group	34.25	\$24,831.25
Grand Total	262.10	\$109,287.25



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1 True and correct copies of the time records of my firm are collectively attached as **Exhibit 26** to
2 this declaration with minor redactions to protect the confidentiality of sensitive, privileged
3 information. I will make unredacted copies of such records available to the Court for *in camera*
4 inspection upon its request.

5 62. Class Counsel have borne all the risks and costs of litigation and will receive no
6 compensation until recovery is obtained. Class Counsel are well-experienced in wage-and-hour
7 class action litigation and used that experience to obtain a fair result for the Class. Considering
8 the amount of the attorney fees requested, the work performed, and the risks incurred, the
9 requested fees and costs are reasonable and should be awarded. My firm's current litigation
10 expenses total approximately \$14,763.21. True and correct copies of the costs and expense
11 records of my firm are collectively attached as **Exhibit 27** to this declaration with minor
12 redactions to protect the confidentiality of sensitive, privileged information. I will make
13 unredacted copies of such records available to the Court for *in camera* inspection upon its request.
14 I anticipate that I will incur an additional \$153.00 in costs, which consist of attorney service
15 charges for e-filing this Motion, attorney service charges for e-filing a notice of entry of order
16 and judgment, and attorney service charges for filing and serving any reports regarding final
17 accounting of the Settlement. I anticipate my firm's litigations costs will total approximately
18 \$14,924.62 through final accounting of the Settlement. Including the litigation expenses of my
19 co-counsel at United Employees Law Group \$8.41, Class Counsel request litigation expenses in
20 the amount of for litigation expenses through final accounting of the Settlement.¹⁰ *Id.*, Haines ¶
21 10. Attached as **Exhibit 28** is a true and correct copy of a legend that defines the acronyms in the
22 time and expense records identified in the paragraphs above regarding Exhibits 26 and 27.

23 *Class Representative Service Payment*

24 63. The Settlement provides that Plaintiff may seek a Class Representative Service
25 Payment of \$15,000.00. This amount is entirely reasonable given Plaintiff's efforts in this Action
26 and the risks he undertook on behalf of Class Members. Here, Plaintiff has devoted many hours
27 advancing the interests of the Settlement Class. Plaintiff has done this by, among other things,
28 retaining experienced counsel, providing them with information about his work history with

29 ¹⁰ My co-counsel and I do not seek reimbursement for the wages we paid to the attorneys,
30 paralegals, and legal assistants to aid in the representation of the Class. My co-counsel and I bore
31 these expenses over the time since this lawsuit began without expectation of reimbursement.



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1 Defendant and Defendant's policies and practices with respect to the wage and hour claims at
2 issue, assisting counsel in identifying witnesses, traveling to and participating in mediation, and
3 being actively involved in the settlement process to ensure a fair result for the Settlement Class
4 as a whole. In doing this, Plaintiff has been exposed to significant risks, including the risk of an
5 order to pay Defendant's attorneys' fees and costs if this action had been unsuccessful (*See* Labor
6 Code §§ 218.5-218.6). The efforts and risks that Plaintiff undertook on behalf of the Settlement
7 Class shows that the proposed Class Representative Service Payment is fair, adequate, and
8 reasonable, and thus warrant preliminary approval. Plaintiff Jorge L. Leon's declaration, filed
9 concurrently with mine, provides further information supporting his request for the Class
10 Representative Service Payment.

11 64. Plaintiff began his investigation and retention of attorneys to pursue the claims at
12 issue is approximately March of 2021. Awarding Plaintiff 9.00% of the GSA is entirely
13 reasonable given Plaintiff's efforts in this case undertaken on behalf of absent Class Members. In
14 this case, Plaintiff has devoted several hours of his time advancing the interests of the Class
15 Members and also expects to devote additional hours of his time with Class Counsel overseeing
16 the administration of the Settlement if the Court grants final approval of the Settlement. *See*
17 *generally* Declaration of Jorge L. Leon. Plaintiff has done this by, among other things, retaining
18 experienced counsel, providing them with extensive information about his work history with
19 Defendant and Defendant's policies and practices with respect to the wage and hour claims at
20 issue, assisting them in contacting absent Class Members to gather information, participating in
21 a full day of mediation, foregoing pursuit of his individual claims in favor of a fair class-wide
22 resolution, and being actively involved in the settlement process to ensure a fair result for the
23 Class Members as a whole.

24 65. As Class Representative, Plaintiff agreed to (1) consider the interests of the class
25 just as he would consider his own interests and, in some cases, to put the interests of the class
26 before his own interests; (2) actively participate in the lawsuit, as necessary, by among other
27 things, answering interrogatories, producing documents to Defendant and giving deposition and
28 trial testimony if requested; (3) travel to give such testimony if required; (4) recognize and accept
that any resolution of the lawsuit by dismissal or settlement, is subject to court approval, and must
be designed in the best interest of the class as a whole; (5) follow the progress of the lawsuit and
provide all relevant facts to Class Counsel; (6) champion many other people with similar claims



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1 and injuries because of the importance of the case and that necessity that all Class Members
2 benefit from the lawsuit; and (7) fight for a resolution in which the individual recovery to each
3 Class Member, including Plaintiff, may be relatively small. Plaintiff agreed to shoulder all of
4 these responsibilities in exchange for a proportionate share of funds made available for
5 distribution to the Class Members. *See generally* Declaration of Jorge L. Leon. Plaintiff had no
6 guarantee of a Class Representative Service Payment. This justifies the Class Representative
Service Payment sought.

7 66. In taking the actions outlined above, Plaintiff has exposed himself to significant
8 risks, including the risk that he could have been ordered to pay Defendant's attorneys' fees and
9 costs if this Action had been unsuccessful (*see* Lab. Code §§ 218.5-218.6), as well as the risk that
10 he could, in the future, face a potentially hostile work environment and worsened career prospects
11 for suing a prior employer for wage and hour violations and serving as the Plaintiff in a class
12 action lawsuit. Additionally, Plaintiff has exposed himself to the risk that he could end up
13 receiving less than Defendant would have paid him at the beginning of the Action via a C.C.P. §
14 998 offer or other individual settlement offer to drop his class allegations. On many occasions,
15 California courts have ordered wage and hour plaintiffs and would be class representatives to pay
outrageous fee and/or cost awards for unsuccessful claims. A few examples are:

- 16 a. *Zalewa v. Tempo Research Corp.*, No. B238142, 2013 WL 766535 (CA 2nd Dist.
17 March 1, 2013) (court awarded the employer \$2,210,360 in attorney's fees to be
18 paid by employee for employee's unsuccessful suit for unpaid bonuses). A true
19 and correct copy of the court's order is attached to this declaration as **Exhibit 11**.
- 20 b. *Cun v. Café Tiramisu LLC*, No. A131241, 2011 WL 5979937 (CA 1st Dist. Nov.
21 30, 2011) (court ordered the employee to pay \$36,612.50 in attorney's fees and
22 costs to employer for unsuccessful suit for unpaid wages). A true and correct copy
23 of the court's order is attached to this declaration as **Exhibit 12**.
- 24 c. *Csaszi v. Sharp Healthcare*, No. D038558, 2003 WL 352422 (CA 4th Dist. Feb.
25 18, 2003) (court ordered the employee to pay \$20,269 in attorney's fees and costs
26 to the employer for unsuccessful suit for unpaid wages and overtime). A true and
correct copy of the court's order is attached to this declaration as **Exhibit 13**.
- 27 d. *Villalobos v. Guertin*, No. CIV. S-07-2778 LKK/GGH, 2009 WL 4718721
28 (U.S.D.C. Eastern Dist. Dec. 3, 2009) (court ordered Plaintiff's counsel to pay



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\$21,180 in attorney's fees and \$1,525.80 in costs to defense counsel for unpaid wages). A true and correct copy of the court's order is attached to this declaration as **Exhibit 14**.

Such costs awards are higher than the share of the Net Settlement Amount ("NSA") that Plaintiff stands to receive as a participating Class Member. It is unfair in view of the substantial risk of an adverse fee or cost award of several thousand dollars that Plaintiff receives less as a reward for taking such a risk. Moreover, we cannot lose sight of the fact that Plaintiff is not a high wage earner. Even the lowest of the cost awards listed above would have devastating consequences for Plaintiff in view of his modest earnings.

67. Plaintiff's individual share of the Net Settlement Amount could be less than that of some absent participating Class Members. Under the Settlement, participating Class Members will receive a *pro rata* distribution of the Settlement proceeds proportionate to the period of time he or she worked for Defendant during the Class Period, compared to the total of the total period of time worked by all participating Class Members during the Class Period, as reflected by Defendant's records. Because Plaintiff may have been employed for a shorter period during the Class Period, some Class Members will have worked more Work Weeks than Plaintiff and, as a result, receive larger shares in the recovery – *even though they did not actively participate in the lawsuit*. While this is a risk that Plaintiff assumed when he brought his lawsuit, it is unfair to limit Plaintiff's Class Representative Service Payment to an amount not much greater than an absent Class Members' share of the recovery. To encourage employees like Plaintiff to don the helm of class champions (and thereby advance the important public policies behind class actions), the Court should award something substantial to Plaintiff for his readiness to receive less than absent Class Members while assuming all the risk and delay of payment.

68. The average putative class member in this case would be unlikely to pursue individually the claims Plaintiff brought against Defendant because such claims would be too small to justify the cost and the risk. A putative class member will be unlikely to find an attorney who is willing to pursue an individual's claims because the claims are too small to justify the hundreds of hours of legal work necessary to prove each claim. Only the class action vehicle, which allows for the aggregation of hundreds of risky small dollar value claims, makes such claims advantageous for an attorney to pursue on a contingency basis and there can be no class action without a class member assuming the great fiduciary responsibilities of as class



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1 representative. This Court should allow the Class Representative Service Payment requested
2 because to do otherwise would discourage employees (and attorneys) from bringing class actions
3 in the first place.

4 69. If would-be class action plaintiffs are not adequately incentivized to advance the
5 public policy behind class actions in court in light of the time and risk it will entail, it is unlikely
6 that they will bring class action lawsuits in the first place. Once employers realize that such
7 lawsuits are unlikely, they will have no incentive to comply with wage and hour laws.

8 70. Plaintiff faced the risk that he could face worsened career prospects for suing a
9 former employer for wage and hour violations and serving as the Plaintiff in a class action lawsuit.
10 *See generally* Declaration of Jorge L. Leon. Because he filed a lawsuit in the California Superior
11 Court, a public record now exists that Plaintiff sued his employer for Labor Code violations – a
12 fact that won't be lost on prospective employers considering him for a job. Common sense dictates
13 that an employer will think twice about hiring someone who sued his last employer. Legal experts
14 have recognized this fact. Attached to this declaration as **Exhibit 15** is a true and correct copy of
15 the article "Employees: Better Think Twice Before Suing Your Employer (Four Reasons Why)."
16 Attached to this declaration as **Exhibit 16** is a true and correct copy of the article "What To Expect
17 If You Sue Your Employer." California even has laws to address this risk: Labor Code § 1102.5
18 prohibits retaliation against employees who speak up about Labor Code violations and Labor
19 Code § 98.6 prohibits discrimination against employees who bring Labor Code violations to the
20 attention of the Labor Commissioner. Thus, the risk to Plaintiff's future employment shows that
21 the Class Representative Service Payment sought is fair, adequate, and reasonable, and warrants
22 final approval of the Court.

23 71. Class Counsel depended on Plaintiff's input to prosecute this lawsuit. Plaintiff
24 made this case possible for a number of reasons. First, Plaintiff challenged his employers on an
25 unlawful practice that led to Defendant paying a large percentage of the unpaid wages in question
26 plus interest to the remainder of its employees – in spite of Defendant's financial limitations.
27 Plaintiff provided Class Counsel with detailed descriptions of how Defendant's business operates,
28 the hours and scheduling of employees, and the nature of the work Class Members performed.
See generally Declaration of Jorge L. Leon.

72. By agreeing to settle the case in the best interest of the Class Members, Plaintiff
has given up the right to pursue individual claims and recover substantially more in unpaid wages,



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1 interest, waiting time penalties, pay stub penalties, and civil penalties that he will release as part
2 of the Settlement. Plaintiff did not seek an individual settlement for his claims at all, instead
3 choosing to prosecute the claims on behalf of the Class Members.

4 73. In view of the risks, Plaintiff achieved a result the Class can be proud of. There
5 were significant risks to any award on behalf of the Class Members and still Plaintiff achieved a
6 settlement of \$166,713.47. This outstanding result calls for significant awards to Plaintiff for
7 making the result possible.

8 ***Class Member and Aggrieved Employee Settlement Share Estimates***

9 74. **Individual Settlement Payments.** At per hour (the average Class Member's
10 hourly wage), the average estimated Individual Settlement Payment to participating Class
11 Members is the equivalent of over hours of unpaid wages (the primary remedies sought). Thus,
12 this is a result the Class can be proud of in view of the significant risks.

13 75. Plaintiff estimates that there are 9,686 Work Weeks for the Class Period. So, each
14 Work Week has a value of approximately \$6.42 (\$62,142.47 Net Settlement Amount / 9,686
15 Work Weeks = \$6.42). Plaintiff had 20 Work Weeks during the Class Period. Based on this, it is
16 anticipated that Plaintiff Jorge L. Leon will receive an Individual Settlement Payment of
17 approximately \$128.31 as a participating Class Member (20 Work Week x \$6.42 = \$128.31) while
18 the average estimated Individual Settlement Payment to participating Class Members will be
19 approximately \$522.21. Some Class Members – those who worked more Work Weeks during the
20 Class Period - will receive more, and some less. The highest possible Individual Settlement
21 Payment to a participating Class Member (i.e., to those who qualify for all Work Weeks in the
22 Class Period) will be approximately \$1,859.11. The lowest possible Individual Settlement
23 Payment to a participating Class Member (i.e., to those who qualify for only one Work Week in
24 the Class Period) will be approximately \$6.42. Some Class Members – those who worked more
25 Work Weeks during the Class Period - will receive more, and some less.

26 76. The Individual Settlement Payment will be paid to each Class Member based on
27 his or her eligible Work Weeks compared to the total Work Weeks. Because this method
28 compensates Class Members based on the extent of their potential injuries, in that Class Members
who worked for Defendant longer would have been subject to more alleged violations, it is fair,
adequate, and reasonable.



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1 77. **Individual PAGA Payments.** I estimate that the average Aggrieved
2 Employee Individual PAGA Payment will be \$17.24. *Id.* Plaintiff's Individual PAGA Payment,
3 his individual share of 25% of the PAGA Penalties, will be less than that of some absent
4 Aggrieved Employees. Under the Settlement, each Aggrieved Employee will receive a *pro rata*
5 distribution of 25% of the PAGA Penalties proportionate to the number of paychecks he or she
6 had with Defendant during the PAGA Period, compared to the total of all paychecks of all
7 Aggrieved Employees during the PAGA Period, as reflected by Defendant's records. Plaintiff
8 estimates that there are 2,844 Aggrieved Employee paychecks for the PAGA Period. So, each
9 Aggrieved Employee paycheck from the PAGA Period has a value of approximately \$0.35 (25%
10 of \$4,000.00 in PAGA Penalties / 2,844 Aggrieved Employee paychecks = \$0.35). It is
11 anticipated that Plaintiff Jorge L. Leon will receive an Individual PAGA Payment of
12 approximately \$7.03 as an Aggrieved Employee (20 paychecks during the PAGA Period x \$0.35
13 paycheck value = \$128.31) while the average estimated Individual PAGA Payment to an
14 Aggrieved Employee will be approximately \$17.24 (\$1,000.00, 25% of PAGA Penalties /
15 Aggrieved Employee paychecks during the PAGA Period = \$17.24 Individual PAGA Payment).
16 Some Aggrieved Employees – those who had more paychecks during the PAGA Period - will
17 receive more, and some less. The highest possible Individual PAGA Payment to an Aggrieved
18 Employee (i.e., to those who qualify for all paychecks in the PAGA Period) will be approximately
\$49.34. The lowest possible Individual PAGA Payment to an Aggrieved Employee (i.e., to those
who qualify for only one paycheck in the PAGA Period) will be approximately \$0.35.

19 ***Proposed Preliminary Approval Order***

20 78. Plaintiff files a proposed Preliminary Approval Order with this declaration. The
21 proposed Preliminary Approval Order includes the Notice Packet. The Notice Packet consists of
22 the Class Notice (Exhibit A to the Preliminary Approval Order), the Election Not to Participate
23 in Settlement form (Exhibit B to the Preliminary Approval Order), the Work Week Dispute form
24 (Exhibit C to the Preliminary Approval Order), and the Objection form (Exhibit D to the
25 Preliminary Approval Order) in English with Spanish translations. Based on my investigation,
26 the Class Members all understand English, Spanish or both. The Notice Packet does not include
27 any other forms. The Settlement Agreement is not attached to the proposed Preliminary Approval
28 Order. I have carefully reviewed both the terms and the terminology of the proposed
Preliminary Approval Order and accompanying Notice Packet to confirm that the various



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documents are internally consistent, consistent with each other, and consistent with the Settlement Agreement.

79. **Identity of Administrator.** The proposed Preliminary Approval Order states the name of the Administrator, and describes the nature of the services that the Administrator will be required to perform, either directly or by reference to the Settlement Agreement.

80. **Exclusion Form.** The proposed Preliminary Approval Order provides that the Class Notice shall be accompanied by the Election Not to Participate in Settlement form (Exhibit B to the Preliminary Approval Order), the Work Week Dispute form (Exhibit C to the Preliminary Approval Order), and the Objection form (Exhibit D to the Preliminary Approval Order) in English with Spanish translations. Based on my investigation, the Class Members all understand English, Spanish or both. The proposed Preliminary Approval Order provides that any exclusion form shall be submitted to the Administrator rather than filed with the Court. The proposed Preliminary Approval Order does not require the Class Member to send copies of the exclusion form to counsel, but requires the Administrator to do so. The proposed Preliminary Approval Order provides that the Administrator shall file a declaration concurrently with the filing of Plaintiff's motion for final approval with a copy of every exclusion form received by the Administrator.

81. **Objection form.** The proposed Preliminary Approval Order provides that the Class Notice shall be accompanied by the Objection form that the Class Members may use. The proposed Preliminary Approval Order provides that any objection shall be submitted to the Administrator rather than filed with the Court. The proposed Preliminary Approval Order does not require the Class Member to send copies of the objection form to counsel, but requires the Administrator to do so. The proposed Preliminary Approval Order provides that the Administrator shall file a declaration concurrently with the filing of the motion for final approval with a copy of every objection form received by the administrator.

82. Neither the proposed Preliminary Approval Order, the Class Notice, nor the Objection form require an objecting party to, either personally or through counsel, appear at the hearing on the motion for final approval for that party's objection to be considered. Neither the proposed Preliminary Approval Order, the Class Notice, nor the Objection form require an objecting party to, either personally or through counsel, to file or serve, or to state in the objection, a notice of intention to appear at the hearing on the motion for final approval.



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1 88. Each document in the Notice Packet is drafted in a manner that is likely to be
2 readily understood by the members of the Class. The Notice Packet does not contain any
3 Latin terms, legal terms of art, or unfamiliar symbols or abbreviations.

4 89. As stated above, the Class Notice includes an estimate of the likely recovery
5 by the individual Class Member. It also provides the estimated dollar value of a Work Week
6 and the estimated dollar value of a Pay Period.

7 90. The Class Notice states that the Court has determined only that there is
8 sufficient evidence to suggest that the proposed settlement might be fair, adequate, and
9 reasonable, and that any final determination of those issues will be made at the final hearing.

10 91. The Class Notice advises the Class Members of where they can find the
11 Settlement Agreement, by describing the full title and filing date either of the settlement
12 agreement and this declaration to which the Settlement Agreement is attached. The Class
13 Notice also states the address of the courthouse to which the case is assigned, and the address
14 of the court's website at which the case file can be viewed on-line.

15 92. The Class Notice describes the releases by Plaintiff and the Class Members.

16 93. The lawsuit includes claim for civil penalties under PAGA. The Class Notice
17 defines PAGA. It states that Class Members may not opt out of the PAGA provisions of the
18 Settlement. However, it does not bar them from objecting to the PAGA portions of the
19 Settlement. The Class Notice also describes the terms of the settlement of the PAGA claim,
20 including who is an Aggrieved Employee. The Class Notice provides an estimate of the
21 individual Aggrieved Employee's share of 25% of the PAGA Penalties and advises
22 Aggrieved Employees that the payments will be reported on a Form 1099.

23 94. The Objection form instructs the objecting Class Member that the objection
24 must be delivered to the Administrator. The Objection form states the name and address of
25 the Administrator. It also states the date by which the objection must be mailed or otherwise
26 delivered.

27 95. The information required to be provided by an objecting Class Member on the
28 Objection form does not exceed the minimum information necessary to (i) identify the
objector as a person entitled to object to the Settlement, (ii) describe the nature of and basis
for the objection, and (iii) contact the objector to clarify any uncertainties.



SPIVAK LAW
EMPLOYEE RIGHTS

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1 does not release the claim for wages or damages of any Aggrieved Employee unless such
2 Aggrieved Employee is a Participating Class Member. Settlement ¶ 6.3.

3 104. The PAGA Release is limited to the Defendant named in the Operative
4 Complaint, together with Defendant's officers, directors, employees, agents, and related
5 entities. See Settlement, ¶ 1.4.2 ("Released Parties").

6 105. The Settlement releases only those claims described in the notice sent by the
7 plaintiff to the LWDA, and only to the extent that they are alleged in the complaint. The
8 Settlement states: Plaintiff releases all claims for civil penalties that could have been sought by
9 the Labor Commissioner for the violations identified in Plaintiff's pre-filing letter to the LWDA;
10 Plaintiff does not release the claim for wages or damages of any Aggrieved Employee unless such
11 Aggrieved Employee is a Participating Class Member. Settlement ¶ 6.3.

12 *Notice of Settlement to the LWDA*

13 106. Pursuant to Labor Code § 2699(l)(2), Plaintiff has provided notice of this
14 settlement to the LWDA with the filing and service of this motion. A true and correct copy of
15 Plaintiff's submission with the LWDA and a confirmation email is attached hereto as **Exhibit 20**.

16 107. A true and correct copy of a declaration signed by Jeff Davis is attached to this
17 declaration as **Exhibit 21**.

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

20 Executed on Monday, January 06, 2025 at New York, New York.

21 

22 DAVID SPIVAK,
23 Declarant



25 SPIVAK LAW
26 EMPLOYEE RIGHTS

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EXHIBIT 1

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8

9 Attorneys for Plaintiff(s),
JORGE L. LEON, and all others similarly situated
10 (Additional attorneys for parties on following page)

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

12 **FOR THE COUNTY OF FRESNO**

13 **(UNLIMITED JURISDICTION)**

14
15 JORGE L. LEON, on behalf of himself and all
16 others similarly situated, and as an “aggrieved
employee” on behalf of other “aggrieved
17 employees” under the Labor Code Private
Attorneys General Act of 2004,

18 *Plaintiff(s),*

19 vs.
20

21 DAVIS & ROBERTS CONSTRUCTION, INC.,
a California corporation; and DOES 1–50,
22 inclusive,

23 *Defendant(s).*
24
25
26
27
28

Case No. 22CECG00407

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

Action filed: February 08, 2022
Dept: 501, The Honorable D.
Tyler Tharpe

ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

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Attorneys for Defendant(s),
DAVIS & ROBERTS CONSTRUCTION, INC.

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and
2 between plaintiff Jorge L. Leon (“Plaintiff”) and defendant Davis & Roberts Construction, Inc.
3 (“Davis & Roberts Construction, Inc.”). The Agreement refers to Plaintiff and Defendant
4 collectively as “Parties,” or individually as “Party.”

5 **1. DEFINITIONS.**

6 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against
7 Davis & Roberts Construction, Inc. captioned “Jorge L. Leon, on behalf of himself, and all others
8 similarly situated, and as an ‘aggrieved employee’ on behalf of other ‘aggrieved employees’ under
9 the Labor Code Private Attorneys General Act of 2004, *Plaintiff(s)*, vs. Davis & Roberts
10 Construction, Inc., a California corporation; and DOES 1 through 50, inclusive, *Defendant(s)*,”
11 Case No. 22CECG00407 initiated on February 08, 2022 and pending in Superior Court of the
12 State of California, County of Fresno.

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
18 with Preliminary Approval of the Settlement.

19 1.4. “Aggrieved Employee” means a person employed by Defendant in California and
20 classified as a hourly, non-exempt who worked for Defendant during the PAGA Period.

21 1.5. “Class” means all current and former hourly, nonexempt employees of Defendant
22 in California during the Class Period.

23 1.6. “Class Counsel” means David G. Spivak of The Spivak Law Firm and Walter L.
24 Haines of United Employees Law Group, PC.

25 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment”
26 mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and
27 expenses, respectively, incurred to prosecute the Action.

28 1.8. “Class Data” means Class Member identifying information in Defendant’s
possession including the Class Member’s name, last-known mailing address, Social Security
number, and number of Class Period Work Weeks 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 February 08, 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 Fresno.

1.16. "Defendant" means named Defendant Davis & Roberts Construction, Inc.

1.17. "Defense Counsel" means Ian B. Wieland and Amanda K. Miller of Sagaser, Watkins & Wieland PC.

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

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

1.20. "Final Approval Hearing" means the Court's hearing on the Motion for Final

1 Approval of the Settlement.

2 1.21. "Final Judgment" means the Judgment Entered by the Court upon Granting Final
3 Approval of the Settlement. A proposed Final Judgment form is attached as Exhibit F.

4 1.22. "Gross Settlement Amount" means \$166,713.47 which is the total amount
5 Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross
6 Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments,
7 the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative
8 Service Payment and the Administrator's Expenses. The Gross Settlement Amount is inclusive
9 of all amounts to be paid to Class Members as part of a "Pick Up Stix" campaign. With the
10 exception of the operation of the Escalator Clause below, under no circumstances will
11 Defendant's settlement payment exceed the Gross Settlement Amount. The Gross Settlement
12 Amount includes the \$56,713.47 Defendant paid to Class Members as part of its Pick-Up-Stix
13 campaign.

14 1.23. "Individual Class Payment" means the Participating Class Member's pro rata
15 share of the Net Settlement Amount calculated according to the number of Work Weeks worked
16 during the Class Period.

17 1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of
18 25% of the PAGA Penalties calculated according to the number of Work Weeks worked during
19 the PAGA Period.

20 1.25. "Judgment" means the judgment entered by the Court based upon the Final
21 Approval.

22 1.26. "LWDA" means the California Labor and Workforce Development Agency, the
23 agency entitled, under Labor Code section 2699, subd. (i).

24 1.27. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the
25 LWDA under Labor Code section 2699, subd. (i).

26 1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following
27 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
28 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be
paid to Participating Class Members as Individual Class Payments.

1.29. "Non-Participating Class Member" means any Class Member who opts out of the

1 Settlement by sending the Administrator a valid and timely Request for Exclusion.

2 1.30. "Notice Packet" means the Class Notice (Exhibit A), the Election Not to
3 Participate in Settlement form (Exhibit B), the Work Week Dispute form (Exhibit C), and the
4 Objection form (Exhibit D) in English with Spanish translations.

5 1.31. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee
6 worked for Defendant for at least one day during the PAGA Period.

7 1.32. "PAGA Period" means the period from December 23, 2020 to the date of
8 preliminary approval of this Settlement.

9 1.33. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

10 1.34. "PAGA Notice" means Plaintiff's December 23, 2021 letter to Defendant and the
11 LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

12 1.35. "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 1.36. "Participating Class Member" means a Class Member who does not submit a valid
16 and timely Request for Exclusion from the Settlement.

17 1.37. "Plaintiff" means Jorge L. Leon, the named plaintiff in the Action.

18 1.38. "Preliminary Approval" means the Court's Order Granting Preliminary Approval
19 of the Settlement.

20 1.39. "Preliminary Approval Order" means the proposed Order Granting Preliminary
21 Approval and Approval of PAGA Settlement. A proposed Preliminary Approval Order form is
22 attached as Exhibit E.

23 1.40. "Released Class Claims" means the claims being released as described in
24 Paragraph 6.2 below.

25 1.41. "Released PAGA Claims" means the claims being released as described in
26 Paragraph 6.2 below.

27 1.42. "Released Parties" means: Defendant and each of its officers, directors, employees
28 and agents.

1.43. "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. An Election Not to
Participate in Settlement form is attached as Exhibit B.

1.44. "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.

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

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

1.47. A Work Week Dispute form is attached as Exhibit C.

2. RECITALS.

2.1. On February 08, 2022, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, failure to pay wages, unauthorized and unlawful wage deductions, and related claims. On March 07, 2022, Plaintiff filed a First Amended Complaint alleging causes of action against Defendant for failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, failure to pay wages, unauthorized and unlawful wage deductions, and related allegations. The First Amended Complaint is the operative complaint in the Action (the "Operative Complaint.") Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.

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

2.3. On November 03, 2022 and May 16, 2023, the Parties participated in all-day mediation sessions presided over by Honorable Howard R. Broadman, Ret. which led to this Agreement to settle the Action (describe alternative means of negotiation.

2.4. Prior to mediation and negotiating the Settlement, Plaintiff obtained, through informal discovery, the number of comparable employees, the number of workweeks, average rates of pay, sample time records, sample payroll records, written policies, and related information. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

2.5. The Court has not granted class certification.

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

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraphs 1.23 and 9 below, Defendant promises to pay \$166,713.47 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

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

3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$15,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the

1 Administrator will retain the remainder in the Net Settlement Amount. The Administrator will
2 pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full
3 responsibility and liability for employee taxes owed on the Class Representative Service Payment.

4 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than
5 33.33%, which is currently estimated to be \$55,571.00 and a Class Counsel Litigation Expenses
6 Payment of not more than \$20,000.00. Defendant will not oppose requests for these payments
7 provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for
8 Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days
9 prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or
10 a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator
11 will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability
12 to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class
13 Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator
14 will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more
15 IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the
16 Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds
17 Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any
18 division or sharing of any of these Payments.

19 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
20 \$6,000.00 except for a showing of good cause and as approved by the Court. To the extent the
21 Administration Expenses are less or the Court approves payment less than \$6,000.00, the
22 Administrator will retain the remainder in the Net Settlement Amount.

23 3.2.4. To Each Participating Class Member: An Individual Class Payment
24 calculated by (a) dividing the Net Settlement Amount by the total number of Work Weeks worked
25 by all Participating Class Members during the Class Period and (b) multiplying the result by each
26 Participating Class Member's Work Weeks.

27 3.2.4.1. Tax Allocation of Individual Class Payments. 20.00% of
28 each Participating Class Member's Individual Class Payment will be allocated to settlement of
wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be
reported on an IRS W-2 Form. The remaining 80.00% of each Participating Class Member's
Individual Class Payment will be allocated to settlement of claims for interest and penalties (the

1 “Non-Wage Portion”). The Non-Wage Portions are not subject to wage withholdings and will be
2 reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability
3 for any employee taxes owed on their Individual Class Payment.

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

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

12 3.2.5.1. The Administrator will calculate each Individual PAGA Payment
13 by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties,
14 \$1,000.00, by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees
15 during the PAGA Period and (b) multiplying the result by each Aggrieved Employee’s PAGA
16 Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes
17 owed on their Individual PAGA Payment. An Individual PAGA Payment will be offset by any
18 amount already paid to the Aggrieved Employee as part of the Defendant’s “Pick Up Stix”
19 campaign.

20 3.2.5.2. If the Court approves PAGA Penalties of less than the amount
21 requested, the Administrator will allocate the remainder to the Net Settlement Amount. The
22 Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

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

24 4.1. Class Work Weeks and Aggrieved Employee Pay Periods. Based on a review of
25 its records to date, Defendant estimates there are 119 Class Members who collectively worked a
26 total of 9,686 Work Weeks, and 58 Aggrieved Employees who worked a total 2,844 of weekly
27 PAGA Pay Periods.

28 4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval
of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in
the form of a Microsoft Excel spreadsheet. To protect Class Members’ privacy rights, the

1 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
2 of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator
3 employees who need access to the Class Data to effect and perform under this Agreement.
4 Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class
5 Data omitted class member identifying information and to provide corrected or updated Class
6 Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant
7 must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use
8 best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or
omitted Class Data.

9 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross
10 Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll
11 taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date.

12 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant
13 funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class
14 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
15 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
16 Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees
17 Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service
18 Payment shall not precede disbursement of Individual Class Payments and Individual PAGA
Payments.

19 4.4.1. The Administrator will issue checks for the Individual Class Payments
20 and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail,
21 postage prepaid. The face of each check shall prominently state the date (not less than 180 days
22 after the date of mailing) when the check will be voided. The Administrator will cancel all checks
23 not cashed by the void date. The Administrator will send checks for Individual Settlement
24 Payments to all Participating Class Members (including those for whom Notice Packet was
25 returned undelivered). The Administrator will send checks for Individual PAGA Payments to all
26 Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved
27 Employees (including those for whom Notice Packet was returned undelivered). The
28 Administrator may send Participating Class Members a single check combining the Individual
Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator

1 must update the recipients' mailing addresses using the National Change of Address Database.

2 4.4.2. The Administrator must conduct a Class Member Address Search for all
3 other Class Members whose checks are returned undelivered without USPS forwarding address.
4 Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS
5 forwarding address provided or to an address ascertained through the Class Member Address
6 Search. The Administrator need not take further steps to deliver checks to Class Members whose
7 re-mailed checks are returned as undelivered. The Administrator shall promptly send a
8 replacement check to any Class Member whose original check was lost or misplaced, requested
9 by the Class Member prior to the void date.

10 4.4.3. For any Class Member whose Individual Class Payment check or
11 Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator
12 shall transmit the funds represented by such checks to the California Controller's Unclaimed
13 Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to
14 the requirements of California Code of Civil Procedure Section 384, subd. (b).

15 4.4.4. The payment of Individual Class Payments and Individual PAGA
16 Payments shall not obligate Defendant to confer any additional benefits or make any additional
17 payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in
18 this Agreement.

19 **5. [OMITTED]**

20 **6. RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire
21 Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the
22 Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims
23 against all Released Parties as follows:

24 6.1 Plaintiff's Release. Plaintiff and his respective former and present spouses,
25 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
26 and discharge Released Parties from all claims, transactions, or occurrences that occurred during
27 the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have
28 been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims
that were, or reasonably could have been, alleged based on facts contained in the Operative
Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under 6.2,
below. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to

1 enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability
2 benefits, social security benefits, workers' compensation benefits that arose at any time, or based
3 on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts
4 or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be
5 true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects,
6 notwithstanding such different or additional facts or Plaintiff's discovery of them.

6 6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
7 purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights,
8 and benefits, if any, of section 1542 of the California Civil Code, which reads:

9
10 **A general release does not extend to claims that the creditor or releasing party does**
11 **not know or suspect to exist in his or her favor at the time of executing the release,**
12 **and that if known by him or her would have materially affected his or her settlement**
13 **with the debtor or Released Party.**

14 6.2 Release by Participating Class Members Who Are Not Aggrieved Employees:
15 All Participating Class Members, on behalf of themselves and their respective former and present
16 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released
17 Parties from all claims stated in the Operative Complaint and those based solely upon the facts
18 alleged in the Operative Complaint. Except as set forth in Section 6.3 of this Agreement,
19 Participating Class Members do not release any other claims, including claims for vested benefits,
20 wrongful termination, violation of the Fair Employment and Housing Act, unemployment
21 insurance, disability, social security, workers' compensation, or claims based on facts occurring
22 outside the Class Period.

23 6.3 Release of PAGA Claim. Plaintiff releases all claims for civil penalties that
24 could have been sought by the Labor Commissioner for the violations identified in Plaintiff's
25 pre-filing letter to the LWDA; Plaintiff does not release the claim for wages or damages of any
26 Aggrieved Employee unless such Aggrieved Employee is a Participating Class Member.

27 ///

28 **7. MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and

1 file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with
2 the Court’s current checklist for Preliminary Approvals. A Preliminary Approval Order form is
3 attached as Exhibit E.

4 7.1 Defendant’s Declaration in Support of Preliminary Approval. Within ten (10)
5 days of the full execution of this Agreement, Defendant will prepare and deliver to Class Counsel
6 a signed Declaration from Defendant and Defense Counsel that shall aver that they are not aware
7 of any other pending matter or action asserting claims that will be extinguished or adversely
8 affected by the Settlement.

9 7.2 Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel
10 all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice,
11 and memorandum in support, of the Motion for Preliminary Approval that includes an analysis
12 of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under
13 Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval
14 and Approval of PAGA Settlement; (iii) a draft proposed Notice Packet; (iv) a signed declaration
15 from the Administrator attaching its “not to exceed” bid for administering the Settlement and
16 attesting to its willingness to serve; competency; operative procedures for protecting the security
17 of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other
18 misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members;
19 and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense
20 Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve
21 and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members,
22 and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its
23 competency to represent the Class Members; its timely transmission to the LWDA of all necessary
24 PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative
25 Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699,
26 subd. (l)(2)); (vi) a redlined version of the parties’ Agreement showing all modifications made to
27 the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or
28 potential conflict of interest with Class Members, and the Administrator. In their Declarations,
Plaintiff and Class Counsel 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

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

5 7.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion
6 for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
7 Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person
8 or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant
9 Preliminary Approval or conditions Preliminary Approval on any material change to this
10 Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of
11 the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and
12 otherwise satisfy the Court's concerns.

13 **8. SETTLEMENT ADMINISTRATION.**

14 8.1 Selection of Administrator. The Parties have jointly selected Simpluris, Inc. to
15 serve as the Administrator and verified that, as a condition of appointment, Simpluris, Inc. agrees
16 to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this
17 Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel
18 represent that they have no interest or relationship, financial or otherwise, with the Administrator
19 other than a professional relationship arising out of prior experiences administering settlements.

20 8.2 Employer Identification Number. The Administrator shall have and use its own
21 Employer Identification Number for purposes of calculating payroll tax withholdings and
22 providing reports state and federal tax authorities.

23 8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund
24 that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury
Regulation section 468B-1.

25 8.4 Notice to Class Members.

26 8.4.1 No later than three (3) business days after receipt of the Class Data, the
27 Administrator shall notify Class Counsel that the list has been received and state the number of
28 Class Members, PAGA Members, Work Weeks, and Pay Periods in the Class Data.

1 8.4.2 Using best efforts to perform as soon as possible, and in no event later than
2 14 days after receiving the Class Data, the Administrator will send to all Class Members identified
3 in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Notice Packet
4 with Spanish translation, if applicable substantially in the forms attached to this Agreement as
5 **Exhibits A, B, C, and D.** The first page of the Class Notice shall prominently estimate the dollar
6 amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class
7 Member, and the number of Work Weeks and PAGA Pay Periods (if applicable) used to calculate
8 these amounts. Before mailing Notice Packets, the Administrator shall update Class Member
addresses using the National Change of Address database.

9 8.4.3 Not later than 3 business days after the Administrator’s receipt of any
10 Notice Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice
11 Packet using any forwarding address provided by the USPS. If the USPS does not provide a
12 forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail
13 the Notice Packet to the most current address obtained. The Administrator has no obligation to
14 make further attempts to locate or send Notice Packet to Class Members whose Notice Packet is
returned by the USPS a second time.

15 8.4.4 The deadlines for Class Members’ written objections, Challenges to Work
16 Weeks and/or weekly Pay Periods (disputes), and Requests for Exclusion will be extended an
17 additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class
18 Members whose notice is re-mailed. The Administrator will inform the Class Member of the
19 extended deadline with the re-mailed Notice Packet.

20 8.4.5 If the Administrator, Defendant or Class Counsel is contacted by or
21 otherwise discovers any persons who believe they should have been included in the Class Data
22 and should have received Notice Packet, the Parties will expeditiously meet and confer in person
23 or by telephone, and in good faith, in an effort to agree on whether to include them as Class
24 Members. If the Parties agree, such persons will be Class Members entitled to the same rights as
25 other Class Members, and the Administrator will send, via email or overnight delivery, a Class
26 Notice requiring them to exercise options under this Agreement not later than 14 days after receipt
27 of Class Notice, or the deadline dates in the Class Notice, which ever are later.

28 8.5 Requests for Exclusion (Opt-Outs).

1 8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class
2 Settlement must send the Administrator, by fax, email, or mail, a signed written Request for
3 Exclusion not later than 60 days after the Administrator mails the Notice Packet (plus an
4 additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for
5 Exclusion is a letter from a Class Member or his/her representative that reasonably communicates
6 the Class Member's election to be excluded from the Settlement and includes the Class Member's
7 name, address and email address or telephone number. To be valid, a Request for Exclusion must
8 be timely faxed, emailed, or postmarked by the Response Deadline. An Election Not to Participate
in Settlement form, attached as Exhibit B, may be used for this purpose but is not required.

9 8.5.2 The Administrator may not reject a Request for Exclusion as invalid
10 because it fails to contain all the information specified in the Class Notice. The Administrator
11 shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the
12 identity of the person as a Class Member and the Class Member's desire to be excluded. The
13 Administrator's determination shall be final and not appealable or otherwise susceptible to
14 challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion,
15 the Administrator may demand additional proof of the Class Member's identity. The
16 Administrator's determination of authenticity shall be final and not appealable or otherwise
susceptible to challenge.

17 8.5.3 Every Class Member who does not submit a timely and valid Request for
18 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all
19 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
20 Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the
21 Participating Class Member actually receives the Class Notice or objects to the Settlement.

22 8.5.4 Every Class Member who submits a valid and timely Request for
23 Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment
24 or have the right to object to the class action components of the Settlement. Aggrieved Employees
are eligible for an Individual PAGA Payment.

25 8.6 Challenges to Calculation of Work Weeks. Each Class Member shall have 60
26 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class
27 Members whose Notice Packet is re-mailed) to challenge the number of Class Work Weeks and
28 weekly PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. This is also

1 known as a dispute. A Work Week Dispute form, attached as Exhibit C, may be used for this
2 purpose but is not required. The Class Member may challenge the allocation by communicating
3 with the Administrator via fax, email or mail. The Administrator must encourage the challenging
4 Class Member to submit supporting documentation. In the absence of any contrary
5 documentation, the Administrator is entitled to presume that the Work Weeks contained in the
6 Class Notice are correct so long as they are consistent with the Class Data. The Administrator's
7 determination of each Class Member's allocation of Work Weeks and/or weekly Pay Periods shall
8 be final and not appealable or otherwise susceptible to challenge. The Administrator shall
9 promptly provide copies of all challenges to calculation of Work Weeks and/or weekly Pay
10 Periods to Defense Counsel and Class Counsel and the Administrator's determination the
11 challenges.

11 8.7 Objections to Settlement.

12 8.7.1 Only Participating Class Members may object to the class action
13 components of the Settlement and/or this Agreement, including contesting the fairness of the
14 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel
15 Litigation Expenses Payment and/or Class Representative Service Payment.

16 8.7.2 Participating Class Members may send written objections to the
17 Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear
18 in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval
19 Hearing. A Participating Class Member who elects to send a written objection to the
20 Administrator must do so not later than 60 days after the Administrator's mailing of the Notice
21 Packet (plus an additional 14 days for Class Members whose Notice Packet was re-mailed). The
22 Objection form attached as Exhibit D may be used for this purpose but is not required.

23 8.7.3 Non-Participating Class Members have no right to object to any of the class
24 action components of the Settlement.

25 8.8 Administrator Duties. The Administrator has a duty to perform or observe all
26 tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

27 8.8.1 Website, Email Address and Toll-Free Number. The Administrator will
28 establish and maintain and use an internet website to post information of interest to Class
Members including the date, time and location for the Final Approval Hearing and copies of the
Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Notice

1 Packet, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class
2 Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final
3 Approval and the Judgment. The Administrator will also maintain and monitor an email address
4 and a toll-free telephone number to receive Class Member calls, faxes and emails.

5 8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator
6 will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not
7 later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the
8 Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names
9 and other identifying information of Class Members who have timely submitted valid Requests
10 for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class
11 Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for
12 Exclusion from Settlement submitted (whether valid or invalid).

13 8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide
14 written reports to Class Counsel and Defense Counsel that, among other things, tally the number
15 of: Notice Packets mailed or re-mailed, Notice Packets returned undelivered, Requests for
16 Exclusion (whether valid or invalid) received, objections received, challenges to Work Weeks
17 and/or weekly Pay Periods received and/or resolved, and checks mailed for Individual Class
18 Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include
19 provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies
20 of all Requests for Exclusion and objections received.

21 8.8.4 Workweek and/or Pay Period Challenges. The Administrator has the
22 authority to address and make final decisions consistent with the terms of this Agreement on all
23 Class Member challenges over the calculation of Work Weeks and/or weekly Pay Periods. The
24 Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

25 8.8.5 Administrator’s Declaration. Not later than 14 days before the date by
26 which Plaintiff is required to file the Motion for Final Approval of the Settlement, the
27 Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable
28 for filing in Court attesting to its due diligence and compliance with all of its obligations under
this Agreement, including, but not limited to, its mailing of the Notice Packets, the Notice Packets
returned as undelivered, the re-mailing of Notice Packets, attempts to locate Class Members, the
total number of Requests for Exclusion from Settlement it received (both valid or invalid), the

number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

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

9. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE. Defendant estimated for purposes of mediation that there are 9,686 weeks worked by 119 Class Members for the period of February 8, 2018 through May 16, 2023. If the number of weeks worked by Class Members increases by more than ten percent (10%) above the estimated number of 9,686 as of the date of the Court's preliminary approval of the Settlement, then Defendant shall have the option of either (1) increasing the amount of the Gross Settlement Amount by the corresponding percentage increase above ten percent (10%) (i.e., if the number of weeks worked by the Class Members increases above the 10% threshold of 10,655, the Gross Settlement Amount shall increase by the percentage of weeks worked by the Class Members above the threshold of 10,655; calculated as follows: $\text{updated total weeks worked} - 10,655 = \text{workweeks above 10\% threshold}$, $\text{workweeks above 10\% threshold} / 10,655 = \text{percentage increase}$, $\text{percentage increase} \times \$166,713.47 \text{ original Gross Settlement Amount} = \text{additional monies owed}$) or (2) modifying the end date of the Class Period to an earlier date to not trigger the escalation provision. Before the Parties seek or a Party seeks final Court approval of the Settlement, the Settlement Administrator will advise Plaintiff's counsel and Defendant's counsel of Defendant's report of the total number of weeks worked by the Class Members for the period of February 8, 2018 through the date of the Court's preliminary approval of the Settlement.

10. DEFENDANT'S RIGHT TO WITHDRAW. If the number of valid Requests for

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

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

17 11.1 Response to Objections. Each Party retains the right to respond to any objection
18 raised by a Participating Class Member, including the right to file responsive documents in Court
19 no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted
20 by the Court.

21 11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
22 Approval on any material change to the Settlement (including, but not limited to, the scope of
23 release to be granted by Class Members), the Parties will expeditiously work together in good
24 faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final
25 Approval. The Court’s decision to award less than the amounts requested for the Class
26 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation
27 Expenses Payment and/or Administrator Expenses Payment shall not constitute a material
28 modification to the Agreement within the meaning of this paragraph.

11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of
Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for

1 purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
2 administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

3 11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms
4 and conditions of this Agreement, specifically including the Class Counsel Fees Payment and
5 Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their
6 respective counsel, and all Participating Class Members who did not object to the Settlement as
7 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to
8 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions
9 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver
10 of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the
11 Parties' obligations to perform under this Agreement will be suspended until such time as the
12 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect
13 the amount of the Net Settlement Amount.

14 11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If
15 the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a
16 material modification of this Agreement (including, but not limited to, the scope of release to be
17 granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless
18 expeditiously work together in good faith to address the appellate court's concerns and to obtain
19 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration
20 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify
21 the Court's award of the Class Representative Service Payment or any payments to Class Counsel
22 shall not constitute a material modification of the Judgment within the meaning of this paragraph,
23 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.

27 **13. ADDITIONAL PROVISIONS.**

28 13.1 No Admission of Liability, Class Certification or Representative Manageability
for Other Purposes. This Agreement represents a compromise and settlement of highly disputed

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

12 13.2 Confidentiality Prior to Preliminary Approval. Other than information necessary
13 to secure Court approval of this Settlement, Plaintiff, Class Counsel, Defendant, and Defense
14 Counsel separately agree that they and each of them will not disclose, disseminate, and/or
15 publicize, or cause or permit another person to disclose, disseminate, or publicize, any of the
16 terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation,
17 association, government agency, or other entity except: (1) to the Parties' attorneys, accountants,
18 or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a
19 related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4)
20 in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a
21 state or federal government agency. Each Party agrees to immediately notify each other Party of
22 any judicial or agency order, inquiry, or subpoena seeking information about the Action,
23 Settlement, or this Agreement.

23 Plaintiff and Class Counsel will keep all terms of this Settlement confidential and
24 will not make any public disclosure or social media postings about the Action, the Settlement, or
25 this Agreement, except for what is necessary to obtain approval of this Settlement from the Court.
26 If comment or information is requested by the media, Plaintiff and Class Counsel will provide no
27 information other than direct the media to the public records of the action on file with the Court.
28 Class Counsel will take all steps necessary to ensure Plaintiff is aware of, and will encourage
Plaintiff to adhere to, the restriction against public disclosure and media comment on the Action,

1 the Settlement, its terms, and this Agreement. Class Counsel and Plaintiff agree that this
2 Confidentiality term is a material term and that breach of this provision shall be deemed a material
3 breach of this Settlement. The Parties agree that breach of this Confidentiality term shall cause
4 irreparable harm to Defendant.

5 13.3 Plaintiff, Class Counsel, Defendant, and Defense Counsel separately agree not
6 to, directly or indirectly, initiate any conversation or other communication with any third party
7 regarding this Agreement or the matters giving rise to this Agreement except to respond only that
8 “the matter was resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s
9 communications with Class Members in accordance with Class Counsel’s ethical obligations
10 owed to Class Members. Nothing in this Agreement shall prohibit Class Counsel from disclosing
11 this Settlement in declarations and/or other evidence submitted to Courts concerning their
12 qualifications to serve as Class Counsel.

13 13.4 No Solicitation. The Parties separately agree that they and their respective
14 counsel and employees will not solicit any Class Member to opt out of or object to the Settlement,
15 or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class
16 Counsel’s ability to communicate with Class Members in accordance with Class Counsel’s ethical
17 obligations owed to Class Members.

18 13.5 Integrated Agreement. Upon execution by all Parties and their counsel, this
19 Agreement together with its attached exhibits shall constitute the entire agreement between the
20 Parties relating to the Settlement, superseding any and all oral representations, warranties,
21 covenants, or inducements made to or by any Party.

22 13.6 Attorney Authorization. Class Counsel and Defense Counsel separately warrant
23 and represent that they are authorized by Plaintiff and Defendant, respectively, to take all
24 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
25 to effectuate its terms, and to execute any other documents reasonably required to effectuate the
26 terms of this Agreement including any amendments to this Agreement.

27 13.7 Cooperation. The Parties and their counsel will cooperate with each other and
28 use their best efforts, in good faith, to implement the Settlement by, among other things,
modifying the Settlement Agreement, submitting supplemental evidence and supplementing
points and authorities as requested by the Court. In the event the Parties are unable to agree upon

1 the form or content of any document necessary to implement the Settlement, or on any
2 modification of the Agreement that may become necessary to implement the Settlement, the
3 Parties will seek the assistance of a mediator and/or the Court for resolution.

4 13.8 No Prior Assignments. The Parties separately represent and warrant that they
5 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
6 or encumber to any person or entity and portion of any liability, claim, demand, action, cause of
7 action, or right released and discharged by the Party in this Settlement.

8 13.9 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense
9 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
10 Settlement be relied upon as such within the meaning of United States Treasury Department
11 Circular 230 (31 CFR Part 10, as amended) or otherwise.

12 13.10 Modification of Agreement. This Agreement, and all parts of it, may be
13 amended, modified, changed, or waived only by an express written instrument signed by all
14 Parties or their representatives, and approved by the Court.

15 13.11 Agreement Binding on Successors. This Agreement will be binding upon, and
16 inure to the benefit of, the successors of each of the Parties.

17 13.12 Applicable Law. All terms and conditions of this Agreement and its exhibits will
18 be governed by and interpreted according to the internal laws of the state of California, without
19 regard to conflict of law principles.

20 13.13 Cooperation in Drafting. The Parties have cooperated in the drafting and
21 preparation of this Agreement. This Agreement will not be construed against any Party on the
22 basis that the Party was the drafter or participated in the drafting.

23 13.14 Confidentiality. To the extent permitted by law, all agreements made, and orders
24 entered during Action and in this Agreement relating to the confidentiality of information shall
25 survive the execution of this Agreement.

26 13.15 Use and Return of Class Data. Information provided to Class Counsel pursuant
27 to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class
28 Counsel by Defendant in connection with the mediation, other settlement negotiations, or in
connection with the Settlement, may be used only with respect to this Settlement, and no other
purpose, and may not be used in any way that violates any existing contractual agreement, statute,
or rule of court. Not later than 90 days after the date when the Court discharges the

1 Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement
2 funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from
3 Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant
4 makes a written request to Class Counsel for the return, rather than the destructions, of Class
5 Data.

6 13.16 Headings. The descriptive heading of any section or paragraph of this Agreement
7 is inserted for convenience of reference only and does not constitute a part of this Agreement.

8 13.17 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement
9 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
10 weekend or federal legal holiday, such date or deadline shall be on the first business day
11 thereafter.

12 13.18 Notice. All notices, demands or other communications between the Parties in
13 connection with this Agreement will be in writing and deemed to have been duly given as of the
14 third business day after mailing by United States mail, or the day sent by email or messenger,
15 addressed as follows:

16 To Plaintiff:
17 David G. Spivak, Esq.
18 The Spivak Law Firm
19 8605 Santa Monica Bl
20 PMB 42554
21 West Hollywood, CA 90069
22 david@spivaklaw.com

23 To Defendant:
24 Ian B. Wieland, Esq.
25 Sagaser, Watkins & Wieland PC
26 5260 N. Palm Ave.
27 Ste. 400
28 Fresno, CA 93704
ian@sw2law.com; amanda@sw2law.com; tristan@sw2law.com

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

1 themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove
2 the existence and contents of this Agreement.

3 13.20 Stay of Litigation. The Parties agree that upon the execution of this Agreement
4 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
5 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
6 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
7 process.

8 Dated: 10 / 30 / 2023

By: 
JORGE L. LEON

9
10 Dated: _____

By: _____
Herbt J. Davis for
Davis & Roberts Construction, Inc.

13 THE SPIVAK LAW FIRM

14
15 Dated: 10 / 20 / 2023

By: 
DAVID G. SPIVAK, Attorneys for
Plaintiff, JORGE L. LEON, and all
others similarly situated

18
19 UNITED EMPLOYEES LAW GROUP, PC

20
21 Dated: _____

By: _____
WALTER L. HAINES, Attorneys for
Plaintiff, JORGE L. LEON, and all
others similarly situated

24 SAGASER, WATKINS & WIELAND PC

25
26 Dated: _____

By: _____
IAN B. WIELAND, Attorneys for
Defendant, DAVIS & ROBERTS
CONSTRUCTION, INC.

1 themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove
2 the existence and contents of this Agreement.

3 13.20 Stay of Litigation. The Parties agree that upon the execution of this Agreement
4 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
5 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
6 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
7 process.

8 Dated: _____

By: _____
JORGE L. LEON

10 Dated: _____

By: _____
Herbt J. Davis for
Davis & Roberts Construction, Inc.

13 THE SPIVAK LAW FIRM

15 Dated: _____

By: _____
DAVID G. SPIVAK, Attorneys for
Plaintiff, JORGE L. LEON, and all
others similarly situated

19 UNITED EMPLOYEES LAW GROUP, PC

21 Dated: October 20, 2023

By: 
WALTER L. HAINES, Attorneys for
Plaintiff, JORGE L. LEON, and all
others similarly situated

25 SAGASER, WATKINS & WIELAND PC

26 Dated: _____

By: _____
IAN B. WIELAND, Attorneys for
Defendant, DAVIS & ROBERTS
CONSTRUCTION, INC.

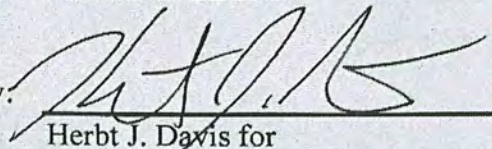
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7 process.

8 Dated: _____

By: _____
JORGE L. LEON

10 Dated: 11-14-2023

11 By: 
Herbt J. Davis for
12 Davis & Roberts Construction, Inc.

13 THE SPIVAK LAW FIRM

15 Dated: _____

16 By: _____
DAVID G. SPIVAK, Attorneys for
17 Plaintiff, JORGE L. LEON, and all
18 others similarly situated

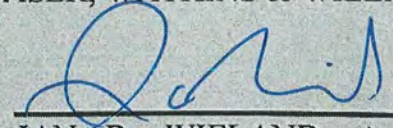
19 UNITED EMPLOYEES LAW GROUP, PC

21 Dated: _____

22 By: _____
WALTER L. HAINES, Attorneys for
23 Plaintiff, JORGE L. LEON, and all
24 others similarly situated

25 SAGASER, WATKINS & WIELAND PC

26 Dated: 11/14/2023

27 By: 
IAN B. WIELAND, Attorneys for
28 Defendant, DAVIS & ROBERTS
CONSTRUCTION, INC.

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EXHIBIT A

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

(case name: *Jorge L. Leon v. Davis & Roberts Construction, Inc.* and number 22CECG00407)

***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 Davis & Roberts Construction, Inc. (“Defendant”) for alleged violations of California’s labor laws. The Action was filed by one of Defendant’s employees Jorge L. Leon (“Plaintiff”) and seeks payment of (1) wages and other relief for a class of all current and former hourly, nonexempt employees of Defendant in California (“Class Members”) Defendant during the Class Period (February 08, 2018 to <<the date of preliminary approval of this Settlement>>); and (2) penalties under the California Private Attorney General Act (“PAGA”) for hourly, non-exempt employees who worked for Defendant during the PAGA Period (December 23, 2020 to <<the date of preliminary approval of this Settlement>>) (“Aggrieved Employees”).

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

Based on Defendant’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$<<IndividualClassPaymentAmount>> (less withholding) and your Individual PAGA Payment is estimated to be \$<<IndividualPAGAPaymentAmount>>.** The estimated dollar value of a Work Week is <<\$increment type value>> and a weekly Pay Period is <<@PayPeriodValue>>. 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 Defendant’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.) The individual payments amounts will vary. However, the average Individual Class Payment to a Class Member is estimated to be <<\$Average Individual Class Payment Amount>>. The average Individual PAGA Payment to a Class Member is estimated to be <<\$Average Individual PAGA Payment Amount>>. The highest Individual Class Payment to a Class Member is estimated to be <<\$Highest Individual Class Payment Amount>> and the lowest is estimated to be <<\$Lowest Individual Class Payment Amount>>. The highest Individual PAGA Payment to a Class Member is estimated to be <<\$Highest Individual PAGA Payment Amount>> and the lowest is estimated to be <<\$Lowest Individual PAGA Payment Amount>>.

The above estimates are based on Defendant’s records showing that **you worked <<__>> Work Weeks** during the Class Period and **you worked <<__>> Pay Periods** during the PAGA Period. If you believe that you worked more Work Weeks 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. The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the Final Approval Hearing. 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 Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

If you worked for Defendant 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 Defendant.

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting a 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 claims for California labor law violations against Defendant, 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.

Defendant 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 claims against Defendant 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 <<RESPONSE DEADLINE>>	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. You can use the enclosed Election Not To Participate In Settlement form for this purpose. 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. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and Plaintiff releases Defendant from civil penalties it may owe to the Aggrieved Employees.
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by <<RESPONSE DEADLINE>>	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. You can use the enclosed Objection form for this purpose. 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.
You Can Participate in the <<FinalApprovalHearingDate>> Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on <<FinalApprovalHearingDate>>. 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 whether or not they submitted a written objection. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Work Week / Pay Periods Written Challenges Must be Submitted by <<RESPONSE DEADLINE>>	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many Work Weeks 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 Work Weeks and number of PAGA Period Pay Periods you worked according to Defendant’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by <<RESPONSE DEADLINE>>. See Section 4 of this Notice. You can use the enclosed Work Weeks Dispute form for this purpose.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Defendant. The Action accuses Defendant of violating California labor laws by failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, failure to pay wages, unauthorized and unlawful wage deductions, and related violations of the Labor Code. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the PAGA (Labor Code section 2698 and sections that follow) (“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, PC (“Class Counsel.”)

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Leon v. Davis & Roberts Construction, Inc., et al.
Class Action and PAGA Settlement Agreement

1 Defendant strongly denies violating any laws or failing to pay any wages and contends it complied
2 with all applicable laws.

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

4 So far, the Court has made no determination whether Defendant or Plaintiff is correct on the
5 merits. In the meantime, Plaintiff and Defendant hired an experienced, neutral mediator in an
6 effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather
7 than continuing the expensive and time-consuming process of litigation. The negotiations were
8 successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to
9 jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff
10 and Defendant have negotiated a proposed Settlement that is subject to the Court’s Final
11 Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By
12 agreeing to settle, Defendant does not admit any violations or concede the merit of any claims.

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

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

20 A. Gross Settlement Amount. Defendant Will Pay \$166,713.47 as the Gross
21 Settlement Amount (Gross Settlement). The Gross Settlement Amount is inclusive of all amounts
22 to be paid to Class Members as part of a “Pick Up Stix” campaign. Defendant has agreed to
23 deposit the Gross Settlement Amount into an account controlled by the Administrator of the
24 Settlement. The Administrator will use the Gross Settlement Amount to pay the Individual Class
25 Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s
26 attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the
27 California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants
28 Final Approval, Defendant will fund the Gross Settlement Amount not more than 14 days after
the Judgment entered by the Court become final. The Judgment will be final on the date the Court
enters Judgment, or a later date if Participating Class Members object to the proposed Settlement
or the Judgment is appealed. The Gross Settlement Amount includes the \$56,713.47 Defendant
paid to Class Members as part of its direct negotiations with individual Class Members to release
their claims (“Pick-Up-Stix campaign”).

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

1. Attorney Fees and Costs. Up to \$55,571.00 (33.33% of the Gross

1 Settlement to Class Counsel for attorneys' fees and up to \$20,000.00 for their litigation expenses.
2 To date, Class Counsel have worked and incurred expenses on the Action without payment.

3 2. Class Representative Service Award. Up to \$15,000.00 as a Class
4 Representative Service Award for filing the Action, working with Class Counsel and representing
5 the Class. A Class Representative Service Award will be the only monies Plaintiff will receive
6 other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.

7 3. Administration Expenses. Up to \$10,000.00 to the Administrator for
8 services administering the Settlement.

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

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

14 Defendant estimated for purposes of mediation that there are 9,686 weeks worked by 119
15 Class Members for the period of February 8, 2018 through May 16, 2023. If the number of weeks
16 worked by Class Members increases by more than ten percent (10%) above the estimated number
17 of 9,686 as of the date of the Court's preliminary approval of the Settlement, then Defendant shall
18 have the option of either (1) increasing the amount of the Gross Settlement Amount by the
19 corresponding percentage increase above ten percent (10%) (i.e., if the number of weeks worked
20 by the Class Members increases above the 10% threshold of 10,655, the Gross Settlement Amount
21 shall increase by the percentage of weeks worked by the Class Members above the threshold of
22 10,655; calculated as follows: updated total weeks worked - 10,655 = workweeks above 10%
23 threshold, workweeks above 10% threshold / 10,655 = percentage increase, percentage increase
24 x \$166,713.47 original Gross Settlement Amount = additional monies owed) or (2) modifying the
25 end date of the Class Period to an earlier date to not trigger the escalation provision. Before the
26 Parties seek or a Party seeks final Court approval of the Settlement, the Settlement Administrator
27 will advise Plaintiff's counsel and Defendant's counsel of Defendant's report of the total number
28 of weeks worked by the Class Members for the period of February 8, 2018 through the date of
the Court's preliminary approval of the Settlement.

29 C. Net Settlement Distributed to Class Members. After making the above deductions
30 in amounts approved by the Court, the Administrator will distribute the rest of the Gross
31 Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class
32 Members based on their Class Period Work Weeks.

33 D. Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking
34 the Court to approve an allocation of 20.00% of each Individual Class Payment to taxable wages
35 ("Wage Portion") and 80.00% to interest and penalties ("Non-Wage Portion."). The Wage Portion
36 is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay
37 employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted

1 as penalties rather than wages for tax purposes. The Administrator will report the Individual
2 PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099
Forms.

3 Although Plaintiff and Defendant 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
any questions about the tax consequences of the proposed Settlement.

7 E. Need to Promptly Cash Payment Checks. The front of every check issued for
8 Individual Class Payments and Individual PAGA Payments will show the date when the check
9 expires (the void date). If you don't cash it by the void date, your check will be automatically
10 cancelled, and the monies will be deposited with the California Controller's Unclaimed Property
11 Fund (https://www.sco.ca.gov/search_upd.html) in your name. If the monies represented by your
check are sent to the Controller's Unclaimed Property Fund, you should consult the rules of the
Fund for instructions on how to retrieve your money. You can contact the Unclaimed Property
Fund at (800) 992-4647.

12 F. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated
13 as a Participating Class Member, participating fully in the Class Settlement, unless you notify the
14 Administrator in writing, not later than <<RESPONSE DEADLINE>>, that you wish to opt-out.
15 The easiest way to notify the Administrator is to email, fax, or mail a written and signed Request
16 for Exclusion by the <<RESPONSE DEADLINE>> Response Deadline. The Request for
17 Exclusion should be a letter from a Class Member or his/her representative setting forth a Class
18 Member's name, present address, telephone number, and a simple statement electing to be
excluded from the Settlement. You may use the enclosed Election Not To Participate In
Settlement form for this purpose. Excluded Class Members (i.e., Non-Participating Class
Members) will not receive Individual Class Payments, but will preserve their rights to personally
pursue claims against Defendant for violations of California's labor laws.

19 You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude
20 themselves from the Class Settlement (Non-Participating Class Members) remain eligible for
21 Individual PAGA Payments and Plaintiff releases Defendant from civil penalties it may owe to
the Aggrieved Employees.

22 G. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is
23 possible the Court will decline to grant Final Approval of the Settlement or decline enter a
24 Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff
25 and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not
pay any money and Class Members will not release any claims against Defendant.

26 H. Administrator. The Court has appointed a neutral company, Simpluris, Inc. (the
27 "Administrator") to send this Notice, calculate and make payments, and process Class Members'
28 Requests for Exclusion. The Administrator will also decide Class Member Challenges over Work
Weeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to

1 administer the Settlement. The Administrator's contact information is contained in Section 9 of
2 this Notice.

3 I. Participating Class Members' Release. After the Judgment is final and Defendant
4 has fully funded the Gross Settlement (and separately paid all employer payroll taxes),
5 Participating Class Members will be legally barred from asserting any of the claims released under
6 the Settlement. This means that unless you opted out by validly excluding yourself from the Class
7 Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or
8 its officers, directors, employees, and agents for wages based on the Class Period facts and PAGA
9 penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

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

11 All Participating Class Members, on behalf of themselves and their respective
12 former and present representatives, agents, attorneys, heirs, administrators,
13 successors, and assigns, release Released Parties from all claims stated in the
14 Operative Complaint and those based solely upon the facts alleged in the Operative
15 Complaint. Except as set forth in Section 6.3 of the Settlement Agreement,
16 Participating Class Members do not release any other claims, including claims for
17 vested benefits, wrongful termination, violation of the Fair Employment and
18 Housing Act, unemployment insurance, disability, social security, workers'
19 compensation, or claims based on facts occurring outside the Class Period.

20 J. The PAGA Release. After the Court's judgment is final, and Defendant has paid
21 the Gross Settlement (and separately paid the employer-side payroll taxes), Plaintiff releases all
22 claims for civil penalties that could have been sought by the Labor Commissioner for the
23 violations identified in Plaintiff's pre-filing letter to the LWDA; Plaintiff does not release the
24 claim for wages or damages of any Aggrieved Employee unless such Aggrieved Employee is a
25 Participating Class Member.

26 **4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

27 A. Individual Class Payments. The Administrator will calculate Individual Class
28 Payments by (a) dividing the Net Settlement Amount by the total number of Work Weeks worked
by all Participating Class Members, and (b) multiplying the result by the number of Work Weeks
worked by each individual Participating Class Member. An Individual Class Payment will be
offset by any amount already paid to the Class Member as part of the Defendant's "Pick Up Stix"
campaign.

B. Individual PAGA Payments. The Administrator will calculate Individual PAGA
Payments by (a) dividing \$1,000.00 by the total number of PAGA Period 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. An Individual PAGA Payment will be
offset by any amount already paid to the Aggrieved Employee as part of the Defendant's "Pick Up
Stix" campaign.

1 C. Workweek/Pay Period Challenges. The number of Class Work Weeks you worked
2 during the Class Period and the number of PAGA Pay Periods you worked during the PAGA
3 Period, as recorded in Defendant's records, are stated in the first page of this Notice. You have
4 until <<RESPONSE DEADLINE>> to challenge the number of Work Weeks and/or weekly Pay
5 Periods credited to you. You can submit your challenge by signing and sending a letter to the
6 Administrator by email, fax or regular U.S. mail. You can use the enclosed Dispute form for this
7 purpose. Section 9 of this Notice has the Administrator's contact information.

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

11 5. HOW WILL I GET PAID?

12 A. Participating Class Members. The Administrator will send, by U.S. mail, a single
13 check to every Participating Class Member (i.e., every Class Member who doesn't opt-out)
14 including those who also qualify as Aggrieved Employees. The single check will combine the
15 Individual Class Payment and the Individual PAGA Payment.

16 B. Non-Participating Class Members. The Administrator will send, by U.S. mail, a
17 single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class
18 Settlement (i.e., every Non-Participating Class Member).

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

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

21 Email, fax, or mail a written and signed letter with your name, present address, telephone
22 number, and a simple statement that you do not want to participate in the Settlement. You may
23 use the enclosed Election Not To Participate In Settlement form for this purpose. The
24 Administrator will exclude you based on any writing communicating your request be excluded.
25 Be sure to personally sign your request, identify the Action as *Jorge L. Leon vs. Davis & Roberts*
26 *Construction, Inc.*, Case No. 22CECG00407, and include your identifying information (full name,
27 address, telephone number, approximate dates of employment, and social security number for
28 verification purposes). You must make the request yourself. If someone else makes the request
for you, it will not be valid. You should send your Request for Exclusion to the Administrator by
email, fax, or send by regular U.S. mail. **The Administrator must be sent your request to be
excluded by <<RESPONSE DEADLINE>>, or it will be invalid.** Section 9 of the Notice has

the Administrator's contact information. If you are an Aggrieved Employee, you will still receive an Individual PAGA Payment.

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 Defendant are asking the Court to approve. At least 16 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 and the Settlement Agreement on the Administrator's Website <<ADMINISTRATOR WEBSITE>> or the Court's website <<COURT WEBSITE>>.

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 <<RESPONSE DEADLINE>>.** 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, *Jorge L. Leon vs. Davis & Roberts Construction, Inc.*, case no. 22CECG00407, and include your name, current address, telephone number, and approximate dates of employment for Defendant and sign the objection. Section 9 of this Notice has the Administrator's contact information. You may use the enclosed Objection form for this purpose. You should send your objection to the Administrator by email, fax, or send by regular U.S. mail.

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

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on <<FINAL APPROVAL HEARING DATE>> at <<FINAL APPROVAL HEARING TIME>> in Department 501 of the Fresno Superior Court, located at B.F. Sisk Court, 1130 O Street, Fresno, CA 93721. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, 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 by <<CourtConnect/CourtCall/MicrosoftTeams>>

(<https://www.<<CourtVirtualAppearanceLink>>>). Check the Court's website for the most current information.

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

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendant and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to the Administrator's website at <<CLERK OF COURT'S PHONE NUMBER>>. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.<<COURT'S WEBSITE>>.aspx>) and entering the Case Number for the Action, Case No. 22CECG00407. You can also make an appointment to personally review court documents in the Clerk's Office at the B.F. Sisk Court by calling <<CLERK OF COURT'S PHONE NUMBER>>.

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

Class Counsel:

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

Administrator:

Name of Company:	Simpluris, Inc.
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 (https://www.sco.ca.gov/search_upd.html) for instructions on how to retrieve the funds. You can contact the Unclaimedx Property Fund at (800)

1 992-4647.

2 ☐ you will have no way to recover the money.

3 **11. WHAT IF I CHANGE MY ADDRESS?**

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

EXHIBIT B

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Leon v. Davis & Roberts Construction, Inc.
Superior Court of the State of California, County of Fresno
Case No. 22CECG00407

ELECTION NOT TO PARTICIPATE IN SETTLEMENT FORM

**IF YOU WANT TO BE INCLUDED IN THIS CLASS ACTION SETTLEMENT AND BE ELIGIBLE FOR
A SHARE OF THE SETTLEMENT PROCEEDS,
DO NOT FILL OUT THIS FORM.**

**IF YOU DO NOT WANT TO BE INCLUDED IN THE SETTLEMENT, YOU MUST COMPLETE AND
SIGN THIS DOCUMENT AND MAIL IT TO THE ADDRESS BELOW, EMAILED, FAXED, OR
POSTMARKED NOT LATER THAN <<RESPONSE DEADLINE>>:**

Leon v. Davis & Roberts Construction, Inc. Class Action Administrator
c/o _____

I declare as follows: I have received notice of the proposed settlement in this action and I wish to be excluded from the class and ***not*** to participate in the proposed settlement. I understand this means that I will not be bound by the Settlement and also will not share in the settlement proceeds. I understand that exclusion from the Class Settlement will not result in exclusion from the PAGA portion of the Settlement. If I am an Aggrieved Employee under the Settlement, I will still receive an Individual PAGA Payment.

(Typed or Printed Name)

(Address)

(City, State, Zip Code)

EXHIBIT C

1 **WORK WEEK DISPUTE FORM**

2 Superior Court of The State of California

3 For The County of Fresno

4 *Jorge L. Leon v. Davis & Roberts Construction, Inc.*, Case No. 22CECG00407

5 Indicate Name/Address Changes, if any:

6 <<Name>>

7 <<Address>>

8 <<City>>, <<State>> <<Zip Code>>

9 XX - XX -

10 TO ALL CURRENT AND FORMER HOURLY, NONEXEMPT EMPLOYEES OF
11 DEFENDANT IN CALIFORNIA FROM FEBRUARY 8, 2018 THROUGH THE DATE OF
12 PRELIMINARY APPROVAL OF THIS SETTLEMENT.

13 The amount of your estimated Settlement Award is based upon the number of Work Weeks you
14 worked between February 08, 2018 and <<the date of preliminary approval of this Settlement>>
15 and Work Weeks you worked between December 23, 2020 and the date of preliminary approval
16 of this Settlement. "Individual Class Work Weeks" are defined as any Work Week in which you
17 worked at least one (1) day as an hourly, non-exempt of Davis & Roberts Construction, Inc.
18 ("Defendant") in California during the calendar week. "Individual PAGA Work Weeks" are
19 defined as any Work Week (Pay Period) in which you worked at least one (1) day as an hourly,
20 non-exempt of Davis & Roberts Construction, Inc. ("Defendant") in California during the
21 calendar week during the period of December 23, 2020 through <<the date of preliminary
22 approval of this Settlement>>. The number of Class and PAGA Work Weeks applicable to your
23 claim are set forth below.

24 **YOUR ELIGIBLE WORK WEEKS**

25 Defendant's records indicate that you worked <<number of Work Weeks>> Work Weeks
26 between February 08, 2018 and <<the date of preliminary approval of this Settlement>> and
27 <<number of Work Weeks>> Work Weeks between December 23, 2020 through <<the date of
28 preliminary approval of this Settlement>>.

29 **YOUR ESTIMATED SETTLEMENT AWARD AND DISPUTE PROCEDURE**

30 Under the terms of the Class Action Settlement, you are entitled to receive a settlement payment
31 in the approximate estimated amount of <<\$Settlement Share Amount>>, minus all applicable
32 payroll and tax deductions, after the Court approves the Settlement and it goes into effect. This
33 process may take six months or more. You will receive a Form W-2 reflecting the payment to
34 you. Your Settlement Share reflected on this Notice is only an estimate. The exact amount of the
35 payment could vary, up or down.

1 If you wish to dispute the number of February 08, 2018 credited to you, or anything else about
2 your employment status, you must complete and return this form by indicating what you believe
3 is incorrect on the blank lines below and return it on or before <<RESPONSE DEADLINE>> to
4 the Administrator by email, fax, or regular U.S. Mail with proof of the submission date (such as
5 a postmark or delivery service date stamp). You may use this Work Weeks Dispute form for this
6 purpose. You must also send any documents or other information that you contend supports your
7 belief that the information set forth above is incorrect. The Administrator will resolve any dispute
8 based upon Defendant's records and any information you provide. Please be advised that the
9 information on this Work Weeks Dispute Form is presumed to be correct unless the documents
10 you submit are company records from Defendant.

11 _____
12 _____
13 _____
14 _____
15 _____

16 **UNLESS YOU ARE FILING A DISPUTE REGARDING THE NUMBER OF WORK**
17 **WEEKS, RECEIPT OF A SETTLEMENT PAYMENT, OR YOUR EMPLOYMENT**
18 **STATUS, YOU DO NOT NEED TO TAKE ANY ACTION**

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EXHIBIT D

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OBJECTION FORM

Jorge L. Leon v. Davis & Roberts Construction, Inc.
Superior Court of the State California, County of Fresno
Case No. 22CECG00407

Please verify and/or complete any missing identifying information:

CPT ID: <<CPT ID>>

<<Name>>

<<Address1>>

<<Address2>>

<<City>>, <<State>> <<Zip>>

CORRECT NAME AND ADDRESS HERE:

Telephone Number: (____) ____ - ____

THIS FORM IS TO BE USED ONLY IF YOU WANT TO PARTICIPATE IN THE SETTLEMENT, BUT YOU OBJECT TO THE TERMS OF THE SETTLEMENT. IF YOU OBJECT TO THE SETTLEMENT, YOU SHOULD SIGN AND COMPLETE THIS FORM ACCURATELY AND IN ITS ENTIRETY (OR ONE LIKE IT), AND YOU SHOULD EMAIL IT TO <<____@____.COM>>, FAX IT TO <<XXX-XXX-XXXX>>, OR MAIL IT BY FIRST CLASS U.S. MAIL TO THE ADMINISTRATOR SO THAT IT IS POSTMARKED ON OR BEFORE <<RESPONSE DEADLINE>>. THE ADDRESS FOR THE ADMINISTRATOR IS NOTED ON PAGE TWO OF THIS FORM.

IF YOU DO NOT OBJECT TO THE SETTLEMENT, DO NOT SUBMIT THIS FORM. THE ADMINISTRATOR WILL SEND THIS OBJECTION AND ANY SUPPORTING DOCUMENTS TO THE ATTORNEYS FOR THE PARTIES. THE ATTORNEYS FOR THE PARTIES WILL FILE THE OBJECTION WITH THE COURT.

The Court will consider your objection at the Final Approval Hearing if you timely submit it. Include any and all evidence and supporting papers (including, without limitation, all briefs, written evidence, and declarations) that you would like the Court to consider. However, you may speak to the Court at the final approval hearing whether or not you submit a timely objection.

[] I OBJECT to the *Jorge L. Leon v. Davis & Roberts Construction, Inc.* Settlement on the following grounds (if additional space necessary, please include additional sheets of paper):

[] I am or will be represented by an attorney (provide name and address of attorney on lines below if applicable):

Executed on _____, 2023

(Signature)

<<Name>>

(Printed Name)

EMAIL TO THE ADMINISTRATOR: <<____@____.COM>>

FAX TO THE ADMINITRATOR: <<(XXX) XXX-XXXX>>

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL
POSTMARKED NOT LATER THAN <<RESPONSE DEADLINE>>:

Jorge L. Leon v. Davis & Roberts Construction, Inc. Administrator

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EXHIBIT E

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

JORGE L. LEON, on behalf of himself 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.

DAVIS & ROBERTS CONSTRUCTION, INC.,
a California corporation; and DOES 1-50,
inclusive,

Defendant(s).

Case No. 22CECG00407

**[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT**

Action filed: February 08, 2022
Dept: 501, The Honorable D. Tyler Tharpe

1 The Motion of Plaintiff Jorge L. Leon (hereafter referred to as "Plaintiff") for Preliminary
2 Approval of a Class Action Settlement (the "Motion") was considered by the Court, the
3 Honorable D. Tyler Tharpe presiding. The Court having considered the Motion, the Class Action
4 and PAGA Settlement Agreement and Class Notice ("Settlement" or "Settlement Agreement"),
5 and supporting papers, HEREBY ORDERS THE FOLLOWING:
6

7 1. The Court grants preliminary approval of the Settlement and the Settlement Class
8 based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary
9 Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court
10 has determined only that there is sufficient evidence to suggest that the proposed settlement
11 might be fair, adequate, and reasonable, and that any final determination of those issues
12 will be made at the final hearing. The Court will make a determination at the hearing on the
13 motion for final approval of class action settlement (the "Final Approval Hearing") as to whether
14 the Settlement is fair, adequate and reasonable to the Settlement Class.
15

16 2. For purposes of this Preliminary Approval Order, the "Settlement Class" means
17 all current and former hourly, nonexempt employees of Defendant in California (collectively
18 "Class Members"), who worked anytime during the Class Period. The "Class Period" shall mean
19 the period of time from February 08, 2018, through the date of preliminary approval of this
20 Settlement.
21

22 3. Defendant estimated for purposes of mediation that there are 9,686 weeks worked
23 by 119 Class Members for the period of February 8, 2018 through May 16, 2023. If the number
24 of weeks worked by Class Members increases by more than ten percent (10%) above the
25 estimated number of 9,686 as of the date of the Court's preliminary approval of the Settlement,
26 then Defendant shall have the option of either (1) increasing the amount of the Gross Settlement
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1 Amount by the corresponding percentage increase above ten percent (10%) (i.e., if the number of
2 weeks worked by the Class Members increases above the 10% threshold of 10,655, the Gross
3 Settlement Amount shall increase by the percentage of weeks worked by the Class Members
4 above the threshold of 10,655; calculated as follows: updated total weeks worked - 10,655 =
5 workweeks above 10% threshold, workweeks above 10% threshold / 10,655 = percentage
6 increase, percentage increase x \$166,713.47 original Gross Settlement Amount = additional
7 monies owed) or (2) modifying the end date of the Class Period to an earlier date to not trigger
8 the escalation provision. Before the Parties seek or a Party seeks final Court approval of the
9 Settlement, the Settlement Administrator will advise Plaintiff's counsel and Defendant's counsel
10 of Defendant's report of the total number of weeks worked by the Class Members for the period
11 of February 8, 2018 through the date of the Court's preliminary approval of the Settlement.
12

13
14 4. "Effective Date" means the date by when both of the following have occurred: (a)
15 the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the
16 Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no
17 Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if
18 one or more Participating Class Members objects to the Settlement, the day after the deadline for
19 filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the
20 day after the appellate court affirms the Judgment and issues a remittitur.
21

22
23 5. This action is provisionally certified pursuant to section 382 of the California Code
24 of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action for
25 purposes of settlement only with respect to the proposed Settlement Class.

26
27 6. Not later than 15 days after the Court grants Preliminary Approval of the
28 Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form

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

12
13 7. No later than three (3) business days after receipt of the Class Data, the
14 Administrator shall notify Class Counsel that the list has been received and state the number of
15 Class Members, PAGA Members, Work Weeks, and Pay Periods in the Class Data.
16

17 8. Using best efforts to perform as soon as possible, and in no event later than 14
18 days after receiving the Class Data, the Administrator will send to all Class Members identified
19 in the Class Data, via first-class United States Postal Service ("USPS") mail, the Notice Packet
20 with Spanish translation, if applicable substantially in the forms attached to this order as **Exhibits**
21 **A, B, C, and D**. The first page of the Class Notice shall prominently estimate the dollar amounts
22 of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member,
23 and the number of Work Weeks and PAGA Pay Periods (if applicable) used to calculate these
24 amounts. Before mailing Notice Packets, the Administrator shall update Class Member addresses
25 using the National Change of Address database.
26

27 9. Not later than 3 business days after the Administrator's receipt of any Notice
28

1 Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice Packet
2 using any forwarding address provided by the USPS. If the USPS does not provide a forwarding
3 address, the Administrator shall conduct a Class Member Address Search, and re-mail the Notice
4 Packet to the most current address obtained. The Administrator has no obligation to make further
5 attempts to locate or send Notice Packet to Class Members whose Notice Packet is returned by
6 the USPS a second time.
7

8 10. Class Counsel's contact information is David G. Spivak, Esq., The Spivak Law
9 Firm, 8605 Santa Monica Bl, PMB 42554, West Hollywood, CA 90069. Defense Counsel's
10 contact information is Ian B. Wieland, Esq., Sagaser, Watkins & Wieland PC, 5260 N. Palm Ave.,
11 Ste. 400, Fresno, CA, 93704.
12

13 11. The deadlines for Class Members' written objections, Challenges to Work Weeks
14 and/or weekly Pay Periods (disputes), and Requests for Exclusion will be extended an additional
15 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose
16 notice is re-mailed. The Administrator will inform the Class Member of the extended deadline
17 with the re-mailed Notice Packet.
18

19 12. If the Administrator, Defendant or Class Counsel is contacted by or otherwise
20 discovers any persons who believe they should have been included in the Class Data and should
21 have received Notice Packet, the Parties will expeditiously meet and confer in person or by
22 telephone, and in good faith, in an effort to agree on whether to include them as Class Members.
23 If the Parties agree, such persons will be Class Members entitled to the same rights as other Class
24 Members, and the Administrator will send, via email or overnight delivery, a Notice Packet
25 requiring them to exercise options under the Settlement Agreement not later than 14 days after
26 receipt of Notice Packet, or the deadline dates in the Notice Packet, which ever are later.
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1 13. Requests for Exclusion. Class Members who wish to exclude themselves (opt-out
2 of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written
3 Request for Exclusion not later than 60 days after the Administrator mails the Notice Packet (plus
4 an additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for
5 Exclusion is a letter from a Class Member or his/her representative that reasonably communicates
6 the Class Member's election to be excluded from the Settlement and includes the Class Member's
7 name, address and email address or telephone number. To be valid, a Request for Exclusion must
8 be timely faxed, emailed, or postmarked by the Response Deadline. An Election Not to Participate
9 in Settlement form, attached as Exhibit B, may be used for this purpose but is not required.

10
11 14. The Administrator may not reject a Request for Exclusion as invalid because it
12 fails to contain all the information specified in the Class Notice. The Administrator shall accept
13 any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of
14 the person as a Class Member and the Class Member's desire to be excluded. The Administrator's
15 determination shall be final and not appealable or otherwise susceptible to challenge. If the
16 Administrator has reason to question the authenticity of a Request for Exclusion, the
17 Administrator may demand additional proof of the Class Member's identity. The Administrator's
18 determination of authenticity shall be final and not appealable or otherwise susceptible to
19 challenge.

20
21 15. Every Class Member who does not submit a timely and valid Request for Exclusion
22 is deemed to be a Participating Class Member under the Settlement Agreement, entitled to all
23 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
24 Members' Releases under Paragraphs 6.2 and 6.3 of the Settlement, regardless whether the
25 Participating Class Member actually receives the Class Notice or objects to the Settlement.
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1 16. Every Class Member who submits a valid and timely Request for Exclusion is a
2 Non-Participating Class Member and shall not receive an Individual Class Payment or have the
3 right to object to the class action components of the Settlement. Plaintiff releases all claims for
4 civil penalties that could have been sought by the Labor Commissioner for the violations
5 identified in Plaintiffs pre-filing letter to the LWDA; Plaintiff does not release the claim for wages
6 or damages of any Aggrieved Employee unless such Aggrieved Employee is a Participating Class
7 Member.
8

9 17. Challenges to Calculation of Work Weeks. Each Class Member shall have 60 days
10 after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members
11 whose Notice Packet is re-mailed) to challenge the number of Class Work Weeks and PAGA Pay
12 Periods (if any) allocated to the Class Member in the Class Notice. This is also known as a dispute.
13 A Work Week Dispute form, attached as Exhibit C, may be used for this purpose but is not
14 required. The Class Member may challenge the allocation by communicating with the
15 Administrator via fax, email or mail. The Administrator must encourage the challenging Class
16 Member to submit supporting documentation. In the absence of any contrary documentation, the
17 Administrator is entitled to presume that the Work Weeks contained in the Class Notice are
18 correct so long as they are consistent with the Class Data. The Administrator's determination of
19 each Class Member's allocation of Work Weeks and/or weekly Pay Periods shall be final and not
20 appealable or otherwise susceptible to challenge. The Administrator shall promptly provide
21 copies of all challenges to calculation of Work Weeks and/or weekly Pay Periods to Defense
22 Counsel and Class Counsel and the Administrator's determination the challenges.
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26 18. Objections to Settlement. Only Participating Class Members may object to the
27 class action components of the Settlement and/or this Agreement, including contesting the
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1 fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
2 Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

3 19. Participating Class Members may send written objections to the Administrator, by
4 fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire
5 an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A
6 Participating Class Member who elects to send a written objection to the Administrator must do
7 so not later than 60 days after the Administrator's mailing of the Notice Packet (plus an additional
8 14 days for Class Members whose Notice Packet was re-mailed). An The Objection form attached
9 as Exhibit D may be used for this purpose but is not required.
10

11 20. Non-Participating Class Members have no right to object to any of the class action
12 components of the Settlement.
13

14 21. Not later than 14 days before the date by which Plaintiff is required to file the
15 Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and
16 Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and
17 compliance with all of its obligations under the Settlement Agreement, including, but not limited
18 to, its mailing of the Notice Packets, the Notice Packets returned as undelivered, the re-mailing
19 of Notice Packets, attempts to locate Class Members, the total number of Requests for Exclusion
20 from Settlement it received (both valid or invalid), the number of written objections and attach
21 the Exclusion List. The Administrator will supplement its declaration as needed or requested by
22 the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's
23 declaration(s) in Court.
24

25 22. The Court approves, as to form and content, the Class Notice in substantially the
26 form attached as Exhibit A to this Order, the Election Not to Participate in Settlement form in
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1 substantially the form attached as Exhibit B to this Order, the Work Weeks Dispute form in
2 substantially the form attached as Exhibit C to this Order, and the Objection form in substantially
3 the form attached as Exhibit D to this Order.

4 23. The Court approves, for settlement purposes only, David G. Spivak of The Spivak
5 Law Firm and Walter L. Haines of United Employees Law Group, PC as Class Counsel.

6 24. The Court approves, for settlement purposes only, Jorge L. Leon as the Class
7 Representative.

8 25. The Court approves Simpluris, Inc. as the Administrator.

9 26. The Court preliminarily approves Class Counsel's request for attorneys' fees and
10 costs subject to final review by the Court.

11 27. The Court preliminarily approves the estimated Administrator costs payable to the
12 Administrator subject to final review by the Court.

13 28. The Court preliminarily approves Plaintiff's Class Representative Service
14 Payment subject to final review by the Court.

15 29. A Final Approval Hearing shall be held on ____ at ____.m. in Department 501 of
16 the Superior Court for the State of California, County of Fresno, located at the B.F. Sisk Court,
17 1130 O Street, Fresno, CA 93721 to consider the fairness, adequacy and reasonableness of the
18 proposed Settlement preliminarily approved by this Preliminary Approval Order, and to consider
19 the application of Class Counsel for attorneys' fees and costs and the Class Representative Service
20 Payment to the Class Representative. The notice of motion and all briefs and materials in support
21 of the motion for final approval of class action settlement and motion for attorneys' fees and
22 litigation costs shall be served and filed with this Court on or before _____. Plaintiff's counsel must
23 give notice to any objecting party of any continuance of the hearing of the motion for final
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1 approval.

2 30. If for any reason the Court does not execute and file a Final Approval Order and
3 judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason, the
4 proposed Settlement that is the subject of this order, and all evidence and proceedings had in
5 connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the
6 litigation, as more specifically set forth in the Settlement.
7

8 31. The Court expressly reserves the right to adjourn or continue the Final Approval
9 Hearing from time to time without further notice to members of the Class. The Plaintiff shall give
10 prompt notice of any continuance to Settlement Class Members who object to the Settlement.
11

12 **IT IS SO ORDERED.**

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15 **DATE**

15 **THE HONORABLE D. TYLER THARPE**
16 **SUPERIOR COURT JUDGE**

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

JORGE L. LEON, on behalf of himself 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.

DAVIS & ROBERTS CONSTRUCTION, INC., a California corporation; and DOES 1–50, inclusive,

Defendant(s).

Case No. 22CECG00407

[PROPOSED] FINAL ORDER AND JUDGMENT APPROVING CLASS ACTION SETTLEMENT

Action filed: February 08, 2022
Dept: 501, The Honorable D. Tyler Tharpe

1 This matter came on for hearing on ____ at ____m. in Department 501 of the above-
2 captioned court on Plaintiff's Motion for Final Approval of a Class Action Settlement pursuant
3 to California Rules of Court, Rule 3.769, as set forth in the Joint Stipulation of Class Action
4 Settlement and Release of Claims (the "Settlement") filed herewith which provides for a Gross
5 Settlement Amount ("GSA") of up to \$166,713.47 in compromise of all disputed claims on behalf
6 of all current and former hourly, nonexempt employees of Defendant in California during the
7 period of February 08, 2018 to the date of preliminary approval of this Settlement ("Settlement
8 Class Period"). All capitalized terms used herein shall have the same meaning as defined in the
9 Settlement. The Gross Settlement Amount includes the \$56,713.47 Defendant paid to Class
10 Members as part of its Pick-Up-Stix campaign.
11

12
13 In accordance with the Court's prior Order Granting Preliminary Approval of Class
14 Action Settlement, Class Members have been given notice of the terms of the Settlement and the
15 opportunity to submit a claim, request exclusion, comment upon or object to it or to any of its
16 terms. Having received and considered the Settlement, the supporting papers filed by the Parties,
17 and the evidence and argument received by the Court in conjunction with the motions for
18 preliminary and final approval of the Settlement, the Court grants final approval of the Settlement
19 and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE FOLLOWING
20 DETERMINATIONS¹:
21

22 1. The Court has jurisdiction over the subject matter of the Action and over all Parties
23 to the Action, including all Class Members. Pursuant to this Court's Order Granting Preliminary
24

25
26
27 ¹ A true and correct copy of the Court's ruling on the Motion for Final Approval of Class Action
28 Settlement entered on [REDACTED] is attached hereto as **Exhibit A** and incorporated by reference. A true
and correct copy of the Court's Minute Order dated [REDACTED] is attached hereto as **Exhibit B** and
incorporated by reference.

1 Approval of Class Action Settlement of ____, the Notice Packet was sent to each Class Member
2 by First Class U.S. mail. The Notice Packet informed Class Members of the terms of the
3 Settlement, their right to receive their proportional share of the Settlement, their right to request
4 exclusion, their right to comment upon or object to the Settlement, and their right to appear in
5 person or by counsel at the final approval hearing and be heard regarding final approval of the
6 Settlement. Adequate periods of time were provided by each of these procedures. No member of
7 the Settlement Class presented written objections to the proposed Settlement as part of this notice
8 process, stated an intention to appear, or actually appeared at the final approval hearing.
9

10 2. For purposes of this Final Order and Judgment, the Class Members are all current
11 and former hourly, nonexempt employees of Defendant in California during the Class Period. at
12 any time during the period of February 08, 2018 to the date of preliminary approval of this
13 Settlement ("Settlement Class Period").
14

15 3. The Court finds and determines that the notice procedure afforded adequate
16 protections to Class Members and provides the basis for the Court to make an informed decision
17 regarding final approval of the Settlement based on the responses of Class Members. The Court
18 finds and determines that the notice provided in this case was the best notice practicable, which
19 satisfied the requirements of law and due process as to all persons entitled to such notice.
20

21 **Release by Plaintiff and Class Members.** The Parties agree that it is their intent that the
22 resolution set forth in this Settlement will release and discharge the Released Claims by way of
23 any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action
24 of any kind by each and all of the Settlement Class Members (including participation to any extent
25 in any representative or collective action) against the Released Parties. This release will not take
26 effect until Defendant has paid the Gross Settlement Amount in full per this Settlement
27
28

1 Agreement.

2 **PAGA Release**. Plaintiff releases all claims for civil penalties that could have been
3 sought by the Labor Commissioner for the violations identified in Plaintiffs pre-filing letter to
4 the LWDA; Plaintiff does not release the claim for wages or damages of any Aggrieved Employee
5 unless such Aggrieved Employee is a Participating Class Member.
6

7 “**Released Claims**” shall mean all claims stated in the Operative Complaint and based
8 solely on the facts alleged in the Operative Complaint. “**Released Parties**” shall mean Defendant,
9 its officers, directors, employees and agents.

10 2. The Court further finds and determines that the terms of the Settlement are fair,
11 reasonable and adequate, that the Settlement is ordered finally approved, and that all terms and
12 provisions of the Settlement, including the release of claims contained therein, should be and
13 hereby are ordered to be consummated, and directs the Parties to effectuate the Settlement
14 according to its terms. As of the Effective Date of Settlement, and for the duration of the
15 Settlement Class Period, all Class Members are hereby deemed to have waived and released all
16 Released Claims and are forever barred and enjoined from prosecuting the Released Claims
17 against the Released Parties as fully set forth in the Settlement. No objections were received by
18 the Parties or the Court through the date of this Final Order and Judgment. The Court finds ____
19 Class Member(s) - ____ - submitted a request for exclusion from the Settlement as determined by
20 the Administrator and therefore is/are not in the Settlement Class.
21
22
23

24 3. The Court finds and determines that (a) the Settlement Shares to be paid to
25 Participating Class Members and (b) the LWDA payment as civil penalties under the California
26 Labor Code Private Attorneys General Act of 2004, as amended, California Labor Code sections
27 2699 *et seq.*, as provided for by the Settlement are fair and reasonable. The Court hereby grants
28

1 final approval to, and orders the payment of, those amounts be made to the Participating Class
2 Members and to the California Labor & Workforce Development Agency (“LWDA”), in
3 accordance with the terms of the Settlement.

4 4. The Court further grants final approval to and orders that the following payments
5 be made in accordance with the terms of the Settlement:

6 a. Class Counsel fees & costs of \$55,571.00 in attorneys’ fees and \$20,000.00
7 in litigation costs to Class Counsel;

8 b. \$15,000.00 as a Class Representative Service Payment award payable to
9 Plaintiff Jorge L. Leon for his service as a Class Representative;

10 c. \$10,000.00 in costs of the Administrator payable to Simpluris, Inc. for its
11 services as the Administrator; and

12 d. Payment of \$3,000.00 (75% of the (\$4,000.00 PAGA penalty) to the
13 LWDA.

14 7. The settlement shall proceed as directed in the Settlement, and no payments
15 pursuant to the Settlement shall be distributed until after the Effective Date of Settlement. Without
16 affecting the finality of this Final Order and Judgment in any way, the Court retains jurisdiction
17 of all matters relating to the interpretation, administration, implementation, effectuation and
18 enforcement of this Final Order and Judgment and the Settlement pursuant to California Rule of
19 Court 3.769(h).

20 8. Within 14 calendar days of the Effective Date of Settlement, Defendant shall
21 deposit the Settlement proceeds in an account designated by the Administrator: (i) the total
22 amount of all Individual Class Payments to Participating Class Members, (ii) the Court approved
23 Class Counsel fees & costs, (iii) the Court-approved Class Representative Service Payment, (iv)
24

1 the Court-approved costs of the Administrator, (v) the payment to the LWDA, and (vi) (i) the
2 total amount of all Individual PAGA Payments to Aggrieved Employees.

3 9. Other than its employer side payroll taxes, Defendant's payment of such sums
4 shall be the sole financial obligation of Defendant under the Settlement, and shall be in full
5 satisfaction of all claims released herein, including, without limitation, all claims for wages,
6 penalties, interest, attorneys' fees, costs and expenses.
7

8 10. Pursuant to CCP 384 and the Settlement, Participating Class Members shall have
9 one hundred and eighty (180) days from the date of the check's issuance to cash their Settlement
10 Share check. After the expiration of the 180-day period, on Defendant's behalf, the Administrator
11 shall remit any amounts from voided settlement checks and otherwise unclaimed, plus interest on
12 the Residue at the legal rate of interest from the date of entry of the initial judgement to the
13 California Unclaimed Property Fund.
14

15 11. The Parties shall file a final accounting report by _____. A non-appearance case
16 review re submission of a final report is scheduled for _____ at _____.m. in Department 501. The
17 Parties shall also prepare and file a stipulation and proposed order and proposed Amended Final
18 Order and Judgment by _____ which includes the amount of distribution of unpaid cash Residue,
19 and unclaimed or abandoned funds to the non-party, the accrued interest on that sum. The
20 stipulation shall be signed by counsel for the class and defense counsel in accord with the
21 proposed Amended Final Order and Judgment. If there are objections by any party or non-party,
22 class counsel shall immediately notify the Court and the matter will be set for further hearing. A
23 non-appearance hearing for the lodging of the stipulation and proposed order and separate
24 amended judgment is scheduled for _____ at _____.m. in Department 501.
25
26

27 12. Nothing in this Final Order and Judgment shall preclude any action to enforce the
28

1 Parties' obligations under the Settlement or hereunder, including the requirement that Defendant
2 deposit funds for distribution by the Administrator to Participating Class Members in accordance
3 with the Settlement.

4 13. The Court hereby enters final judgment in this case in accordance with the terms
5 of the Settlement, Order Granting Preliminary Approval of Class Action Settlement, and this Final
6 Order and Judgment.
7

8 14. The Parties are hereby ordered to comply with the terms of the Settlement.

9 15. The Parties shall bear their own costs and attorneys' fees except as otherwise
10 provided by the Settlement and this Final Order and Judgment.
11

12 16. The Settlement is not an admission by Defendant nor is this Final Order and
13 Judgment a finding of the validity of any claims in the Action or of any wrongdoing by Defendant.
14 Furthermore, the Settlement is not a concession by Defendant and shall not be used as an
15 admission of any fault, omission, or wrongdoing by Defendant. Neither this Final Order and
16 Judgment, the Settlement, any document referred to herein, any exhibit to any document referred
17 to herein, any action taken to carry out the Settlement, nor any negotiations or proceedings related
18 to the Settlement are to be construed as, or deemed to be evidence of, or an admission or
19 concession with regard to, the denials or defenses of Defendant, and shall not be offered in
20 evidence in any proceeding against the Parties hereto in any Court, administrative agency, or other
21 tribunal for any purpose whatsoever other than to enforce the provisions of this Final Order and
22 Judgment. This Final Order and Judgment, the Settlement and exhibits thereto, and any other
23 papers and records on file in the Action may be filed in this Court or in any other litigation as
24 evidence of the settlement by Defendant to support a defense of res judicata, collateral estoppel,
25 release, or other theory of claim or issue preclusion or similar defense as to the Released Claims.
26
27
28

1 17. This document shall constitute a Judgment for purposes of California Rule of
2 Court 3.769(h).

3 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

4
5
6 _____
7 **DATE**

8 **THE HONORABLE D. TYLER THARPE**
9 **SUPERIOR COURT JUDGE**

EXHIBIT 2



SPIVAK LAW

**SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND
EMAIL***

December 23, 2021

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

Re: Jorge L. Leon / Davis & Roberts

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Jorge L. Leon (hereafter “Leon” or “Complainant”) provides notice that Davis & Roberts Construction, Inc., a California corporation, and related entities (collectively “the Davis & Roberts Employers” or “the Employers”) violated his rights and those of all other individuals the Davis & Roberts Employers have employed or otherwise contracted with in California as hourly, non-exempt workers, including but not limited to finishers, 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, 1198, 2802, and related Labor Code statutes. On behalf of himself and all other Aggrieved Employees, Leon hereby provides this notice to the Labor & Workforce Development Agency and the Davis & Roberts Employers and their agents and representatives.

At all relevant times, the Davis & Roberts Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies,

throughout California. Leon and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 16-2001 (hereafter “the Wage Order”) section 2, subdivision (H) and “Aggrieved Employees” within the meaning of Labor Code section 2699©.

Statement of Facts

On approximately December 30, 2020, the Davis & Roberts Employers began to employ Leon in Clovis (Fresno County) in the position of laborer. The Davis & Roberts Employers continuously employed him in that capacity until on or about May 21, 2021 when his employment ended.

At all relevant times, the Davis & Roberts Employers issued wages to Leon and all of the other Aggrieved Employees on a weekly (52 paychecks/year) basis and paid them by the hour. At all relevant times, the Davis & Roberts Employers classified Leon and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Davis & Roberts Employers failed to compensate Leon and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Davis & Roberts Employers required Leon and the Aggrieved Employees to work through their meal periods though the Davis & Roberts Employers did not include this time as time worked on the timesheets they filled out for Leon and the Aggrieved Employees, or removed this time from the timesheets they filled out for Leon and the Aggrieved Employees. The Davis & Roberts Employers also failed to record other time worked by Leon and the Aggrieved Employees on the timesheets the Davis & Roberts Employers filled out for them. The Davis & Roberts Employers required Leon and the Aggrieved Employees to approve the time sheets regardless of whether their hours were under reported.

The Davis & Roberts Employers failed to compensate Leon 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. As stated above, the Davis & Roberts Employers did not credit Leon

and the Aggrieved Employees with all of hours they worked. They worked in excess of eight hours per day and 40 hours per week, so they under reported hours should have been paid at overtime premium rates of pay.

At all relevant times, the Davis & Roberts Employers failed to provide Leon and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. As stated above, The Davis & Roberts Employers required Leon and the Aggrieved Employees to work through their meal periods though the Davis & Roberts Employers did not include this time as time worked on the timesheets they filled out for Leon and the Aggrieved Employees, or removed this time from the timesheets they filled out for Leon and the Aggrieved Employees. The Davis & Roberts Employers also failed to pay premium wages for days on which failed to provide Leon and all of the other Aggrieved Employees with meal periods as required by law. On those occasions in which the David & Roberts Employers paid a “meal premium” to Leon and the Aggrieved Employees, it was paid at less than the regular rate of pay.

At all relevant times, the Davis & Roberts Employers failed to authorize and permit Leon 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 Davis & Roberts Employers required Leon and the Aggrieved Employees to work through their rest breaks. The Davis & Roberts Employers also failed to pay premium wages for days on which failed to authorize and permit Leon and all of the other Aggrieved Employees to take rest breaks as required by law.

The Davis & Roberts Employers unlawfully deducted wages belonging to Leon and all of the other Aggrieved Employees. As stated above, the Davis & Roberts Employers required Leon and the Aggrieved Employees to work through their meal periods though the Davis & Roberts Employers did not include this time as time worked on the timesheets they filled out for Leon and the Aggrieved Employees, or removed this time from the timesheets they filled out for Leon and the Aggrieved Employees.

At all relevant times, the Davis & Roberts Employers failed to issue to Leon 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 Davis & Roberts Employers knowingly and intentionally failed to state on the wage statements they issued to Leon and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, gross wages earned, and net wages earned.

The Davis & Roberts Employers also failed to timely pay Leon and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Davis & Roberts Employers failed to maintain accurate employee records of Leon and all of the other Aggrieved Employees.

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

- (a) The Davis & Roberts Employers failed to pay Leon and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, and overtime wages;
- (b) The Davis & Roberts Employers failed to provide Leon and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Davis & Roberts Employers failed to authorize and permit Leon and all of the other Aggrieved Employees to take rest breaks in compliance with California law;

- (d) The Davis & Roberts Employers failed to compensate Leon and all of the other Aggrieved Employees at one hour's pay at the regular rate of pay for each day in which the Davis & Roberts Employers failed to provide them with one or more meal periods as required by law;
- (e) The Davis & Roberts Employers failed to compensate Leon and all of the other Aggrieved Employees at one hour's pay at the regular rate of pay for each day in which the Davis & Roberts Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Davis & Roberts Employers unlawfully deducted wages belonging to Leon and all of the other Aggrieved Employees;
- (g) The Davis & Roberts Employers knowingly and intentionally failed to provide Leon and all of the other Aggrieved Employees with accurate and complete wage statements;
- (h) The Davis & Roberts Employers willfully failed to timely pay Leon and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Davis & Roberts Employers and when their employment ended; and
- (i) The Davis & Roberts Employers failed to maintain accurate employment records pertaining to Leon and all of the other Aggrieved Employees.

Accordingly, Leon now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Davis & Roberts Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to

all persons employed in the on-site occupations of construction, including but not limited to alteration, demolition, building, excavating, renovation, remodeling, maintenance, improvement, and repair work, and work for which a contractor's license is required by the California Business and Professions Code, Division 3, Chapter 9, Sections 7025 et seq. drilling, including but not limited to all work required to drill, establish, repair, and rework wells for the exploration or extraction of oil, gas, or water resources; logging work for which a timber operator's license is required pursuant to California Public Resources Code Sections 4571 through 4586; and mining (not covered by Labor Code Section 750 et seq.), including all work required to mine and/or establish pits, quarries, and surface or underground mines for the purposes of exploration or extraction of nonmetallic minerals and ores, coal, and building materials such as stone and gravel, whether paid on a time, piece rate, commission, or other basis."

Wage Order, § 1. The Wage Order defines "construction occupations" to mean,

all job classifications associated with construction, including but not limited to work involving alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement, and repair work, by the California Business and Professions Code, Division 3, Chapter 9, Sections 7025 et seq., and any other similar or related occupations or trades. (D) "Division" means the Division of Labor Standards Enforcement of the State of California.

Wage Order, § 2(C).

At all relevant times during the applicable limitations period, the Davis & Roberts “Employers, Leon, and all of the Aggrieved Employees were covered by the Wage Order because Leon and all of the Aggrieved Employees worked for the Davis & Roberts Employers in construction occupations, including pouring concrete. Accordingly, Leon 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(J) 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.

- (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.

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 Davis & Roberts Employers required Leon and the Aggrieved Employees to work through their meal periods though the Davis & Roberts Employers did not include this time as time worked on the timesheets they filled out for Leon and the Aggrieved Employees, or removed this time from the timesheets they filled out for Leon and the Aggrieved Employees. The Davis & Roberts Employers also failed to record other time worked by Leon and the Aggrieved Employees on the timesheets the Davis & Roberts Employers filled out for them. The Davis & Roberts Employers required Leon and the Aggrieved Employees to approve the time sheets regardless of whether their hours were under reported.

As stated above, the Davis & Roberts Employers did not credit Leon and the Aggrieved Employees with all of hours they worked. They worked in excess of eight hours per day and 40 hours per week, so they under reported hours should have been paid at overtime premium rates of pay. As stated above, the Davis & Roberts Employers did not credit Leon and the Aggrieved Employees with all of hours they worked. Additionally, the Davis & Roberts Employers include all

forms of hours worked in determining whether Leon and the Aggrieved Employees had worked into overtime hours requiring compensation at overtime premium rates of pay.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Davis & Roberts Employers, Leon and all of the other Aggrieved Employees earned monetary incentives, subsistence pay, travel subsistence, health insurance pay, and related compensation during pay periods in which they worked hours qualifying for overtime premium pay rates. However, the Davis & Roberts Employers, Leon failed to pay to Leon and all of the other Aggrieved Employees monetary incentives, subsistence pay, travel subsistence, health insurance pay overtime premium pay on such monetary incentives, subsistence pay, travel subsistence, health insurance pay, and related compensation.

At all relevant times during the applicable limitations period, the Davis & Roberts Employers failed to compensate Leon and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, and overtime wages for all hours they worked at the correct rates of pay. Accordingly, Leon now seeks civil penalties on behalf of himself 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(J) 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 10 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. (See Labor Code Section 512.)
- (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. (See Labor Code Section 512.)
- (C) ...

- (D) 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 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 and complies with Labor Code Section 512.
- (E) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

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

At all relevant times, the Davis & Roberts Employers failed to provide Leon and all of the other Aggrieved Employees with all timely meal periods. The Davis & Roberts Employers denied Leon and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. As stated above, The Davis & Roberts Employers required Leon and the Aggrieved Employees to work through their meal periods though the Davis & Roberts Employers did not include this time as time worked on the timesheets they filled out for Leon and the Aggrieved Employees, or removed this time from the timesheets they filled out for Leon and the Aggrieved Employees. Furthermore, the Davis & Roberts Employers failed to pay premium wages for days on which they failed to provide Leon and all of the other Aggrieved Employees with timely meal periods. Accordingly, Leon now seeks civil penalties for these Labor Code violations that the Davis & Roberts Employers have committed against him 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)).

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

Section 2(J) 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 11 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. Nothing in this provision shall prevent an employer from staggering rest periods to avoid interruption in the flow of work and to maintain continuous operations, or from scheduling rest periods to coincide with breaks in the flow of work that occur in the course of the workday. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof. Rest periods shall take place at employer designated areas, which may include or be limited to the employees’ immediate work area.
- (B) Rest periods need not be authorized in limited circumstances when the disruption of continuous operations would jeopardize the product or process of the work. However, the

employer shall make up the missed rest period within the same workday or compensate the employee for the missed ten (10) minutes of rest time at his/her regular rate of pay within the same pay period.

(C) ...

(D) 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.

(d) A rest or recovery period mandated pursuant to 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, shall be counted as hours worked, for which there shall be no deduction from wages. This subdivision is declaratory of existing law.

The Davis & Roberts Employers failed to authorize and permit Leon 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 Davis & Roberts Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Davis & Roberts Employers required Leon and the Aggrieved Employees to work through their rest breaks. Moreover, the Davis & Roberts Employers failed to pay Leon and all of the other Aggrieved Employees premium wages on workdays the Davis & Roberts Employers failed to provide Leon and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Leon now seeks civil penalties for these Labor Code violations that the Davis & Roberts Employers have committed against him 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)).

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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.” Similarly, section 7 of the Wage Order states,

No employer shall collect or deduct from any employee any part of the wages that are paid unless such deductions are allowed by law. (See Labor Code Sections 220-226.) No fee shall be charged by the employer or agent of the employer for cashing a payroll check.

The Davis & Roberts Employers deducted wages from the wages earned by Leon and all of the other Aggrieved Employees for and similar deductions in violation of Labor Code § 221, including for time worked during meal periods. Accordingly, Leon seeks civil penalties on behalf of himself 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.

Similarly, section 6(B) of the Wage Order states

Every employer who has control over wages, hours, or working conditions shall semimonthly or at the time of each payment of wages furnish each employee an itemized statement in writing showing:

- (1) all deductions;
- (2) the inclusive dates of the period for which the employee is paid;
- (3) the name of the employee or the employee's social security number;
and

- (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item. (See Labor Code Section 226.)

This information shall be furnished either separately or as a detachable part of the check, draft, or voucher paying the employee's wages.

At all relevant times during the applicable limitations period, the Davis & Roberts 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 Davis & Roberts Employers failed to state in the wage statements they issued to Leon 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 Davis & Roberts Employers knowingly and intentionally failed to state on the wage statements they issued to Leon and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, gross wages earned, net wages earned, and similar information. Accordingly, Leon seeks civil penalties for the Labor Code violations that the Davis & Roberts Employers have committed against him and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to 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 Davis & Roberts Employers failed to compensate Leon and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, and deducted wages, at the intervals stated above. As a result, the Davis & Roberts Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Leon now seeks civil penalties for the Labor Code violations that the Davis & Roberts Employers have committed against him 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 Davis & Roberts Employers failed to pay Leon 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 Leon, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, and deducted wages and similar forms of compensation. By failing to pay Leon and all of the other Aggrieved Employees as set forth above at the end of employment, the Davis & Roberts Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Leon seeks civil penalties from the Davis & Roberts 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 6 of Wage Order states,

- (A) Every employer who has control over wages, hours, or working conditions shall keep accurate information with respect to each employee, including the following:
 - (1) The employee's full name, home address, occupation, and social security number. The employee's date of birth, if under 18 years of age, and designation as a minor. 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.
 - (2) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
 - (3) Total hours worked during the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request. 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.
- (C) All required records shall be in the English language and in ink or other indelible form, dated properly, showing month, day and year. The employer who has control over wages, hours, or working

conditions shall also keep said records on file at the place of employment or at a central location for at least three years. An employee's records shall be available for inspection by the employee upon reasonable request.

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

The Davis & Roberts Employers failed to compensate Leon and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, gross wages earned, and net wages earned. As a result, the Davis & Roberts Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Leon and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Leon seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Conclusion

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

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EXHIBIT 3

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12 Attorneys for Plaintiff,
13 JORGE L. LEON, and all others similarly situated

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

JORGE L. LEON, on behalf of himself and all
others similarly situated, and the general public,

Plaintiff,

vs.

DAVIS & ROBERTS CONSTRUCTION, INC.,
a California corporation; and DOES 1–50,
inclusive,

Defendants.

Case No. [22CECG00407](#)

CLASS ACTION

COMPLAINT FOR:

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

JURY TRIAL DEMANDED



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ADDITIONAL ATTORNEY FOR PLAINTIFF

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1 Plaintiff, JORGE L. LEON (hereafter “Plaintiff” or “Leon”), on behalf of himself and all
2 others similarly situated, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this class action for alleged violations of the California Labor
5 Code, Industrial Welfare Commission Order No. 16-2001 (hereafter “the Wage Order”), and the
6 California Business and Professions Code against Defendants DAVIS & ROBERTS
7 CONSTRUCTION, INC., a California corporation, and Does 1 through 50, inclusive (collectively
8 “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 him and other similarly situated workers for unpaid wages, statutory penalties, interest, and
11 related relief. These claims are based on Defendants’ failures to:

12 (A) Pay all wages without deductions, including minimum, regular, overtime
13 and doubletime wages, earned for all hours worked at the correct rates of pay;

14 (B) Provide all meal periods;

15 (C) Authorize and permit all rest breaks;

16 (D) Pay premium wages for unprovided meal periods;

17 (E) Pay premium wages for unprovided rest breaks;

18 (F) Only deduct wages lawfully;

19 (G) Issue only accurate and complete itemized wage statements;

20 (H) Timely pay wages upon termination of employment;

21 Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages,
22 restitution, statutory penalties, attorneys’ fees, costs, and related relief through this class action.

23 **II. THE PARTIES**

24 3. Plaintiff JORGE L. LEON is a resident of California.

25 4. Defendant DAVIS & ROBERTS CONSTRUCTION, INC. is a corporation
26 organized and existing under the laws of California and also a citizen of California based on
27 Plaintiff’s information and belief.

28 5. 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.



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

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

8 7. At all relevant times, in perpetrating the acts and omissions alleged herein,
9 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
10 of a practice which resulted in Defendants not compensating Plaintiff and the other Class
11 Members or otherwise complying with their rights in accordance with applicable California labor
12 laws as alleged herein.

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

17 **III. CLASS ALLEGATIONS**

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

23 10. **Class Definition:** The Class is defined as follows: All persons Defendants
24 employed in California hourly, non-exempt workers, including but not limited to finishers,
25 laborers, individuals performing work comparable to the aforementioned, compensated
26 comparably to the aforementioned, and individuals in similar positions, at any time during the
27 period beginning four years prior to the filing of this action and ending on the date that final
28 judgment is entered in this action (“Class” or “Class Members”).

11. **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.



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

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

8 A. Whether Defendants failed to pay all wages earned to Class Members for
9 all hours worked at the correct rates of pay, including minimum, regular, overtime, doubletime,
10 meal period premium, and rest period premium;

11 B. Whether Defendants unlawfully deducted wages from Class Members;

12 C. Whether Defendants failed to provide the Class Members with all meal
13 periods in compliance with California law;

14 D. Whether Defendants failed to authorize and permit the Class Members to
15 take all rest periods in compliance with California law;

16 E. Whether Defendants knowingly and intentionally failed to provide the
17 class with accurate and complete itemized wage statements;

18 F. Whether Defendants willfully failed to provide the class with timely final
19 wages;

20 G. Whether Defendants engaged in unfair competition within the meaning of
21 Business and Professions Code sections 17200, et seq., with respect to the Class; and

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

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

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



Members.

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

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

IV. STATEMENT OF FACTS

18. The Wage Order applies to

all persons employed in the on-site occupations of construction, including but not limited to alteration, demolition, building, excavating, renovation, remodeling, maintenance, improvement, and repair work, and work for which a contractor's license is required by the California Business and Professions Code, Division 3, Chapter 9, Sections 7025 et seq. drilling, including but not limited to all work required to drill, establish, repair, and rework wells for the exploration or extraction of oil, gas, or water resources; logging work for which a timber operator's license is required pursuant to California Public Resources Code Sections 4571 through 4586; and mining (not covered by Labor Code Section 750 et seq.), including all work required to mine and/or establish pits, quarries, and surface or underground mines for the purposes of exploration or extraction of nonmetallic minerals and ores, coal, and building materials such as stone and gravel, whether paid on a time, piece rate, commission, or other basis."

Wage Order, § 1. The Wage Order defines "construction occupations" to mean,

all job classifications associated with construction, including but not limited to work involving alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement, and repair work, by the California



Business and Professions Code, Division 3, Chapter 9, Sections 7025 et seq., and any other similar or related occupations or trades. (D) “Division” means the Division of Labor Standards Enforcement of the State of California.

Wage Order, § 2(L). At all relevant times during the applicable limitations period, the Defendants, Leon, and all of the Class Members were covered by the Wage Order because Leon and all of the Class Members worked for the Defendants in construction occupations, including pouring concrete. Accordingly, Leon and all of the other Class Members are entitled to the protections the Wage Order provides.

19. On approximately December 30, 2020, the Defendants began to employ Leon in Clovis (Fresno County) in the position of finisher. The Defendants continuously employed him in that capacity and as a laborer until on or about March 21, 2021 when his employment ended.

20. At all relevant times, the Defendants issued wages to Leon and all of the other Class Members on a weekly (52 paychecks/year) basis and paid them by the hour. At all relevant times, the Defendants classified Leon and all of the other Class Members as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

21. At all relevant times, the Defendants failed to compensate Leon and all of the other Class Members for all hours worked at the applicable minimum or regular rates of pay. Defendants required Plaintiff and the Class Members to work through their meal periods though Defendants did not include this time as time worked on the timesheets they filled out for Plaintiff and the Class Members, or removed this time from the timesheets they filled out for Plaintiff and the Class Members. Defendants also failed to record other time worked by Plaintiff and the Class Members on the timesheets Defendants filled out for them. Defendants required Plaintiff and the Class Members to approve the time sheets regardless of whether their hours were under reported.

22. At all relevant times, the Defendants failed to compensate Leon and all of the other Class Members at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. As stated above, Defendants did not Plaintiff and the Class Members with all of hours they worked. They worked in excess of eight hours per day and 40 hours per week, so the under reported hours should have been paid at overtime premium rates of pay.

23. At all relevant times, the Defendants failed to provide Leon and all of the other Class Members with all timely 30-minute, off-duty meal periods. As stated above, Defendants



1 required Plaintiff and the Class Members to work through their meal periods though the
2 Defendants did not include this time as time worked on the timesheets they filled out for Plaintiff
3 and the Class Members, or removed this time from the timesheets they filled out for Plaintiff and
4 the Class Members. The Defendants also failed to pay premium wages for days on which they
5 failed to provide Leon and all of the other Class Members with meal periods as required by law.

6 24. At all relevant times, the Defendants failed to authorize and permit Leon and all
7 of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked
8 or major portion thereof. Defendants required Plaintiff and the Class Members to work through
9 their rest breaks. The Defendants also failed to pay premium wages for days on which they failed
10 to authorize and permit Leon and all of the other Class Members to take rest breaks as required
11 by law.

12 25. At all relevant times, the Defendants unlawfully deducted wages belonging to
13 Leon and all of the other Class Members. As stated above, Defendants required Plaintiff and the
14 Class Members to work through their meal periods though the Defendants did not include this
15 time as time worked on the timesheets they filled out for Plaintiff and the Class Members, or
16 removed this time from the timesheets they filled out for Plaintiff and the Class Members.

17 26. At all relevant times, the Defendants failed to issue to Leon and all of the other
18 Class Members complete and accurate wage statements that state all hours worked at the correct
19 rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on
20 the wage statements they issued to Leon and all of the other Class Members the unpaid wages
21 discussed above. The wage statements fail to state all minimum wages earned, all regular wages
22 earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages
23 earned, all rest break premium wages earned, all unlawfully deducted wages, gross wages earned,
24 net wages earned, and related information.

25 27. At all relevant times, the Defendants also failed to timely pay Leon and all of the
26 other Class Members all earned wages as described above during and at the conclusion of
27 employment.

28 28. At all relevant times, the Defendants failed to maintain accurate employee records
of Leon and all of the other Class Members.

29. For the reasons stated herein, Plaintiff alleges that as a result of Defendants' unlawful practices and policies, Plaintiff and the Class Members were:



- 1 A. Not provided with all off duty meal periods;
2 B. Not authorized and permitted to take all rest break periods;
3 C. Not paid one hour's pay for each workday in which Defendants failed to
4 authorize and permit them to take one or more timely rest periods;
5 D. Not paid one hour's pay for each workday in which Defendants failed to
6 provide them with one or more timely meal periods;
7 E. Not paid all wages earned, including, but not limited to, minimum, regular,
8 overtime, and doubletime wages for work performed while clocked out;
9 F. Not provided with accurate and complete wage statements; and
10 G. Not timely paid all earned and unpaid wages at the time their employment
11 ended.

12 **FIRST CAUSE OF ACTION**

13 **FAILURE TO PAY, DEDUCTING, OR WITHHOLDING ALL WAGES AT THE
14 CORRECT RATES**

15 **Lab. Code §§ 221, 510, 1194, 1197, and 1198**

16 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

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

18 31. At all relevant times, Plaintiff and the Class Members have been non-exempt
19 employees entitled to the protections of both the Labor Code and the Wage Order.

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

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

25 33. Section 3 of the Wage Order states:

26 The following overtime provisions are applicable to employees 18 years of age or
27 over and to employees 16 or 17 years of age who are not required by law to attend
28 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.
- (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.

34. 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.

35. Labor Code section 510 states:

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

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

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

38. Labor Code section 1198 makes it unlawful for an employer to employ an



employee under conditions that violate the Wage Order.

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

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

41. At all relevant times during their work for the Davis & Roberts Employers, Leon and all of the other Class Members earned monetary incentives, subsistence pay, travel subsistence, health insurance pay, and related compensation during pay periods in which they worked hours qualifying for overtime premium pay rates. However, the Davis & Roberts Employers, Leon failed to pay to Leon and all of the other Aggrieved Employees monetary incentives, subsistence pay, travel subsistence, health insurance pay overtime premium pay on such monetary incentives, subsistence pay, travel subsistence, health insurance pay, and related compensation.

42. At all relevant times during the applicable limitations period, Defendants failed to compensate Plaintiff and the Class Members for all hours worked, including, but not limited to minimum, regular, overtime and doubletime wages for all minimum, regular, overtime and doubletime hours, respectively, that they worked at the correct rates of pay.

43. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’ failure to compensate Plaintiff and the other Class Members for all hours worked at the correct rates of pay as required by California law.

B. UNLAWFUL WAGE DEDUCTIONS

44. Under Labor Code § 221, “It shall be unlawful for any employer to collect or



1 receive from an employee any part of wages theretofore paid by said employer to said employee.”
2 The Defendants deducted wages from the wages earned by Leon and all of the other Class
3 Members for in violation of Labor Code § 221.

4 45. At all relevant times, Defendants required Plaintiff and the Class Members to work
5 through their meal periods though the Defendants did not include this time as time worked on the
6 timesheets they filled out for Plaintiff and the Class Members, or removed this time from the
7 timesheets they filled out for Plaintiff and the Class Members.

8 46. 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 deduction of wages belonging to Plaintiff and the other Class Members in violation of California
11 law.

12 **SECOND CAUSE OF ACTION**

13 **FAILURE TO PROVIDE MEAL PERIODS**

14 **Lab. Code §§ 226.7 and 512**

15 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

16 47. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

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

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

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

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

26 An employer shall not employ an employee for a work period of
27 more than five hours per day without providing the employee with
28 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.

51. In relevant part, Section 10 of the Wage Order states:

- (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. (See Labor Code Section 512.)
- (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. (See Labor Code Section 512.)
- (C) In all places of employment the employer shall provide an adequate supply of potable water, soap, or other suitable cleansing agent and single use towels for hand washing.
- (D) 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 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 and complies with Labor Code Section 512.
- (F) 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.

52. 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.

53. 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.

54. 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. As stated above, Defendants required Plaintiff and the Class Members to work through their meal periods though the Defendants did not include this time as time worked on the timesheets they filled out for Plaintiff and the Class Members, or removed this time from the timesheets they filled out for Plaintiff and the Class Members.

55. At all relevant times, Defendants failed to provide Plaintiff and the Class Members with all timely meal periods. Defendants denied Plaintiff and the other Class Members their 30-minute off-duty meal period within the first five hours of work. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class Members with timely meal periods.

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

57. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have



suffered damages in amounts subject to proof to the extent they were not paid additional wages owed for all meal periods not provided to them.

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

THIRD CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT REST BREAKS

Lab. Code § 226.7

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

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

60. 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 and 1198, and the Wage Order.

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

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

62. In relevant part, Section 11 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. Nothing in this provision shall prevent an employer from staggering rest periods to avoid interruption in the flow of work and to maintain continuous operations, or from scheduling rest periods to coincide with breaks in the flow of work that occur in the course of the workday. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof. Rest periods shall take place at employer designated areas, which may include or be limited to the employees' immediate work area.

(B) Rest periods need not be authorized in limited circumstances when



the disruption of continuous operations would jeopardize the product or process of the work. However, the employer shall make up the missed rest period within the same workday or compensate the employee for the missed ten (10) minutes of rest time at his/her regular rate of pay within the same pay period.

(C) ...

(D) 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.

63. 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.

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

65. Defendants intentionally failed to authorize and permit Plaintiff and the Class Members to take all 10-minute rest periods free from any work duties in accordance with the Wage Order.

66. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium



1 wages to Plaintiff and the Class Members for days on which they failed to authorize and permit
2 Plaintiff and the other Class Members to take timely rest periods.

3 67. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
4 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
5 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
6 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
7 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed
8 to authorize and permit them to take 10-minute rest periods every four hours worked or major
9 fraction thereof.

10 68. Plaintiff is informed and believes and thereon alleges that, at all relevant times
11 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
12 which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to
13 take all rest breaks required by California law.

14 69. Defendants failed to provide Plaintiff with all required rest breaks in accordance
15 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
16 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
17 which resulted in Defendants not providing the Class Members with all rest breaks required by
18 California law.

19 70. Defendants failed to pay Plaintiff the additional wages required by California
20 Labor Code § 226.7 for all rest breaks not provided to him. Plaintiff is informed and believes and
21 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
22 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
23 Class Members with additional wages for all rest breaks not provided to them as required by
24 California Labor Code § 226.7.

25 71. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
26 suffered damages in amounts subject to proof to the extent they were not paid additional wages
27 owed for all rest breaks not provided to them.

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

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FOURTH CAUSE OF ACTION

FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS

Lab. Code § 226

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

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

74. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized statement showing:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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.

Lab. Code § 266(a).



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

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

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

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

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

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

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

19 77. As alleged herein, at all relevant times during the applicable limitations period,
20 Defendants violated California Labor Code section 226 because they did not properly and
21 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
22 the corresponding number of hours worked at each rate by the employee and other requirements
23 of California Labor Code section 226. Defendants failed to state in the wage statements they
24 issued to Plaintiff and the other Class Members all their hours worked and wages earned,
25 including, but not limited to, regular and overtime wages for work they performed off-the-clock
26 after clocking-out (as described above). Defendants knowingly and intentionally did not issue
27 either as a detachable part of the check, draft, or voucher paying the employee’s wages, or
28 separately if wages are paid by personal check or cash, statements to Plaintiff and the Class
Members that state all minimum wages earned, all regular wages earned, all overtime wages



1 earned, all doubletime wages earned, all meal period premium wages earned, all rest break
2 premium wages earned, all unlawfully deducted wages, gross wages earned, net wages earned.

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

7 79. Similarly, section 6(B) of the Wage Order states

8 Every employer who has control over wages, hours, or working conditions shall
9 semimonthly or at the time of each payment of wages furnish each employee an
10 itemized statement in writing showing:

- 11 (1) all deductions;
- 12 (2) the inclusive dates of the period for which the employee is paid;
- 13 (3) the name of the employee or the employee's social security number; and
- 14 (4) the name of the employer, provided all deductions made on written orders
15 of the employee may be aggregated and shown as one item. (See Labor
16 Code Section 226.)

17 This information shall be furnished either separately or as a detachable part of the
18 check, draft, or voucher paying the employee's wages.

19 80. As a result of being provided with inaccurate wage statements by Defendants,
20 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
21 wage 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 other Class Members were not able to ascertain from the wage statements whether
28 Defendants complied with their obligations under California Labor Code section 226(a).

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FIFTH CAUSE OF ACTION

WILLFUL FAILURE TO TIMELY PAY FINAL WAGES

(Lab. Code §§ 201, 202, and 203)

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

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

82. At all relevant times during the applicable limitations period, Plaintiffs and the Class have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 201, 202, and 203, and the Wage Order.

83. 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.

84. 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.

85. The Defendants failed to pay Leon and all of the other Class Members whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Leon, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, and deducted wages.

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

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

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

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SIXTH CAUSE OF ACTION

UNFAIR COMPETITION

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

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

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

90. 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 the Business and Professions Code §§ 17200, *et seq.*

91. The unlawful conduct of Defendants alleged herein amount to and constitutes unfair competition within the meaning of California Business & Professions Code §§ 17200, *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly gained a competitive advantage over other comparable companies doing business in California that comply with their legal obligations to compensate employees for all earned wages.

92. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class Members were deprived of minimum wages, regular wages, overtime wages, missed rest period premium wages, missed meal period premium wages, unlawfully deducted wages, and comparable money and property.

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

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

V. PRAYER FOR RELIEF

95. WHEREFORE, Plaintiff, on behalf of himself and the Class Members, prays for relief and judgment against Defendants as follows:

A. An order that the action be certified as a class action with respect to Plaintiff's claims for violations of California law;

B. An order that Plaintiff be appointed class representative;



- 1 C. An order that counsel for Plaintiff be appointed class counsel;
2 D. Unpaid wages, including minimum, regular, overtime, double-time,
3 missed meal period, missed rest period and unlawfully deducted wages;
4 E. Liquidated damages;
5 F. Statutory penalties, including waiting time penalties;
6 G. Restitution;
7 H. Declaratory relief;
8 I. Actual damages;
9 J. Pre-judgment interest;
10 K. Costs of suit;
11 L. Reasonable attorneys' fees; and
12 M. Such other relief as the Court deems just and proper.

13 **VI. DEMAND FOR JURY TRIAL**

14 Plaintiff, on behalf of himself and all other Class Members, hereby demands a jury trial
15 on all issues so triable.

16 Respectfully submitted,

17 THE SPIVAK LAW FIRM

18 Dated: February 7, 2022

19 By:



20 DAVID G. SPIVAK,
21 CAROLINE TAHMASSIAN,
22 MAYA CHEAITANI, Attorneys for
23 Plaintiff, JORGE L. LEON, and all
24 others similarly situated
25
26
27
28



EXHIBIT 4

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12 Attorneys for Plaintiff,
13 JORGE L. LEON, and all others similarly situated

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF FRESNO**
16 **(UNLIMITED JURISDICTION)**

17 JORGE L. LEON, on behalf of himself and all
18 others similarly situated, and as an “aggrieved
19 employee” on behalf of other “aggrieved
20 employees” under the Labor Code Private
21 Attorneys General Act of 2004,

22 *Plaintiff,*

23 vs.

24 DAVIS & ROBERTS CONSTRUCTION, INC.,
25 a California corporation; and DOES 1–50,
26 inclusive,

27 *Defendants.*

E-FILED
3/7/2022 3:31 PM
Superior Court of California
County of Fresno
By: I. Herrera, Deputy

Case No.: 22CECG00407

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

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

JURY TRIAL DEMANDED



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1 Plaintiff, JORGE L. LEON (hereafter “Plaintiff” or “Leon”), on behalf of himself and all
2 others similarly situated, and the State of California, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this class and representative action for alleged violations of the
5 California Labor Code, Industrial Welfare Commission Order No. 16-2001 (hereafter “the Wage
6 Order”), and the California Business and Professions Code against Defendants DAVIS &
7 ROBERTS CONSTRUCTION, INC., a California corporation, and Does 1 through 50, inclusive
8 (collectively “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 him and other similarly situated workers for unpaid wages, statutory penalties, interest, and
11 related relief. These claims are based on Defendants’ failures to:

12 (A) Pay all wages without deductions, including minimum, regular, overtime
13 wages, earned for all hours worked at the correct rates of pay;

14 (B) Provide all meal periods;

15 (C) Authorize and permit all rest breaks;

16 (D) Pay premium wages for unprovided meal periods;

17 (E) Pay premium wages for unprovided rest breaks;

18 (F) Only deduct wages lawfully;

19 (G) Issue only accurate and complete itemized wage statements; and

20 (H) Timely pay wages upon termination of employment;

21 Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages,
22 restitution, statutory penalties, attorneys’ fees, costs, and related relief through this class action.

23 **II. THE PARTIES**

24 3. Plaintiff JORGE L. LEON is a resident of California.

25 4. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8
26 California Code of Regulations Section 11160 and an “aggrieved employee” within the meaning
27 of Labor Code Section 2699(c).

28 5. Defendant DAVIS & ROBERTS CONSTRUCTION, INC. is a corporation



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1 organized and existing under the laws of California and also a citizen of California based on
2 Plaintiff's information and belief.

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

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

14 8. At all relevant times, in perpetrating the acts and omissions alleged herein,
15 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
16 of a practice which resulted in Defendants not compensating Plaintiff and the other Class
17 Members or otherwise complying with their rights in accordance with applicable California labor
18 laws as alleged herein.

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

23 **III. CLASS ALLEGATIONS**

24 10. This action has been brought and may be maintained as a class action pursuant to
25 California Code of Civil Procedure section 382 because there is a well-defined community of
26 interest among the persons who comprise the readily ascertainable class defined below and
27 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as
28 a class action.



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1 11. **Class Definition:** The Class is defined as follows: All persons Defendants
2 employed in California as hourly, non-exempt workers, including but not limited to finishers,
3 laborers, individuals performing work comparable to the aforementioned, compensated
4 comparably to the aforementioned, and individuals in similar positions, at any time during the
5 period beginning four years prior to the filing of this action and ending on the date that final
6 judgment is entered in this action (“Class” or “Class Members”).

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

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

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

17 A. Whether Defendants failed to pay all wages earned to Class Members for
18 all hours worked at the correct rates of pay, including minimum, regular, overtime, meal period
19 premium, and rest period premium;

20 B. Whether Defendants unlawfully deducted wages from Class Members;

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

23 D. Whether Defendants failed to authorize and permit the Class Members to
24 take all rest periods in compliance with California law;

25 E. Whether Defendants knowingly and intentionally failed to provide the
26 class with accurate and complete itemized wage statements;

27 F. Whether Defendants willfully failed to provide the class with timely final
28 wages;



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1 G. Whether Defendants engaged in unfair competition within the meaning of
2 Business and Professions Code sections 17200, et seq., with respect to the Class; and

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

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

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

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

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

28 ///



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1 **IV. STATEMENT OF FACTS**

2 19. The Wage Order applies to

3 all persons employed in the on-site occupations of construction, including but not
4 limited to alteration, demolition, building, excavating, renovation, remodeling,
5 maintenance, improvement, and repair work, and work for which a contractor's
6 license is required by the California Business and Professions Code, Division 3,
7 Chapter 9, Sections 7025 et seq. drilling, including but not limited to all work
8 required to drill, establish, repair, and rework wells for the exploration or
9 extraction of oil, gas, or water resources; logging work for which a timber
10 operator's license is required pursuant to California Public Resources Code
11 Sections 4571 through 4586; and mining (not covered by Labor Code Section 750
12 et seq.), including all work required to mine and/or establish pits, quarries, and
13 surface or underground mines for the purposes of exploration or extraction of
14 nonmetallic minerals and ores, coal, and building materials such as stone and
15 gravel, whether paid on a time, piece rate, commission, or other basis."

16 Wage Order, § 1. The Wage Order defines "construction occupations" to mean,

17 all job classifications associated with construction, including but not limited to
18 work involving alteration, demolition, building, excavation, renovation,
19 remodeling, maintenance, improvement, and repair work, by the California
20 Business and Professions Code, Division 3, Chapter 9, Sections 7025 et seq., and
21 any other similar or related occupations or trades. (D) "Division" means the
22 Division of Labor Standards Enforcement of the State of California.

23 Wage Order, § 2(L). At all relevant times during the applicable limitations period, the Defendants,
24 Leon, and all of the Class Members were covered by the Wage Order because Leon and all of the
25 Class Members worked for the Defendants in construction occupations, including pouring
26 concrete. Accordingly, Leon and all of the other Class Members are entitled to the protections the
27 Wage Order provides.

28 20. On approximately December 30, 2020, the Defendants began to employ Leon in
Clovis (Fresno County) in the position of finisher. The Defendants continuously employed him
in that capacity and as a laborer until on or about March 21, 2021 when his employment ended.

21. At all relevant times, the Defendants issued wages to Leon and all of the other
Class Members on a weekly (52 paychecks/year) basis and paid them by the hour. At all relevant
times, the Defendants classified Leon and all of the other Class Members as non-exempt



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

22. At all relevant times, the Defendants failed to compensate Leon and all of the other Class Members for all hours worked at the applicable minimum or regular rates of pay. Defendants required Plaintiff and the Class Members to work through their meal periods though Defendants did not include this time as time worked on the timesheets they filled out for Plaintiff and the Class Members, or removed this time from the timesheets they filled out for Plaintiff and the Class Members. Defendants also failed to record other time worked by Plaintiff and the Class Members on the timesheets Defendants filled out for them. Defendants required Plaintiff and the Class Members to approve the time sheets regardless of whether their hours were under reported.

23. At all relevant times, the Defendants failed to compensate Leon and all of the other Class Members at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. As stated above, Defendants did not Plaintiff and the Class Members with all of hours they worked. They worked in excess of eight hours per day and 40 hours per week, so the under reported hours should have been paid at overtime premium rates of pay.

24. At all relevant times, the Defendants failed to provide Leon and all of the other Class Members with all timely 30-minute, off-duty meal periods. As stated above, Defendants required Plaintiff and the Class Members to work through their meal periods though the Defendants did not include this time as time worked on the timesheets they filled out for Plaintiff and the Class Members, or removed this time from the timesheets they filled out for Plaintiff and the Class Members. The Defendants also failed to pay premium wages for days on which they failed to provide Leon and all of the other Class Members with meal periods as required by law.

25. At all relevant times, the Defendants failed to authorize and permit Leon and all of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. Defendants required Plaintiff and the Class Members to work through their rest breaks. The Defendants also failed to pay premium wages for days on which they failed to authorize and permit Leon and all of the other Class Members to take rest breaks as required by law.



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1 26. At all relevant times, the Defendants unlawfully deducted wages belonging to
2 Leon and all of the other Class Members. As stated above, Defendants required Plaintiff and the
3 Class Members to work through their meal periods though the Defendants did not include this
4 time as time worked on the timesheets they filled out for Plaintiff and the Class Members, or
5 removed this time from the timesheets they filled out for Plaintiff and the Class Members.

6 27. At all relevant times, the Defendants failed to issue to Leon and all of the other
7 Class Members complete and accurate wage statements that state all hours worked at the correct
8 rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on
9 the wage statements they issued to Leon and all of the other Class Members the unpaid wages
10 discussed above. The wage statements fail to state all minimum wages earned, all regular wages
11 earned, all overtime wages earned, all meal period premium wages earned, all rest break premium
12 wages earned, all unlawfully deducted wages, gross wages earned, net wages earned, and related
13 information.

14 28. At all relevant times, the Defendants also failed to timely pay Leon and all of the
15 other Class Members all earned wages as described above during and at the conclusion of
16 employment.

17 29. At all relevant times, the Defendants failed to maintain accurate employee records
18 of Leon and all of the other Class Members.

19 30. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
20 unlawful practices and policies, Plaintiff and the Class Members were:

- 21 A. Not provided with all off duty meal periods;
- 22 B. Not authorized and permitted to take all rest break periods;
- 23 C. Not paid one hour's pay for each workday in which Defendants failed to
24 authorize and permit them to take one or more timely rest periods;
- 25 D. Not paid one hour's pay for each workday in which Defendants failed to
26 provide them with one or more timely meal periods;
- 27 E. Not paid all wages earned, including, but not limited to, minimum, regular,
28 and overtime wages for work performed while clocked out;



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1 F. Not provided with accurate and complete wage statements; and
2 G. Not timely paid all earned and unpaid wages at the time their employment
3 ended.

4 **FIRST CAUSE OF ACTION**

5 **FAILURE TO PAY, DEDUCTING, OR WITHHOLDING ALL WAGES AT THE**
6 **CORRECT RATES**

7 **Lab. Code §§ 221, 510, 1194, 1197, and 1198**

8 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

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

10 32. At all relevant times, Plaintiff and the Class Members have been non-exempt
11 employees entitled to the protections of both the Labor Code and the Wage Order.

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

14 33. Section 2 of the Wage Order defines “hours worked” as “the time during which an
15 employee is subject to the control of an employer, and includes all the time the employee is
16 suffered or permitted to work, whether or not required to do so.”

17 34. Section 3 of the Wage Order states:

18 The following overtime provisions are applicable to employees 18 years of age or
19 over and to employees 16 or 17 years of age who are not required by law to attend
20 school and are not otherwise prohibited by law from engaging in the subject work.
21 Such employees shall not be employed more than eight (8) hours in any workday
22 or more than 40 in a workweek unless the employee receives one and one half
23 (1½) times such employee’s regular rate of pay for all hours worked over 40 hours
24 in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment
25 beyond eight (8) hours in any workday or more than six (6) days in any workweek
26 is permissible provided the employee is compensated for such overtime at not less
27 than:

28 (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)



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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.

35. 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.

36. Labor Code section 510 states:

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

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

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

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

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



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1 Cal.4th 575, 585.)

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

9 42. At all relevant times during their work for the Defendants, Leon and all of the other
10 Class Members earned monetary incentives, subsistence pay, travel subsistence, health insurance
11 pay, and related compensation during pay periods in which they worked hours qualifying for
12 overtime premium pay rates. However, the Defendants failed to pay to Leon and all of the other
13 Aggrieved Employees overtime premium pay on such monetary incentives, subsistence pay,
14 travel subsistence, health insurance pay, and related compensation.

15 43. At all relevant times during the applicable limitations period, Defendants failed to
16 compensate Plaintiff and the Class Members for all hours worked, including, but not limited to
17 minimum, regular, overtime wages for all minimum, regular, overtime hours, respectively, that
18 they worked at the correct rates of pay.

19 44. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
20 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’
21 failure to compensate Plaintiff and the other Class Members for all hours worked at the correct
22 rates of pay as required by California law.

23 **B. UNLAWFUL WAGE DEDUCTIONS**

24 45. Under Labor Code § 221, “It shall be unlawful for any employer to collect or
25 receive from an employee any part of wages theretofore paid by said employer to said employee.”
26 The Defendants deducted wages from the wages earned by Leon and all of the other Class
27 Members for in violation of Labor Code § 221.

28 46. At all relevant times, Defendants required Plaintiff and the Class Members to work



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1 through their meal periods though the Defendants did not include this time as time worked on the
2 timesheets they filled out for Plaintiff and the Class Members, or removed this time from the
3 timesheets they filled out for Plaintiff and the Class Members.

4 47. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
5 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
6 deduction of wages belonging to Plaintiff and the other Class Members in violation of California
7 law.

8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO PROVIDE MEAL PERIODS**

10 **Lab. Code §§ 226.7 and 512**

11 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

12 48. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

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

16 50. In relevant part, California Labor Code § 1198 states:

17
18 The maximum hours of work and the standard conditions of labor fixed by the
19 commission shall be the maximum hours of work and the standard conditions of
20 labor for employees. The employment of any employee for longer hours than those
21 fixed by the order or under conditions of labor prohibited by the order is unlawful.

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

23
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
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.

26
27 An employer shall not employ an employee for a work period of
28 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



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

52. In relevant part, Section 10 of the Wage Order states:

(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. (See Labor Code Section 512.)

(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. (See Labor Code Section 512.)

(C) In all places of employment the employer shall provide an adequate supply of potable water, soap, or other suitable cleansing agent and single use towels for hand washing.

(D) 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 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 and complies with Labor Code Section 512.

(F) 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.

53. 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



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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.

54. 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.

55. 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. As stated above, Defendants required Plaintiff and the Class Members to work through their meal periods though the Defendants did not include this time as time worked on the timesheets they filled out for Plaintiff and the Class Members, or removed this time from the timesheets they filled out for Plaintiff and the Class Members.

56. At all relevant times, Defendants failed to provide Plaintiff and the Class Members with all timely meal periods. Defendants denied Plaintiff and the other Class Members their 30-minute off-duty meal period within the first five hours of work. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class Members with timely meal periods.

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

58. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have



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1 suffered damages in amounts subject to proof to the extent they were not paid additional wages
2 owed for all meal periods not provided to them.

3 59. By reason of the above, Plaintiff and the Class Members are entitled to premium
4 wages for workdays in which one or more meal periods were not provided to them pursuant to
5 California Labor Code § 226.7.

6 **THIRD CAUSE OF ACTION**

7 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

8 **Lab. Code § 226.7**

9 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

10 60. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

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

14 62. In relevant part, California Labor Code § 1198 states:

15
16 The maximum hours of work and the standard conditions of labor
17 fixed by the commission shall be the maximum hours of work and
18 the standard conditions of labor for employees. The employment
19 of any employee for longer hours than those fixed by the order or
20 under conditions of labor prohibited by the order is unlawful.

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

22 **Rest Periods:**

23 (A) Every employer shall authorize and permit all employees to take
24 rest periods, which insofar as practicable shall be in the middle of
25 each work period. Nothing in this provision shall prevent an
26 employer from staggering rest periods to avoid interruption in the
27 flow of work and to maintain continuous operations, or from
28 scheduling rest periods to coincide with breaks in the flow of work
that occur in the course of the workday. The authorized rest period
time shall be based on the total hours worked daily at the rate of
ten (10) minutes net rest time for every four (4) hours worked, or
major fraction thereof. Rest periods shall take place at employer
designated areas, which may include or be limited to the



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employees' immediate work area.

(B) Rest periods need not be authorized in limited circumstances when the disruption of continuous operations would jeopardize the product or process of the work. However, the employer shall make up the missed rest period within the same workday or compensate the employee for the missed ten (10) minutes of rest time at his/her regular rate of pay within the same pay period.

(C) ...

(D) 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.

64. 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.

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

66. Defendants intentionally failed to authorize and permit Plaintiff and the Class Members to take all 10-minute rest periods free from any work duties in accordance with the



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1 Wage Order.

2 67. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
3 Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium
4 wages to Plaintiff and the Class Members for days on which they failed to authorize and permit
5 Plaintiff and the other Class Members to take timely rest periods.

6 68. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
7 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
8 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
9 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
10 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed
11 to authorize and permit them to take 10-minute rest periods every four hours worked or major
12 fraction thereof.

13 69. Plaintiff is informed and believes and thereon alleges that, at all relevant times
14 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
15 which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to
16 take all rest breaks required by California law.

17 70. Defendants failed to provide Plaintiff with all required rest breaks in accordance
18 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
19 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
20 which resulted in Defendants not providing the Class Members with all rest breaks required by
21 California law.

22 71. Defendants failed to pay Plaintiff the additional wages required by California
23 Labor Code § 226.7 for all rest breaks not provided to him. Plaintiff is informed and believes and
24 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
25 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
26 Class Members with additional wages for all rest breaks not provided to them as required by
27 California Labor Code § 226.7.

28 72. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have



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1 suffered damages in amounts subject to proof to the extent they were not paid additional wages
2 owed for all rest breaks not provided to them.

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

6 **FOURTH CAUSE OF ACTION**

7 **FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS**

8 **Lab. Code § 226**

9 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

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

11 75. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were
12 entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
13 statement showing:

- 14 1. Gross wages earned;
- 15 2. Total hours worked by the employee, except for any employee
16 whose compensation is solely based on a salary and who is exempt
17 from payment of overtime under subdivision (a) of Section 515 or
18 any applicable order of the Industrial Welfare Commission;
- 19 3. The number of piece rate units earned and any applicable piece rate
20 if the employee is paid on a piece-rate basis;
- 21 4. All deductions, provided that all deductions made on written
22 orders of the 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,
26 except that by January 1, 2008, only the last four digits of his or
27 her social security number or an employee identification number
28 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,



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1 if the employer is a farm labor contractor, as defined in subdivision
2 (b) of Section 1682, the name and address of the legal entity that
secured the services of the employer; and

- 3 9. All applicable hourly rates in effect during the pay period and the
4 corresponding number of hours worked at each hourly rate by the
5 employee.

6 Lab.Code § 266(a).

7 76. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
8 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
9 the employer fails to provide accurate and complete information as required by California Labor
10 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
11 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 Section 1682 of the California Labor Code, the name
19 and address of the legal entity that secured the services of the employer during the pay period;

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

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

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

27 78. As alleged herein, at all relevant times during the applicable limitations period,
28 Defendants violated California Labor Code section 226 because they did not properly and



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1 accurately itemize each employee's gross wages earned, net wages earned, the total hours worked,
2 the corresponding number of hours worked at each rate by the employee and other requirements
3 of California Labor Code section 226. Defendants failed to state in the wage statements they
4 issued to Plaintiff and the other Class Members all their hours worked and wages earned,
5 including, but not limited to, regular and overtime wages for work they performed off-the-clock
6 after clocking-out (as described above). Defendants knowingly and intentionally did not issue
7 either as a detachable part of the check, draft, or voucher paying the employee's wages, or
8 separately if wages are paid by personal check or cash, statements to Plaintiff and the Class
9 Members that state all minimum wages earned, all regular wages earned, all overtime wages
10 earned, all meal period premium wages earned, all rest break premium wages earned, all
11 unlawfully deducted wages, gross wages earned, net wages earned.

12 79. Defendants' failure to provide Plaintiff and the other Class Members with accurate
13 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
14 the other Class Members with accurate wage statements but intentionally provided wage
15 statements that Defendants knew were not accurate.

16 80. Similarly, section 6(B) of the Wage Order states

17 Every employer who has control over wages, hours, or working conditions shall
18 semimonthly or at the time of each payment of wages furnish each employee an
19 itemized statement in writing showing:

- 20 (1) all deductions;
- 21 (2) the inclusive dates of the period for which the employee is paid;
- 22 (3) the name of the employee or the employee's social security number; and
- 23 (4) the name of the employer, provided all deductions made on written orders
24 of the employee may be aggregated and shown as one item. (See Labor
25 Code Section 226.)

26 This information shall be furnished either separately or as a detachable part of the
27 check, draft, or voucher paying the employee's wages.

28 81. As a result of being provided with inaccurate wage statements by Defendants,



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

10 **FIFTH CAUSE OF ACTION**

11 **WILLFUL FAILURE TO TIMELY PAY FINAL WAGES**

12 **(Lab. Code §§ 201, 202, and 203)**

13 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

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

15 83. At all relevant times during the applicable limitations period, Plaintiff and the
16 Class have been non-exempt employees of Defendants and entitled to the benefits and protections
17 of California Labor Code §§ 201, 202, and 203, and the Wage Order.

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

20 85. Labor Code § 202 provides that all earned and unpaid wages of an employee who
21 quits after providing at least 72-hours notice before quitting are due and payable at the time of
22 quitting and that all earned and unpaid wages of an employee who quits without providing at least
23 72-hours notice before quitting are due and payable within 72 hours.

24 86. The Defendants failed to pay Leon and all of the other Class Members whose
25 employment ended all of the earned but unpaid wages described above by the conclusion of their
26 employment with Defendants, including minimum wages, regular wages, overtime wages,
27 unprovided meal period premium wages, unprovided rest break premium wages, and deducted
28 wages.



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comparable money and property.

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

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

SEVENTH CAUSE OF ACTION

CIVIL PENALTIES

(By Plaintiff and the Class against all Defendants)

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

97. The "Aggrieved Employees" are all members of the Class defined above who Defendants employed during the period beginning December 23, 2020 and ending on the date that final judgment is entered in this action.

98. Labor Code § 204 states

(d) 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.

(e) ©However, when employees are covered by a collective bargaining agreement that



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provides different pay arrangements, those arrangements shall apply to the covered employees.

(f) 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.

96. 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.

97. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198.

98. 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.

99. 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, 1174, 1194, 1197, and 1198 during the applicable limitations period in the following amounts:

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

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



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1 C. For violations of California Labor Code § 226(a), two hundred fifty dollars
2 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00)
3 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
4 California Labor Code § 226.3).

5 D. For violations of California Labor Code §§ 510 and 512, fifty dollars
6 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for
7 each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
8 established by California Labor Code § 558).

9 E. For violations of California Labor Code § 1197, one hundred dollars
10 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
11 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
12 (regardless of whether the initial violations were intentionally committed) (penalty amounts
13 established by California Labor Code § 1197.1).

14 F. For violations of California Labor Code § 1174, five hundred dollars
15 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
16 California Labor Code § 1174.5).

17 G. 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)).

21 100. Plaintiff has complied with the procedures for bringing suit specified in California
22 Labor Code § 2699.3. By letter dated December 23, 2021, Plaintiff filed written notice online
23 with the Labor and Workforce Development Agency (“LWDA”) and gave written notice by
24 certified mail to Defendants of the specific provisions of the California Labor Code alleged to
25 have been violated, including the facts and theories to support the alleged violations. A true and
26 correct copy of the notice to the LWDA dated December 23, 2021 is attached as Exhibit A.
27 Plaintiff accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has
28 failed to take action in response within 65 calendar days of the date of Plaintiff’s notice, but



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1 Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing him that it
2 does not intend to investigate these allegations.

3 101. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
4 Employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in
5 connection with their claims for civil penalties.

6 **V. PRAYER FOR RELIEF**

7 102. WHEREFORE, Plaintiff, on behalf of himself and the Class Members, prays for
8 relief and judgment against Defendants as follows:

9 A. An order that the action be certified as a class action with respect to
10 Plaintiff's claims for violations of California law;

11 B. An order that Plaintiff be appointed class representative;

12 C. An order that counsel for Plaintiff be appointed class counsel;

13 D. Unpaid wages, including minimum, regular, overtime, missed meal period,
14 missed rest period and unlawfully deducted wages;

15 E. Liquidated damages;

16 F. Statutory penalties, including waiting time penalties;

17 G. Civil penalties;

18 H. Restitution;

19 I. Declaratory relief;

20 J. Actual damages;

21 K. Pre-judgment interest;

22 L. Costs of suit;

23 M. Reasonable attorneys' fees; and

24 N. Such other relief as the Court deems just and proper.

25 ///

26 ///

27 ///

28 ///



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VI. DEMAND FOR JURY TRIAL

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: March 7, 2022

By: 

DAVID G. SPIVAK,
CAROLINE TAHMASSIAN,
MAYA CHEAITANI, Attorneys for
Plaintiff, JORGE L. LEON, and all
others similarly situated



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EXHIBIT A



SPIVAK LAW

**SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND
EMAIL***

December 23, 2021

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

Re: Jorge L. Leon / Davis & Roberts

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Jorge L. Leon (hereafter “Leon” or “Complainant”) provides notice that Davis & Roberts Construction, Inc., a California corporation, and related entities (collectively “the Davis & Roberts Employers” or “the Employers”) violated his rights and those of all other individuals the Davis & Roberts Employers have employed or otherwise contracted with in California as hourly, non-exempt workers, including but not limited to finishers, 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, 1198, 2802, and related Labor Code statutes. On behalf of himself and all other Aggrieved Employees, Leon hereby provides this notice to the Labor & Workforce Development Agency and the Davis & Roberts Employers and their agents and representatives.

At all relevant times, the Davis & Roberts Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies,

throughout California. Leon and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 16-2001 (hereafter “the Wage Order”) section 2, subdivision (H) and “Aggrieved Employees” within the meaning of Labor Code section 2699©.

Statement of Facts

On approximately December 30, 2020, the Davis & Roberts Employers began to employ Leon in Clovis (Fresno County) in the position of laborer. The Davis & Roberts Employers continuously employed him in that capacity until on or about May 21, 2021 when his employment ended.

At all relevant times, the Davis & Roberts Employers issued wages to Leon and all of the other Aggrieved Employees on a weekly (52 paychecks/year) basis and paid them by the hour. At all relevant times, the Davis & Roberts Employers classified Leon and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Davis & Roberts Employers failed to compensate Leon and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Davis & Roberts Employers required Leon and the Aggrieved Employees to work through their meal periods though the Davis & Roberts Employers did not include this time as time worked on the timesheets they filled out for Leon and the Aggrieved Employees, or removed this time from the timesheets they filled out for Leon and the Aggrieved Employees. The Davis & Roberts Employers also failed to record other time worked by Leon and the Aggrieved Employees on the timesheets the Davis & Roberts Employers filled out for them. The Davis & Roberts Employers required Leon and the Aggrieved Employees to approve the time sheets regardless of whether their hours were under reported.

The Davis & Roberts Employers failed to compensate Leon 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. As stated above, the Davis & Roberts Employers did not credit Leon

and the Aggrieved Employees with all of hours they worked. They worked in excess of eight hours per day and 40 hours per week, so they under reported hours should have been paid at overtime premium rates of pay.

At all relevant times, the Davis & Roberts Employers failed to provide Leon and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. As stated above, The Davis & Roberts Employers required Leon and the Aggrieved Employees to work through their meal periods though the Davis & Roberts Employers did not include this time as time worked on the timesheets they filled out for Leon and the Aggrieved Employees, or removed this time from the timesheets they filled out for Leon and the Aggrieved Employees. The Davis & Roberts Employers also failed to pay premium wages for days on which failed to provide Leon and all of the other Aggrieved Employees with meal periods as required by law. On those occasions in which the David & Roberts Employers paid a “meal premium” to Leon and the Aggrieved Employees, it was paid at less than the regular rate of pay.

At all relevant times, the Davis & Roberts Employers failed to authorize and permit Leon 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 Davis & Roberts Employers required Leon and the Aggrieved Employees to work through their rest breaks. The Davis & Roberts Employers also failed to pay premium wages for days on which failed to authorize and permit Leon and all of the other Aggrieved Employees to take rest breaks as required by law.

The Davis & Roberts Employers unlawfully deducted wages belonging to Leon and all of the other Aggrieved Employees. As stated above, the Davis & Roberts Employers required Leon and the Aggrieved Employees to work through their meal periods though the Davis & Roberts Employers did not include this time as time worked on the timesheets they filled out for Leon and the Aggrieved Employees, or removed this time from the timesheets they filled out for Leon and the Aggrieved Employees.

At all relevant times, the Davis & Roberts Employers failed to issue to Leon 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 Davis & Roberts Employers knowingly and intentionally failed to state on the wage statements they issued to Leon and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, gross wages earned, and net wages earned.

The Davis & Roberts Employers also failed to timely pay Leon and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Davis & Roberts Employers failed to maintain accurate employee records of Leon and all of the other Aggrieved Employees.

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

- (a) The Davis & Roberts Employers failed to pay Leon and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, and overtime wages;
- (b) The Davis & Roberts Employers failed to provide Leon and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Davis & Roberts Employers failed to authorize and permit Leon and all of the other Aggrieved Employees to take rest breaks in compliance with California law;

- (d) The Davis & Roberts Employers failed to compensate Leon and all of the other Aggrieved Employees at one hour's pay at the regular rate of pay for each day in which the Davis & Roberts Employers failed to provide them with one or more meal periods as required by law;
- (e) The Davis & Roberts Employers failed to compensate Leon and all of the other Aggrieved Employees at one hour's pay at the regular rate of pay for each day in which the Davis & Roberts Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Davis & Roberts Employers unlawfully deducted wages belonging to Leon and all of the other Aggrieved Employees;
- (g) The Davis & Roberts Employers knowingly and intentionally failed to provide Leon and all of the other Aggrieved Employees with accurate and complete wage statements;
- (h) The Davis & Roberts Employers willfully failed to timely pay Leon and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Davis & Roberts Employers and when their employment ended; and
- (i) The Davis & Roberts Employers failed to maintain accurate employment records pertaining to Leon and all of the other Aggrieved Employees.

Accordingly, Leon now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Davis & Roberts Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to

all persons employed in the on-site occupations of construction, including but not limited to alteration, demolition, building, excavating, renovation, remodeling, maintenance, improvement, and repair work, and work for which a contractor's license is required by the California Business and Professions Code, Division 3, Chapter 9, Sections 7025 et seq. drilling, including but not limited to all work required to drill, establish, repair, and rework wells for the exploration or extraction of oil, gas, or water resources; logging work for which a timber operator's license is required pursuant to California Public Resources Code Sections 4571 through 4586; and mining (not covered by Labor Code Section 750 et seq.), including all work required to mine and/or establish pits, quarries, and surface or underground mines for the purposes of exploration or extraction of nonmetallic minerals and ores, coal, and building materials such as stone and gravel, whether paid on a time, piece rate, commission, or other basis."

Wage Order, § 1. The Wage Order defines "construction occupations" to mean,

all job classifications associated with construction, including but not limited to work involving alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement, and repair work, by the California Business and Professions Code, Division 3, Chapter 9, Sections 7025 et seq., and any other similar or related occupations or trades. (D) "Division" means the Division of Labor Standards Enforcement of the State of California.

Wage Order, § 2(C).

At all relevant times during the applicable limitations period, the Davis & Roberts “Employers, Leon, and all of the Aggrieved Employees were covered by the Wage Order because Leon and all of the Aggrieved Employees worked for the Davis & Roberts Employers in construction occupations, including pouring concrete. Accordingly, Leon 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(J) 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.

- (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.

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 Davis & Roberts Employers required Leon and the Aggrieved Employees to work through their meal periods though the Davis & Roberts Employers did not include this time as time worked on the timesheets they filled out for Leon and the Aggrieved Employees, or removed this time from the timesheets they filled out for Leon and the Aggrieved Employees. The Davis & Roberts Employers also failed to record other time worked by Leon and the Aggrieved Employees on the timesheets the Davis & Roberts Employers filled out for them. The Davis & Roberts Employers required Leon and the Aggrieved Employees to approve the time sheets regardless of whether their hours were under reported.

As stated above, the Davis & Roberts Employers did not credit Leon and the Aggrieved Employees with all of hours they worked. They worked in excess of eight hours per day and 40 hours per week, so they under reported hours should have been paid at overtime premium rates of pay. As stated above, the Davis & Roberts Employers did not credit Leon and the Aggrieved Employees with all of hours they worked. Additionally, the Davis & Roberts Employers include all

forms of hours worked in determining whether Leon and the Aggrieved Employees had worked into overtime hours requiring compensation at overtime premium rates of pay.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Davis & Roberts Employers, Leon and all of the other Aggrieved Employees earned monetary incentives, subsistence pay, travel subsistence, health insurance pay, and related compensation during pay periods in which they worked hours qualifying for overtime premium pay rates. However, the Davis & Roberts Employers, Leon failed to pay to Leon and all of the other Aggrieved Employees monetary incentives, subsistence pay, travel subsistence, health insurance pay overtime premium pay on such monetary incentives, subsistence pay, travel subsistence, health insurance pay, and related compensation.

At all relevant times during the applicable limitations period, the Davis & Roberts Employers failed to compensate Leon and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, and overtime wages for all hours they worked at the correct rates of pay. Accordingly, Leon now seeks civil penalties on behalf of himself 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(J) 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 10 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. (See Labor Code Section 512.)
- (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. (See Labor Code Section 512.)
- (C) ...

- (D) 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 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 and complies with Labor Code Section 512.
- (E) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

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

At all relevant times, the Davis & Roberts Employers failed to provide Leon and all of the other Aggrieved Employees with all timely meal periods. The Davis & Roberts Employers denied Leon and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. As stated above, The Davis & Roberts Employers required Leon and the Aggrieved Employees to work through their meal periods though the Davis & Roberts Employers did not include this time as time worked on the timesheets they filled out for Leon and the Aggrieved Employees, or removed this time from the timesheets they filled out for Leon and the Aggrieved Employees. Furthermore, the Davis & Roberts Employers failed to pay premium wages for days on which they failed to provide Leon and all of the other Aggrieved Employees with timely meal periods. Accordingly, Leon now seeks civil penalties for these Labor Code violations that the Davis & Roberts Employers have committed against him 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)).

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

Section 2(J) 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 11 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. Nothing in this provision shall prevent an employer from staggering rest periods to avoid interruption in the flow of work and to maintain continuous operations, or from scheduling rest periods to coincide with breaks in the flow of work that occur in the course of the workday. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof. Rest periods shall take place at employer designated areas, which may include or be limited to the employees’ immediate work area.
- (B) Rest periods need not be authorized in limited circumstances when the disruption of continuous operations would jeopardize the product or process of the work. However, the

employer shall make up the missed rest period within the same workday or compensate the employee for the missed ten (10) minutes of rest time at his/her regular rate of pay within the same pay period.

(C) ...

(D) 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.

(d) A rest or recovery period mandated pursuant to 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, shall be counted as hours worked, for which there shall be no deduction from wages. This subdivision is declaratory of existing law.

The Davis & Roberts Employers failed to authorize and permit Leon 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 Davis & Roberts Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Davis & Roberts Employers required Leon and the Aggrieved Employees to work through their rest breaks. Moreover, the Davis & Roberts Employers failed to pay Leon and all of the other Aggrieved Employees premium wages on workdays the Davis & Roberts Employers failed to provide Leon and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Leon now seeks civil penalties for these Labor Code violations that the Davis & Roberts Employers have committed against him 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)).

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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.” Similarly, section 7 of the Wage Order states,

No employer shall collect or deduct from any employee any part of the wages that are paid unless such deductions are allowed by law. (See Labor Code Sections 220-226.) No fee shall be charged by the employer or agent of the employer for cashing a payroll check.

The Davis & Roberts Employers deducted wages from the wages earned by Leon and all of the other Aggrieved Employees for and similar deductions in violation of Labor Code § 221, including for time worked during meal periods. Accordingly, Leon seeks civil penalties on behalf of himself 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.

Similarly, section 6(B) of the Wage Order states

Every employer who has control over wages, hours, or working conditions shall semimonthly or at the time of each payment of wages furnish each employee an itemized statement in writing showing:

- (1) all deductions;
- (2) the inclusive dates of the period for which the employee is paid;
- (3) the name of the employee or the employee's social security number;
and

- (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item. (See Labor Code Section 226.)

This information shall be furnished either separately or as a detachable part of the check, draft, or voucher paying the employee's wages.

At all relevant times during the applicable limitations period, the Davis & Roberts 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 Davis & Roberts Employers failed to state in the wage statements they issued to Leon 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 Davis & Roberts Employers knowingly and intentionally failed to state on the wage statements they issued to Leon and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, gross wages earned, net wages earned, and similar information. Accordingly, Leon seeks civil penalties for the Labor Code violations that the Davis & Roberts Employers have committed against him and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to 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 Davis & Roberts Employers failed to compensate Leon and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, and deducted wages, at the intervals stated above. As a result, the Davis & Roberts Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Leon now seeks civil penalties for the Labor Code violations that the Davis & Roberts Employers have committed against him 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 Davis & Roberts Employers failed to pay Leon 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 Leon, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, and deducted wages and similar forms of compensation. By failing to pay Leon and all of the other Aggrieved Employees as set forth above at the end of employment, the Davis & Roberts Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Leon seeks civil penalties from the Davis & Roberts 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 6 of Wage Order states,

- (A) Every employer who has control over wages, hours, or working conditions shall keep accurate information with respect to each employee, including the following:
 - (1) The employee's full name, home address, occupation, and social security number. The employee's date of birth, if under 18 years of age, and designation as a minor. 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.
 - (2) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
 - (3) Total hours worked during the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request. 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.
- (C) All required records shall be in the English language and in ink or other indelible form, dated properly, showing month, day and year. The employer who has control over wages, hours, or working

conditions shall also keep said records on file at the place of employment or at a central location for at least three years. An employee's records shall be available for inspection by the employee upon reasonable request.

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

The Davis & Roberts Employers failed to compensate Leon and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, gross wages earned, and net wages earned. As a result, the Davis & Roberts Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Leon and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Leon seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Conclusion

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

Davis & Roberts Construction, Inc.
c/o Ian B. Wieland, Esq.
Sagaser, Watkins & Wieland PC
5260 N. Palm Ave., Ste. 400
Fresno, CA 93704
ian@sw2law.com

1 **PROOF OF SERVICE**

2
3 State of California,
County of Los Angeles

4 1. I am a citizen of the United States and am employed in the County
5 of Los Angeles, State of California. I am over the age of 18 years, and not a
6 party to the within action. My business address is 15303 Ventura Blvd., Suite
900, Sherman Oaks, CA 91403.

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

9 On Monday, March 07, 2022, I served the foregoing document described as
10 **FIRST AMENDED COMPLAINT** on interested parties by electronic mail, addressed as
follows:

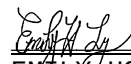
11 Ian B. Wieland, Esq.
12 Sagaser, Watkins & Wieland PC
13 5260 N. Palm Ave., Ste. 400
Fresno, CA 93704
14 ian@sw2law.com
tristan@sw2law.com

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

17 EXECUTED on Monday, March 07, 2022, at Los Angeles, California.

18 XXXX (State) I declare under penalty of perjury under the laws of the State
19 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
bar of this court at whose direction the service was made.

21
22 
23 _____
24 EMILY HOUNG LY



25 **SPIVAK LAW**

26 Employee Rights Attorneys

27 Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
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28 Office:
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Ste 900
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EXHIBIT 5

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10 Telephone: (213) 725-9094
11 Facsimile: (213) 634-2485

12 Attorneys for Plaintiff,
13 JORGE L. LEON, and all others similarly situated

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF FRESNO**
16 **(UNLIMITED JURISDICTION)**

17 JORGE L. LEON, on behalf of himself and all
18 others similarly situated, and as an "aggrieved
19 employee" on behalf of other "aggrieved
20 employees" under the Labor Code Private
21 Attorneys General Act of 2004,

22 *Plaintiff,*

23 vs.

24 DAVIS & ROBERTS CONSTRUCTION, INC.,
25 a California corporation; and DOES 1-50,
26 inclusive,

27 *Defendants.*

FILED

AUG 21 2023

FRESNO SUPERIOR COURT
By _____ DEPUTY

RECEIVED
8/15/2023 3:39 PM
FRESNO COUNTY SUPERIOR COURT
By: I. Herrera, Deputy

Case No.: 22CECG00407

CLASS ACTION

~~PROPOSED~~ SECOND AMENDED COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 221, 510, 1194, 1197, and 1198);
2. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
3. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
4. Failure to Indemnify (Lab. Code § 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code § 203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*); and
8. Civil Penalties (Lab. Code §§ 2698, *et seq.*).



SPIVAK LAW

Employee Rights Attorneys

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JURY TRIAL DEMANDED

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1 Plaintiff, JORGE L. LEON (hereafter “Plaintiff” or “Leon”), on behalf of himself and all
2 others similarly situated, and the State of California, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this class and representative action for alleged violations of the
5 California Labor Code, Industrial Welfare Commission Order No. 16-2001 (hereafter “the Wage
6 Order”), and the California Business and Professions Code against Defendants DAVIS &
7 ROBERTS CONSTRUCTION, INC., a California corporation, and Does 1 through 50, inclusive
8 (collectively “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 him and other similarly situated workers for unpaid wages, statutory penalties, interest, and
11 related relief. These claims are based on Defendants’ failures to:

12 (A) Pay all wages without deductions, including minimum, regular, overtime
13 wages, earned for all hours worked at the correct rates of pay;

14 (B) Provide all meal periods;

15 (C) Authorize and permit all rest breaks;

16 (D) Pay premium wages for unprovided meal periods;

17 (E) Pay premium wages for unprovided rest breaks;

18 (F) Only deduct wages lawfully;

19 (G) Indemnify for necessary work-related expenditures;

20 (H) Issue only accurate and complete itemized wage statements; and

21 (I) Timely pay wages upon termination of employment;

22 Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages,
23 restitution, statutory penalties, attorneys’ fees, costs, and related relief through this class action.

24 **II. THE PARTIES**

25 3. Plaintiff JORGE L. LEON is a resident of California.

26 4. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8
27 California Code of Regulations Section 11160 and an “aggrieved employee” within the meaning
28 of Labor Code Section 2699(c).



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1 a class action.

2 11. **Class Definition:** The Class is defined as follows: All persons Defendants
3 employed in California as hourly, non-exempt workers, including but not limited to finishers,
4 laborers, individuals performing work comparable to the aforementioned, compensated
5 comparably to the aforementioned, and individuals in similar positions, at any time during the
6 period beginning four years prior to the filing of this action and ending on the date that final
7 judgment is entered in this action (“Class” or “Class Members”).

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

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

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

18 A. Whether Defendants failed to pay all wages earned to Class Members for
19 all hours worked at the correct rates of pay, including minimum, regular, overtime, meal period
20 premium, and rest period premium;

21 B. Whether Defendants unlawfully deducted wages from Class Members;

22 C. Whether Defendants failed to provide the Class Members with all meal
23 periods in compliance with California law;

24 D. Whether Defendants failed to authorize and permit the Class Members to
25 take all rest periods in compliance with California law;

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

28 F. Whether Defendants knowingly and intentionally failed to provide the



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1 class with accurate and complete itemized wage statements;

2 G. Whether Defendants willfully failed to provide the class with timely final
3 wages;

4 H. Whether Defendants engaged in unfair competition within the meaning of
5 Business and Professions Code sections 17200, et seq., with respect to the Class; and

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

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

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

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

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



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Members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

IV. STATEMENT OF FACTS

19. The Wage Order applies to

all persons employed in the on-site occupations of construction, including but not limited to alteration, demolition, building, excavating, renovation, remodeling, maintenance, improvement, and repair work, and work for which a contractor's license is required by the California Business and Professions Code, Division 3, Chapter 9, Sections 7025 et seq. drilling, including but not limited to all work required to drill, establish, repair, and rework wells for the exploration or extraction of oil, gas, or water resources; logging work for which a timber operator's license is required pursuant to California Public Resources Code Sections 4571 through 4586; and mining (not covered by Labor Code Section 750 et seq.), including all work required to mine and/or establish pits, quarries, and surface or underground mines for the purposes of exploration or extraction of nonmetallic minerals and ores, coal, and building materials such as stone and gravel, whether paid on a time, piece rate, commission, or other basis."

Wage Order, § 1. The Wage Order defines "construction occupations" to mean,

all job classifications associated with construction, including but not limited to work involving alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement, and repair work, by the California Business and Professions Code, Division 3, Chapter 9, Sections 7025 et seq., and any other similar or related occupations or trades. (D) "Division" means the Division of Labor Standards Enforcement of the State of California.

Wage Order, § 2(L). At all relevant times during the applicable limitations period, the Defendants, Leon, and all of the Class Members were covered by the Wage Order because Leon and all of the Class Members worked for the Defendants in construction occupations, including pouring concrete. Accordingly, Leon and all of the other Class Members are entitled to the protections the Wage Order provides.

20. On approximately December 30, 2020, the Defendants began to employ Leon in Clovis (Fresno County) in the position of finisher. The Defendants continuously employed him in that capacity and as a laborer until on or about March 21, 2021 when his employment ended.

21. At all relevant times, the Defendants issued wages to Leon and all of the other



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1 Class Members on a weekly (52 paychecks/year) basis and paid them by the hour. At all relevant
2 times, the Defendants classified Leon and all of the other Class Members as non-exempt
3 employees entitled to the protections of the Labor Code and the Wage Order.

4 22. At all relevant times, the Defendants failed to compensate Leon and all of the other
5 Class Members for all hours worked at the applicable minimum or regular rates of pay.
6 Defendants required Plaintiff and the Class Members to work through their meal periods though
7 Defendants did not include this time as time worked on the timesheets they filled out for Plaintiff
8 and the Class Members, or removed this time from the timesheets they filled out for Plaintiff and
9 the Class Members. Defendants also failed to record other time worked by Plaintiff and the Class
10 Members on the timesheets Defendants filled out for them. Defendants required Plaintiff and the
11 Class Members to approve the time sheets regardless of whether their hours were under reported.

12 23. At all relevant times, the Defendants failed to compensate Leon and all of the other
13 Class Members at the correct rates of pay for all hours worked over eight in a day, over 40 in a
14 week, and for the first eight hours of the seventh day of the workweek. As stated above,
15 Defendants did not Plaintiff and the Class Members with all of hours they worked. They worked
16 in excess of eight hours per day and 40 hours per week, so the under reported hours should have
17 been paid at overtime premium rates of pay.

18 24. At all relevant times, the Defendants failed to provide Leon and all of the other
19 Class Members with all timely 30-minute, off-duty meal periods. As stated above, Defendants
20 required Plaintiff and the Class Members to work through their meal periods though the
21 Defendants did not include this time as time worked on the timesheets they filled out for Plaintiff
22 and the Class Members, or removed this time from the timesheets they filled out for Plaintiff and
23 the Class Members. The Defendants also failed to pay premium wages for days on which they
24 failed to provide Leon and all of the other Class Members with meal periods as required by law.

25 25. At all relevant times, the Defendants failed to authorize and permit Leon and all
26 of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked
27 or major portion thereof. Defendants required Plaintiff and the Class Members to work through
28 their rest breaks. The Defendants also failed to pay premium wages for days on which they failed



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1 to authorize and permit Leon and all of the other Class Members to take rest breaks as required
2 by law.

3 26. At all relevant times, the Defendants unlawfully deducted wages belonging to
4 Leon and all of the other Class Members. As stated above, Defendants required Plaintiff and the
5 Class Members to work through their meal periods though the Defendants did not include this
6 time as time worked on the timesheets they filled out for Plaintiff and the Class Members, or
7 removed this time from the timesheets they filled out for Plaintiff and the Class Members.

8 27. At all relevant times, the Defendants required Leon and all of the other Class
9 Members to incur certain business expenses in the course of performing their duties. However,
10 the Defendants did not reimburse Leon and the other Class Members for these items.

11 28. At all relevant times, the Defendants failed to issue to Leon and all of the other
12 Class Members complete and accurate wage statements that state all hours worked at the correct
13 rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on
14 the wage statements they issued to Leon and all of the other Class Members the unpaid wages
15 discussed above. The wage statements fail to state all minimum wages earned, all regular wages
16 earned, all overtime wages earned, all meal period premium wages earned, all rest break premium
17 wages earned, all unlawfully deducted wages, gross wages earned, net wages earned, and related
18 information.

19 29. At all relevant times, the Defendants also failed to timely pay Leon and all of the
20 other Class Members all earned wages as described above during and at the conclusion of
21 employment.

22 30. At all relevant times, the Defendants failed to maintain accurate employee records
23 of Leon and all of the other Class Members.

24 31. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
25 unlawful practices and policies, Plaintiff and the Class Members were:

- 26 A. Not provided with all off duty meal periods;
- 27 B. Not authorized and permitted to take all rest break periods;
- 28 C. Not paid one hour's pay for each workday in which Defendants failed to



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1 authorize and permit them to take one or more timely rest periods;

2 D. Not paid one hour's pay for each workday in which Defendants failed to
3 provide them with one or more timely meal periods;

4 E. Not paid all wages earned, including, but not limited to, minimum, regular,
5 and overtime wages for work performed while clocked out;

6 F. Not provided with accurate and complete wage statements; and

7 G. Not timely paid all earned and unpaid wages at the time their employment
8 ended.

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PAY, DEDUCTING, OR WITHHOLDING ALL WAGES AT THE**
11 **CORRECT RATES**

12 **Lab. Code §§ 221, 510, 1194, 1197, and 1198**

13 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

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

15 33. At all relevant times, Plaintiff and the Class Members have been non-exempt
16 employees entitled to the protections of both the Labor Code and the Wage Order.

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

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

22 35. Section 3 of the Wage Order states:

23 The following overtime provisions are applicable to employees 18 years of age or
24 over and to employees 16 or 17 years of age who are not required by law to attend
25 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
28 than:



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- 1 (a) One and one-half (1½) times the employee's regular rate of pay for all
2 hours worked in excess of eight (8) hours up to and including twelve (12)
3 hours in any workday, and for the first eight (8) hours worked on the
4 seventh (7th) consecutive day of work in a workweek;
- 5 (b) Double the employee's regular rate of pay for all hours worked in excess
6 of 12 hours in any workday and for all hours worked in excess of eight (8)
7 hours on the seventh (7th) consecutive day of work in a workweek.
- 8 (c) The overtime rate of compensation required to be paid to a nonexempt
9 full-time salaried employee shall be computed by using the employee's
10 regular hourly salary as one fortieth (1/40) of the employee's weekly
11 salary.

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

15 37. Labor Code section 510 states:

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

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

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

40. Labor Code section 1198 makes it unlawful for an employer to employ an

1 employee under conditions that violate the Wage Order.

2 41. 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 42. With respect to overtime wages, the regular rate of pay under California law must
8 include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14
9 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g.,*
10 *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses
11 must be included in the regular rate whether they are the sole source of the employee’s
12 compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117,
13 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379.

14 43. At all relevant times during their work for the Defendants, Leon and all of the other
15 Class Members earned monetary incentives, subsistence pay, travel subsistence, health insurance
16 pay, and related compensation during pay periods in which they worked hours qualifying for
17 overtime premium pay rates. However, the Defendants failed to pay to Leon and all of the other
18 Aggrieved Employees overtime premium pay on such monetary incentives, subsistence pay,
19 travel subsistence, health insurance pay, and related compensation.

20 44. At all relevant times during the applicable limitations period, Defendants failed to
21 compensate Plaintiff and the Class Members for all hours worked, including, but not limited to
22 minimum, regular, overtime wages for all minimum, regular, overtime hours, respectively, that
23 they worked at the correct rates of pay.

24 45. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
25 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’
26 failure to compensate Plaintiff and the other Class Members for all hours worked at the correct
27 rates of pay as required by California law.

28



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1 **B. UNLAWFUL WAGE DEDUCTIONS**

2 46. 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 The Defendants deducted wages from the wages earned by Leon and all of the other Class
5 Members for in violation of Labor Code § 221.

6 47. At all relevant times, Defendants required Plaintiff and the Class Members to work
7 through their meal periods though the Defendants did not include this time as time worked on the
8 timesheets they filled out for Plaintiff and the Class Members, or removed this time from the
9 timesheets they filled out for Plaintiff and the Class Members.

10 48. 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 deduction of wages belonging to Plaintiff and the other Class Members in violation of California
13 law.

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PROVIDE MEAL PERIODS**

16 **Lab. Code §§ 226.7 and 512**

17 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

18 49. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

19 50. 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 and 1198, and the Wage Order.

22 51. In relevant part, California Labor Code § 1198 states:

23
24 The maximum hours of work and the standard conditions of labor fixed by the
25 commission shall be the maximum hours of work and the standard conditions of
26 labor for employees. The employment of any employee for longer hours than those
27 fixed by the order or under conditions of labor prohibited by the order is unlawful.

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

An employer shall not employ an employee for a work period of



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

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

12 53. In relevant part, Section 10 of the Wage Order states:

13 (A) No employer shall employ any person for a work period of more
14 than five (5) hours without a meal period of not less than 30
15 minutes, except that when a work period of not more than six (6)
16 hours will complete the day's work the meal period may be waived
17 by mutual consent of the employer and the employee. (See Labor
18 Code Section 512.)

19 (B) An employer may not employ an employee for a work period of
20 more than ten (10) hours per day without providing the employee
21 with a second meal period of not less than 30 minutes, except that
22 if the total hours worked is no more than 12 hours, the second meal
23 period may be waived by mutual consent of the employer and the
24 employee only if the first meal period was not waived. (See Labor
25 Code Section 512.)

26 (C) In all places of employment the employer shall provide an
27 adequate supply of potable water, soap, or other suitable cleansing
28 agent and single use towels for hand washing.

(D) 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 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 and
complies with Labor Code Section 512.

(F) 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



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meal period is not provided.

54. 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.

55. 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.

56. 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. As stated above, Defendants required Plaintiff and the Class Members to work through their meal periods though the Defendants did not include this time as time worked on the timesheets they filled out for Plaintiff and the Class Members, or removed this time from the timesheets they filled out for Plaintiff and the Class Members.

57. At all relevant times, Defendants failed to provide Plaintiff and the Class Members with all timely meal periods. Defendants denied Plaintiff and the other Class Members their 30-minute off-duty meal period within the first five hours of work. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class



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Members with timely meal periods.

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

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

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

THIRD CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT REST BREAKS

Lab. Code § 226.7

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

61. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

62. 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 and 1198, and the Wage Order.

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

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

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

Rest Periods:

(A) Every employer shall authorize and permit all employees to take



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rest periods, which insofar as practicable shall be in the middle of each work period. Nothing in this provision shall prevent an employer from staggering rest periods to avoid interruption in the flow of work and to maintain continuous operations, or from scheduling rest periods to coincide with breaks in the flow of work that occur in the course of the workday. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof. Rest periods shall take place at employer designated areas, which may include or be limited to the employees' immediate work area.

(B) Rest periods need not be authorized in limited circumstances when the disruption of continuous operations would jeopardize the product or process of the work. However, the employer shall make up the missed rest period within the same workday or compensate the employee for the missed ten (10) minutes of rest time at his/her regular rate of pay within the same pay period.

(C) ...

(D) 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.

65. 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.



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1 66. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be
2 authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period
3 of work, or major fraction thereof.

4 67. Defendants intentionally failed to authorize and permit Plaintiff and the Class
5 Members to take all 10-minute rest periods free from any work duties in accordance with the
6 Wage Order.

7 68. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
8 Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium
9 wages to Plaintiff and the Class Members for days on which they failed to authorize and permit
10 Plaintiff and the other Class Members to take timely rest periods.

11 69. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
12 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
13 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
14 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
15 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed
16 to authorize and permit them to take 10-minute rest periods every four hours worked or major
17 fraction thereof.

18 70. Plaintiff is informed and believes and thereon alleges that, at all relevant times
19 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
20 which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to
21 take all rest breaks required by California law.

22 71. Defendants failed to provide Plaintiff with all required rest breaks in accordance
23 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
24 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
25 which resulted in Defendants not providing the Class Members with all rest breaks required by
26 California law.

27 72. Defendants failed to pay Plaintiff the additional wages required by California
28



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1 Labor Code § 226.7 for all rest breaks not provided to him. Plaintiff is informed and believes and
2 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
3 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
4 Class Members with additional wages for all rest breaks not provided to them as required by
5 California Labor Code § 226.7.

6 73. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
7 suffered damages in amounts subject to proof to the extent they were not paid additional wages
8 owed for all rest breaks not provided to them.

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

12 **FOURTH CAUSE OF ACTION**

13 **FAILURE TO INDEMNIFY**

14 **Lab. Code § 2802**

15 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

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

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

20 77. At all relevant times, Defendants required Plaintiff and the Class Members to incur
21 certain business expenses in the course of performing their duties. However, the Defendants did
22 not reimburse Moreno and the other Class members for such expenses.

23 78. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
24 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
25 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
26 during the course of performing their duties.

27 **FIFTH CAUSE OF ACTION**

28 **FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS**



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1 **Lab. Code § 226**

2 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

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

4 80. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were
5 entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
6 statement showing:

- 7 1. Gross wages earned;
- 8 2. Total hours worked by the employee, except for any employee
9 whose compensation is solely based on a salary and who is exempt
10 from payment of overtime under subdivision (a) of Section 515 or
11 any applicable order of the Industrial Welfare Commission;
- 12 3. The number of piece rate units earned and any applicable piece rate
13 if the employee is paid on a piece-rate basis;
- 14 4. All deductions, provided that all deductions made on written
15 orders of the Employee may be aggregated and shown as one item;
- 16 5. Net wages earned;
- 17 6. The inclusive dates of the period for which the employee is paid;
- 18 7. The name of the employee and his or her social security number,
19 except that by January 1, 2008, only the last four digits of his or
20 her social security number or an employee identification number
21 other than a social security number may be shown on the itemized
22 statement;
- 23 8. The name and address of the legal entity that is the employer and,
24 if the employer is a farm labor contractor, as defined in subdivision
25 (b) of Section 1682, the name and address of the legal entity that
26 secured the services of the employer; and
- 27 9. All applicable hourly rates in effect during the pay period and the
28 corresponding number of hours worked at each hourly rate by the
employee.

Lab.Code § 266(a).

81. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury



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

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

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

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

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

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

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

20 83. As alleged herein, at all relevant times during the applicable limitations period,
21 Defendants violated California Labor Code section 226 because they did not properly and
22 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
23 the corresponding number of hours worked at each rate by the employee and other requirements
24 of California Labor Code section 226. Defendants failed to state in the wage statements they
25 issued to Plaintiff and the other Class Members all their hours worked and wages earned,
26 including, but not limited to, regular and overtime wages for work they performed off-the-clock
27 after clocking-out (as described above). Defendants knowingly and intentionally did not issue
28 either as a detachable part of the check, draft, or voucher paying the employee’s wages, or



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1 separately if wages are paid by personal check or cash, statements to Plaintiff and the Class
2 Members that state all minimum wages earned, all regular wages earned, all overtime wages
3 earned, all meal period premium wages earned, all rest break premium wages earned, all
4 unlawfully deducted wages, gross wages earned, net wages earned.

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

9 85. Similarly, section 6(B) of the Wage Order states

10 Every employer who has control over wages, hours, or working conditions shall
11 semimonthly or at the time of each payment of wages furnish each employee an
12 itemized statement in writing showing:

- 13 (1) all deductions;
- 14 (2) the inclusive dates of the period for which the employee is paid;
- 15 (3) the name of the employee or the employee's social security number; and
- 16 (4) the name of the employer, provided all deductions made on written orders
17 of the employee may be aggregated and shown as one item. (See Labor
18 Code Section 226.)

19 This information shall be furnished either separately or as a detachable part of the
20 check, draft, or voucher paying the employee's wages.

21 86. As a result of being provided with inaccurate wage statements by Defendants,
22 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
23 wage statements were violated and they were misled about the amount of wages they had actually
24 earned and were owed. In addition, the absence of accurate information on their wage statements
25 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
26 and mathematical computations to determine the amounts of wages owed, has caused difficulty
27 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
28 inaccurate information about wages to state and federal government agencies. Further, Plaintiff



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1 and the other Class Members were not able to ascertain from the wage statements whether
2 Defendants complied with their obligations under California Labor Code section 226(a).

3 **SIXTH CAUSE OF ACTION**

4 **WILLFUL FAILURE TO TIMELY PAY FINAL WAGES**

5 **(Lab. Code §§ 201, 202, and 203)**

6 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

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

8 88. At all relevant times during the applicable limitations period, Plaintiff and the
9 Class have been non-exempt employees of Defendants and entitled to the benefits and protections
10 of California Labor Code §§ 201, 202, and 203, and the Wage Order.

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

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

17 91. The Defendants failed to pay Leon and all of the other Class Members whose
18 employment ended all of the earned but unpaid wages described above by the conclusion of their
19 employment with Defendants, including minimum wages, regular wages, overtime wages,
20 unprovided meal period premium wages, unprovided rest break premium wages, and deducted
21 wages.

22 92. By failing to pay such earned wages to Plaintiff and the Class Members,
23 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
24 § 201 or § 202.

25 93. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
26 and the Class Members all of their earned and unpaid wages (described above) have been willful
27 in that, at all relevant times, Defendants have deliberately maintained policies and practices that
28 violate the requirements of the Labor Code and the Wage Order, even though at all relevant times,



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1 they have had the ability to comply with those legal requirements.

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

5 **SEVENTH CAUSE OF ACTION**

6 **UNFAIR COMPETITION**

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

8 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

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

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

13 97. The unlawful conduct of Defendants alleged herein amount to and constitutes
14 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
15 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
16 gained a competitive advantage over other comparable companies doing business in California
17 that comply with their legal obligations to compensate employees for all earned wages.

18 98. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
19 Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class
20 Members were deprived of expenses, minimum wages, regular wages, overtime wages, missed
21 rest period premium wages, missed meal period premium wages, unlawfully deducted wages, and
22 comparable money and property.

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

27 100. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
28 connection with their unfair competition claims pursuant to California Code of Civil Procedure §



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1021.5, the substantial benefit doctrine and/or the common fund doctrine.

EIGHTH CAUSE OF ACTION

CIVIL PENALTIES

(By Plaintiff and the Class against all Defendants)

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

97. The “Aggrieved Employees” are all members of the Class defined above who Defendants employed during the period beginning December 23, 2020 and ending on the date that final judgment is entered in this action.

98. Labor Code § 204 states

(d) 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.

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

(f) 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.

101. 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



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1 intervals for all wages earned and all hours worked.

2 102. During the applicable time period, Defendants violated California Labor Code §§
3 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

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

7 104. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are
8 entitled to recover civil penalties for each of the Defendants' violations of California Labor Code
9 §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 during the
10 applicable limitations period in the following amounts:

11 A. 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 for each subsequent, willful or intentional violation
14 (penalty amounts established by California Labor Code § 210).

15 B. For violations of California Labor Code § 221, one hundred dollars
16 (\$100.00) for each Aggrieved Employee for each initial violation (if found to be neither willful
17 nor intentional) and \$200 for each aggrieved employee for each initial violation of California
18 Labor Code § 221 (if found to be either willful or intentional) and for each subsequent violation
19 of California Labor Code § 221 (regardless of whether they are found to be either willful or
20 intentional) (penalty amount set by California Labor Code § 225.5).

21 C. For violations of California Labor Code § 226(a), two hundred fifty dollars
22 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00)
23 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
24 California Labor Code § 226.3).

25 D. For violations of California Labor Code §§ 510 and 512, fifty dollars
26 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for
27 each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
28 established by California Labor Code § 558).



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

6 F. For violations of California Labor Code § 1174, five hundred dollars
7 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
8 California Labor Code § 1174.5).

9 G. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
10 1198, and 2802 one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for
11 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
12 period for each subsequent violation (penalty amounts established by California Labor Code §
13 2699(f)(2)).

14 105. Plaintiff has complied with the procedures for bringing suit specified in California
15 Labor Code § 2699.3. By letter dated December 23, 2021, Plaintiff filed written notice online
16 with the Labor and Workforce Development Agency (“LWDA”) and gave written notice by
17 certified mail to Defendants of the specific provisions of the California Labor Code alleged to
18 have been violated, including the facts and theories to support the alleged violations. A true and
19 correct copy of the notice to the LWDA dated December 23, 2021 is attached as Exhibit A.
20 Plaintiff accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has
21 failed to take action in response within 65 calendar days of the date of Plaintiff’s notice, but
22 Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing him that it
23 does not intend to investigate these allegations.

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

27 **V. PRAYER FOR RELIEF**

28 107. WHEREFORE, Plaintiff, on behalf of himself and the Class Members, prays for



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1 relief and judgment against Defendants as follows:

2 A. An order that the action be certified as a class action with respect to
3 Plaintiff's claims for violations of California law;

4 B. An order that Plaintiff be appointed class representative;

5 C. An order that counsel for Plaintiff be appointed class counsel;

6 D. Unpaid wages, including minimum, regular, overtime, missed meal period,
7 missed rest period and unlawfully deducted wages;

8 E. Liquidated damages;

9 F. Statutory penalties, including waiting time penalties;

10 G. Civil penalties;

11 H. Restitution;

12 I. Declaratory relief;

13 J. Actual damages;

14 K. Pre-judgment interest;

15 L. Costs of suit;

16 M. Reasonable attorneys' fees; and

17 N. Such other relief as the Court deems just and proper.

18 **VI. DEMAND FOR JURY TRIAL**

19 Plaintiff, on behalf of himself and all other Class Members, hereby demands a jury trial
20 on all issues so triable.

21 Respectfully submitted,

22
23 THE SPIVAK LAW FIRM

24
25 Dated: August 15, 2023

By: 

DAVID G. SPIVAK,
CAROLINE TAHMASSIAN,
MAYA CHEAITANI, Attorneys for
Plaintiff, JORGE L. LEON, and all
others similarly situated



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EXHIBIT A



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**SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND
EMAIL***

December 23, 2021

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

Re: Jorge L. Leon / Davis & Roberts

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Jorge L. Leon (hereafter “Leon” or “Complainant”) provides notice that Davis & Roberts Construction, Inc., a California corporation, and related entities (collectively “the Davis & Roberts Employers” or “the Employers”) violated his rights and those of all other individuals the Davis & Roberts Employers have employed or otherwise contracted with in California as hourly, non-exempt workers, including but not limited to finishers, 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, 1198, 2802, and related Labor Code statutes. On behalf of himself and all other Aggrieved Employees, Leon hereby provides this notice to the Labor & Workforce Development Agency and the Davis & Roberts Employers and their agents and representatives.

At all relevant times, the Davis & Roberts Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies,

throughout California. Leon and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 16-2001 (hereafter “the Wage Order”) section 2, subdivision (H) and “Aggrieved Employees” within the meaning of Labor Code section 2699©.

Statement of Facts

On approximately December 30, 2020, the Davis & Roberts Employers began to employ Leon in Clovis (Fresno County) in the position of laborer. The Davis & Roberts Employers continuously employed him in that capacity until on or about May 21, 2021 when his employment ended.

At all relevant times, the Davis & Roberts Employers issued wages to Leon and all of the other Aggrieved Employees on a weekly (52 paychecks/year) basis and paid them by the hour. At all relevant times, the Davis & Roberts Employers classified Leon and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Davis & Roberts Employers failed to compensate Leon and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Davis & Roberts Employers required Leon and the Aggrieved Employees to work through their meal periods though the Davis & Roberts Employers did not include this time as time worked on the timesheets they filled out for Leon and the Aggrieved Employees, or removed this time from the timesheets they filled out for Leon and the Aggrieved Employees. The Davis & Roberts Employers also failed to record other time worked by Leon and the Aggrieved Employees on the timesheets the Davis & Roberts Employers filled out for them. The Davis & Roberts Employers required Leon and the Aggrieved Employees to approve the time sheets regardless of whether their hours were under reported.

The Davis & Roberts Employers failed to compensate Leon 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. As stated above, the Davis & Roberts Employers did not credit Leon

and the Aggrieved Employees with all of hours they worked. They worked in excess of eight hours per day and 40 hours per week, so they under reported hours should have been paid at overtime premium rates of pay.

At all relevant times, the Davis & Roberts Employers failed to provide Leon and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. As stated above, The Davis & Roberts Employers required Leon and the Aggrieved Employees to work through their meal periods though the Davis & Roberts Employers did not include this time as time worked on the timesheets they filled out for Leon and the Aggrieved Employees, or removed this time from the timesheets they filled out for Leon and the Aggrieved Employees. The Davis & Roberts Employers also failed to pay premium wages for days on which failed to provide Leon and all of the other Aggrieved Employees with meal periods as required by law. On those occasions in which the David & Roberts Employers paid a “meal premium” to Leon and the Aggrieved Employees, it was paid at less than the regular rate of pay.

At all relevant times, the Davis & Roberts Employers failed to authorize and permit Leon 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 Davis & Roberts Employers required Leon and the Aggrieved Employees to work through their rest breaks. The Davis & Roberts Employers also failed to pay premium wages for days on which failed to authorize and permit Leon and all of the other Aggrieved Employees to take rest breaks as required by law.

The Davis & Roberts Employers unlawfully deducted wages belonging to Leon and all of the other Aggrieved Employees. As stated above, the Davis & Roberts Employers required Leon and the Aggrieved Employees to work through their meal periods though the Davis & Roberts Employers did not include this time as time worked on the timesheets they filled out for Leon and the Aggrieved Employees, or removed this time from the timesheets they filled out for Leon and the Aggrieved Employees.

At all relevant times, the Davis & Roberts Employers failed to issue to Leon 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 Davis & Roberts Employers knowingly and intentionally failed to state on the wage statements they issued to Leon and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, gross wages earned, and net wages earned.

The Davis & Roberts Employers also failed to timely pay Leon and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Davis & Roberts Employers failed to maintain accurate employee records of Leon and all of the other Aggrieved Employees.

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

- (a) The Davis & Roberts Employers failed to pay Leon and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, and overtime wages;
- (b) The Davis & Roberts Employers failed to provide Leon and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Davis & Roberts Employers failed to authorize and permit Leon and all of the other Aggrieved Employees to take rest breaks in compliance with California law;

- (d) The Davis & Roberts Employers failed to compensate Leon and all of the other Aggrieved Employees at one hour's pay at the regular rate of pay for each day in which the Davis & Roberts Employers failed to provide them with one or more meal periods as required by law;
- (e) The Davis & Roberts Employers failed to compensate Leon and all of the other Aggrieved Employees at one hour's pay at the regular rate of pay for each day in which the Davis & Roberts Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Davis & Roberts Employers unlawfully deducted wages belonging to Leon and all of the other Aggrieved Employees;
- (g) The Davis & Roberts Employers knowingly and intentionally failed to provide Leon and all of the other Aggrieved Employees with accurate and complete wage statements;
- (h) The Davis & Roberts Employers willfully failed to timely pay Leon and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Davis & Roberts Employers and when their employment ended; and
- (i) The Davis & Roberts Employers failed to maintain accurate employment records pertaining to Leon and all of the other Aggrieved Employees.

Accordingly, Leon now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Davis & Roberts Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to

all persons employed in the on-site occupations of construction, including but not limited to alteration, demolition, building, excavating, renovation, remodeling, maintenance, improvement, and repair work, and work for which a contractor's license is required by the California Business and Professions Code, Division 3, Chapter 9, Sections 7025 et seq. drilling, including but not limited to all work required to drill, establish, repair, and rework wells for the exploration or extraction of oil, gas, or water resources; logging work for which a timber operator's license is required pursuant to California Public Resources Code Sections 4571 through 4586; and mining (not covered by Labor Code Section 750 et seq.), including all work required to mine and/or establish pits, quarries, and surface or underground mines for the purposes of exploration or extraction of nonmetallic minerals and ores, coal, and building materials such as stone and gravel, whether paid on a time, piece rate, commission, or other basis."

Wage Order, § 1. The Wage Order defines "construction occupations" to mean,

all job classifications associated with construction, including but not limited to work involving alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement, and repair work, by the California Business and Professions Code, Division 3, Chapter 9, Sections 7025 et seq., and any other similar or related occupations or trades. (D) "Division" means the Division of Labor Standards Enforcement of the State of California.

Wage Order, § 2(C).

At all relevant times during the applicable limitations period, the Davis & Roberts “Employers, Leon, and all of the Aggrieved Employees were covered by the Wage Order because Leon and all of the Aggrieved Employees worked for the Davis & Roberts Employers in construction occupations, including pouring concrete. Accordingly, Leon 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(J) 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.

- (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.

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 Davis & Roberts Employers required Leon and the Aggrieved Employees to work through their meal periods though the Davis & Roberts Employers did not include this time as time worked on the timesheets they filled out for Leon and the Aggrieved Employees, or removed this time from the timesheets they filled out for Leon and the Aggrieved Employees. The Davis & Roberts Employers also failed to record other time worked by Leon and the Aggrieved Employees on the timesheets the Davis & Roberts Employers filled out for them. The Davis & Roberts Employers required Leon and the Aggrieved Employees to approve the time sheets regardless of whether their hours were under reported.

As stated above, the Davis & Roberts Employers did not credit Leon and the Aggrieved Employees with all of hours they worked. They worked in excess of eight hours per day and 40 hours per week, so they under reported hours should have been paid at overtime premium rates of pay. As stated above, the Davis & Roberts Employers did not credit Leon and the Aggrieved Employees with all of hours they worked. Additionally, the Davis & Roberts Employers include all

forms of hours worked in determining whether Leon and the Aggrieved Employees had worked into overtime hours requiring compensation at overtime premium rates of pay.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Davis & Roberts Employers, Leon and all of the other Aggrieved Employees earned monetary incentives, subsistence pay, travel subsistence, health insurance pay, and related compensation during pay periods in which they worked hours qualifying for overtime premium pay rates. However, the Davis & Roberts Employers, Leon failed to pay to Leon and all of the other Aggrieved Employees monetary incentives, subsistence pay, travel subsistence, health insurance pay overtime premium pay on such monetary incentives, subsistence pay, travel subsistence, health insurance pay, and related compensation.

At all relevant times during the applicable limitations period, the Davis & Roberts Employers failed to compensate Leon and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, and overtime wages for all hours they worked at the correct rates of pay. Accordingly, Leon now seeks civil penalties on behalf of himself 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(J) 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 10 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. (See Labor Code Section 512.)
- (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. (See Labor Code Section 512.)
- (C) ...

- (D) 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 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 and complies with Labor Code Section 512.
- (E) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

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

At all relevant times, the Davis & Roberts Employers failed to provide Leon and all of the other Aggrieved Employees with all timely meal periods. The Davis & Roberts Employers denied Leon and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. As stated above, The Davis & Roberts Employers required Leon and the Aggrieved Employees to work through their meal periods though the Davis & Roberts Employers did not include this time as time worked on the timesheets they filled out for Leon and the Aggrieved Employees, or removed this time from the timesheets they filled out for Leon and the Aggrieved Employees. Furthermore, the Davis & Roberts Employers failed to pay premium wages for days on which they failed to provide Leon and all of the other Aggrieved Employees with timely meal periods. Accordingly, Leon now seeks civil penalties for these Labor Code violations that the Davis & Roberts Employers have committed against him 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)).

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

Section 2(J) 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 11 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. Nothing in this provision shall prevent an employer from staggering rest periods to avoid interruption in the flow of work and to maintain continuous operations, or from scheduling rest periods to coincide with breaks in the flow of work that occur in the course of the workday. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof. Rest periods shall take place at employer designated areas, which may include or be limited to the employees’ immediate work area.
- (B) Rest periods need not be authorized in limited circumstances when the disruption of continuous operations would jeopardize the product or process of the work. However, the

employer shall make up the missed rest period within the same workday or compensate the employee for the missed ten (10) minutes of rest time at his/her regular rate of pay within the same pay period.

(C) ...

(D) 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.

(d) A rest or recovery period mandated pursuant to 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, shall be counted as hours worked, for which there shall be no deduction from wages. This subdivision is declaratory of existing law.

The Davis & Roberts Employers failed to authorize and permit Leon 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 Davis & Roberts Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Davis & Roberts Employers required Leon and the Aggrieved Employees to work through their rest breaks. Moreover, the Davis & Roberts Employers failed to pay Leon and all of the other Aggrieved Employees premium wages on workdays the Davis & Roberts Employers failed to provide Leon and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Leon now seeks civil penalties for these Labor Code violations that the Davis & Roberts Employers have committed against him 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)).

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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.” Similarly, section 7 of the Wage Order states,

No employer shall collect or deduct from any employee any part of the wages that are paid unless such deductions are allowed by law. (See Labor Code Sections 220-226.) No fee shall be charged by the employer or agent of the employer for cashing a payroll check.

The Davis & Roberts Employers deducted wages from the wages earned by Leon and all of the other Aggrieved Employees for and similar deductions in violation of Labor Code § 221, including for time worked during meal periods. Accordingly, Leon seeks civil penalties on behalf of himself 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.

Similarly, section 6(B) of the Wage Order states

Every employer who has control over wages, hours, or working conditions shall semimonthly or at the time of each payment of wages furnish each employee an itemized statement in writing showing:

- (1) all deductions;
- (2) the inclusive dates of the period for which the employee is paid;
- (3) the name of the employee or the employee's social security number;
and

- (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item. (See Labor Code Section 226.)

This information shall be furnished either separately or as a detachable part of the check, draft, or voucher paying the employee's wages.

At all relevant times during the applicable limitations period, the Davis & Roberts 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 Davis & Roberts Employers failed to state in the wage statements they issued to Leon 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 Davis & Roberts Employers knowingly and intentionally failed to state on the wage statements they issued to Leon and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, gross wages earned, net wages earned, and similar information. Accordingly, Leon seeks civil penalties for the Labor Code violations that the Davis & Roberts Employers have committed against him and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to 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 Davis & Roberts Employers failed to compensate Leon and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, and deducted wages, at the intervals stated above. As a result, the Davis & Roberts Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Leon now seeks civil penalties for the Labor Code violations that the Davis & Roberts Employers have committed against him 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 Davis & Roberts Employers failed to pay Leon 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 Leon, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, and deducted wages and similar forms of compensation. By failing to pay Leon and all of the other Aggrieved Employees as set forth above at the end of employment, the Davis & Roberts Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Leon seeks civil penalties from the Davis & Roberts 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 6 of Wage Order states,

- (A) Every employer who has control over wages, hours, or working conditions shall keep accurate information with respect to each employee, including the following:
 - (1) The employee's full name, home address, occupation, and social security number. The employee's date of birth, if under 18 years of age, and designation as a minor. 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.
 - (2) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
 - (3) Total hours worked during the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request. 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.
- (C) All required records shall be in the English language and in ink or other indelible form, dated properly, showing month, day and year. The employer who has control over wages, hours, or working

conditions shall also keep said records on file at the place of employment or at a central location for at least three years. An employee's records shall be available for inspection by the employee upon reasonable request.

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

The Davis & Roberts Employers failed to compensate Leon and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, gross wages earned, and net wages earned. As a result, the Davis & Roberts Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Leon and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Leon seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Conclusion

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

Davis & Roberts Construction, Inc.
c/o Ian B. Wieland, Esq.
Sagaser, Watkins & Wieland PC
5260 N. Palm Ave., Ste. 400
Fresno, CA 93704
ian@sw2law.com

EXHIBIT 6

Ian B. Wieland, State Bar No. 285721
Amanda K. Miller, State Bar No. 298680
SAGASER, WATKINS & WIELAND PC
5260 North Palm Avenue, Suite 400
Fresno, California 93704
Telephone: (559) 421-7000
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Attorneys for Defendant, DAVIS & ROBERTS CONSTRUCTION,
INC., a California corporation

STATE OF CALIFORNIA

SUPERIOR COURT FOR THE COUNTY OF FRESNO

JORGE L. LEON, on behalf of himself, all
others similarly situated, and as an
“aggrieved employee” on behalf of the other
“aggrieved employees” under the Labor
Code Private Attorneys General Act of 2004,

Plaintiff,

v.

DAVIS & ROBERTS CONSTRUCTION,
INC., a California corporation; and DOES 1-
50, inclusive,

Defendant(s).

Case No.: 22CECG00407

**DEFENDANT DAVIS & ROBERTS
CONSTRUCTION, INC.’S ANSWER TO
PLAINTIFF JORGE L. LEON’S
SECOND AMENDED COMPLAINT**

Complaint Filed: February 8, 2022

COMES NOW Defendant DAVIS & ROBERTS CONSTRUCTION, INC (hereinafter
referred to as “Defendant”), hereby answers the Second Amended Class Action Complaint
 (“Complaint”) of Plaintiff JORGE L. LEON (hereinafter referred to as “Plaintiff”) as follows:

GENERAL DENIAL

Defendant generally denies each and every allegation contained therein and the whole
thereof, pursuant to section 431.30 of the California Code of Civil Procedure. In addition, Defendant
denies Plaintiff has sustained, or will sustain, any loss or damage in the manner or amount alleged,
or otherwise, by reason of any act or omission, or any other conduct or absence thereof on the part
of Defendant.

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AFFIRMATIVE DEFENSES

Defendant asserts the following affirmative and other defenses, which it designates, collectively, as “affirmative defenses.” Defendant’s designation of its defenses as “affirmative” is not intended in any way to alter Plaintiff’s burden of proof with regard to any element of his causes of action. Defendant also expressly denies the existence of any alleged putative group of persons or “class” that Plaintiff purports to represent in this lawsuit. Defendant incorporates (as if fully set forth therein) this express denial each and every time it references “Plaintiff.”

First Affirmative Defense

(Failure to State a Claim)

1. As a separate and distinctive affirmative defense, Defendant alleges that the Complaint, and each and every alleged cause of action therein, fails to state facts sufficient to constitute a cause of action upon which relief can be granted.

Second Affirmative Defense

(Class Action - Certification Prerequisites)

2. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff cannot satisfy the prerequisites for class certification and therefore cannot represent the interest of others.

Third Affirmative Defense

(Class Action - Standing)

3. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff lacks standing to assert the legal rights or interests of others.

Fourth Affirmative Defense

(Class Action - Lack of Predominance)

4. As a separate and distinctive affirmative defense, Defendant alleges that the types of claims alleged by Plaintiff on behalf of himself and/or the alleged putative group he purports to represent are matters in which individual questions dominate and thus are not appropriate for class treatment.

Fifth Affirmative Action**(Class Action - Lack of Numerosity)**

5. As a separate and distinctive affirmative defense, Defendant alleges that the alleged putative group that Plaintiff purports to represent is not so numerous that joinder is impossible or impractical.

Sixth Affirmative Defense**(Class Action - Lack of Typicality)**

6. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff is not similarly situated to other potential members of the alleged putative group he purports to represent and is an inadequate representative of the alleged putative group.

Seventh Affirmative Defense**(Class Action - Lack of Typicality)**

7. As a separate and distinctive affirmative defense, Defendant alleges that certain interests of the alleged putative group are in conflict with the interests of all or certain subgroups of the members of the putative group.

Eighth Affirmative Defense**(Class Action - Lack of Superiority)**

8. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff has not shown and cannot show that class treatment of the purported causes of action in his Complaint is superior to other methods of adjudicating the controversy.

Ninth Affirmative Defense**(Class Action - Lack of Manageability)**

9. As a separate and distinctive affirmative defense, Defendant alleges that the Complaint and each purported cause of action alleged therein, cannot proceed as a purported class or collective action because of difficulties likely to be encountered that render the action unmanageable.

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Tenth Affirmative Defense

(Class Action - Violation of Due Process)

10. As a separate and distinctive affirmative defense, Defendant alleges that certification of a class, as applied to the facts and circumstances of this case, would constitute a denial of Defendant's due process rights, both substantive and procedural, in violation of the Fourteenth Amendment to the United States Constitution and the California Constitution. Defendant reserves the right to amend its answer upon further investigation and discovery of facts supporting this defense.

Eleventh Affirmative Defense

(Labor Code §§ 204, 221, 226.7, 512, and 1174 No Private Right of Action)

11. As a separate and distinctive affirmative defense, Defendant alleges that there is no private right of action for an employee to recover damages under Sections 204, 221, 226.7, 512, and 1174 of the California Labor Code.

Twelfth Affirmative Defense

(Labor Code §§ 204, 221, 226.7, 512, and 1174 - Compliance with Obligations)

12. As a separate and distinctive affirmative defense, Defendant alleges that it acted under a reasonable and good faith belief that it complied with its obligations, if any, under the California Labor Code, specifically including Sections 204, 221, 226.7, 512, and 1174 thereof, as to Plaintiff and all putative class member(s).

Thirteenth Affirmative Defense

(No Failure to Authorize and Permit, or Otherwise Provide, Meal Periods or Rest Periods)

13. As a separate and distinctive affirmative defense, Defendant alleges that it was not required to and/or did not fail to authorize and permit, or otherwise provide, meal periods or rest periods pursuant to the California Labor Code, applicable wage orders issued by the Industrial Welfare Commission, or any other basis.

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Fourteenth Affirmative Defense**(Good Faith)**

14. As a separate and distinctive affirmative defense, Defendant is informed and believes that further investigation and discovery will reveal, and on that basis alleges, that if any violation of the Labor Code or an Order of the Industrial Welfare Commission occurred, it was an act or omission made in good faith and Defendant has reasonable grounds for believing that its meal and rest period practices complied with applicable laws and that any such act or omission was not a violation of the Labor Code or any Order of the Industrial Welfare Commission such that Plaintiff and/or the putative class members are not entitled to any damages.

Fifteenth Affirmative Defense**(De Minimis)**

15. As a separate and distinctive affirmative defense, Defendant alleges that the Complaint and each cause of action therein, or some of them, are barred to the extent the work allegedly performed was de minimis in nature.

Sixteenth Affirmative Defense**(Bus. & Prof. Code §17200 - Violates Due Process)**

16. As a separate and distinctive affirmative defense, Defendant alleges that the prosecution of a representative action on behalf of the general public under California Business and Professions Code section 17200 et seq., as applied to the facts and circumstances of this case, would constitute a denial of Defendant's due process rights, both substantive and procedural, in violation of the California Constitution and the Fourteenth Amendment to the United States Constitution.

Seventeenth Affirmative Defense**(Bus. & Prof. Code §17200 - No Penalties)**

17. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff and the putative class members cannot recover waiting time or other penalties under California Business and Professions Code section 17200 et seq.

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Eighteenth Affirmative Defense**(Bus. & Prof. Code § 17200 — No Violation)**

18. As a separate and distinctive affirmative defense, Defendant alleges that its business practices were not “unfair,” “unlawful,” or “deceptive” within the meaning of California Business and Professions Code section 17200 et seq.

Nineteenth Affirmative Defense**(Penalties Barred)**

19. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff’s prayer for restitution pursuant to Business and Professions Code Section 17200 et seq. is barred with respect to penalties of any nature.

Twentieth Affirmative Defense**(Labor Code § 226 - Lack of Injury)**

20. As a separate and distinctive affirmative defense, Plaintiff sustained no injury from any alleged failure by Defendant to comply with Labor Code section 226.

Twenty-First Affirmative Defense**(Labor Code § 226 - Good Faith)**

21. As a separate and distinctive affirmative defense, Defendant alleges that they acted in good faith at all times concerning Plaintiff.

Twenty-Second Affirmative Defense**(Labor Code § 226 - No Intentional Failure)**

22. As a separate and distinctive affirmative defense, Defendant alleges that, even assuming arguendo that Plaintiff was not provided with proper itemized statements of wages and deductions, or that electronic wage statements do not comply with Labor Code, Plaintiff is not entitled to recover damages or penalties because Defendant’s alleged failure to comply with California Labor Code section 226(a) was not a “knowing and intentional failure” under California Labor Code section 226(e).

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Twenty-Third Affirmative Defense**(Labor Code § 226.3 - Lack of Standing)**

23. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff lacks standing to bring this action forth, and the court lacks jurisdiction to award, certain of the monetary penalties sought in the Complaint, including, but not limited to those penalties claimed pursuant to California Labor Code section 226.3, as such penalties may only be imposed in a proceeding brought by the California Labor Commission.

Twenty-Fourth Affirmative Defense**(No Willful or Intentional Violation)**

24. As a separate and distinctive affirmative defense, Defendant alleges that the Complaint fails to state a claim for penalties because Defendant did not willfully or intentionally violate the Labor Code.

Twenty-Fifth Affirmative Defense**(Labor Code §§ 201 and 202 - No Obligation)**

25. As a separate and distinctive affirmative defense, Defendant alleges that the Complaint fails to state a claim for penalties in which relief may be granted under the California Labor Code because there exists a bona fide dispute as to the existence and/or extent of Defendant's obligations to Plaintiff and/or the putative class members under any applicable Labor Code provisions, including without limitation, Labor Code section 203.

Twenty-Sixth Affirmative Defense**(Failure to State a Claim for Attorneys' Fees and Costs)**

26. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff failed to state facts sufficient to constitute a claim for which attorneys' fees and costs may be awarded.

Twenty-Seventh Affirmative Defense**(Lack of Specificity)**

27. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff

1 failed to allege special damages with requisite specificity.

2 **Twenty-Eighth Affirmative Defense**

3 **(Statute of Limitations)**

4 28. As a separate and distinctive affirmative defense, Defendant alleges that each
5 purported cause of action set forth in the Complaint is barred in whole or in part by the applicable
6 statute(s) of limitation, including without limitation, California Code of Civil Procedure sections
7 338(a) and 340(a); Business and Professions Code section 17208, and California Labor Code
8 sections 203 and 226(a); and the one-year statute of limitations applicable to claims under the Private
9 Attorney General Act. Without limitation, Plaintiff's Class Action Complaint was filed on or about
10 February 8, 2022. To the extent the Plaintiff seeks to pursue any causes of action for relief that were
11 or are untimely as of February 8, 2022, those causes of action for relief are barred.

12 **Twenty-Ninth Affirmative Defense**

13 **(Liquidated Damages)**

14 29. As a separate and distinctive affirmative defense, Defendant alleges that it had a good
15 faith and reasonable belief that it was in compliance with applicable law and that, accordingly no
16 liquidated damages should be awarded to Plaintiff for any violation thereof that may be found to
17 exist.

18 **Thirtieth Affirmative Defense**

19 **(Prejudgment Interest)**

20 30. As a separate and distinctive affirmative defense, Defendant alleges that the
21 Complaint fails to properly state a claim upon which prejudgment interest may be awarded, as the
22 damages claimed are not sufficiently certain or proper to allow an award of prejudgment interest.

23 **Thirty-First Affirmative Defense**

24 **(Mitigation of Damages)**

25 31. As a separate and distinctive affirmative defense, Defendant alleges that it is
26 informed and believes that a reasonable opportunity for investigation and discovery will reveal, and
27 on that basis alleges, Plaintiff failed to exercise reasonable care to mitigate his damages, if any were
28

suffered, and that his right to recover against Defendant should be reduced and/or eliminated by such a failure.

Thirty-Second Affirmative Defense

(Waiver)

32. As a separate and distinctive affirmative defense, Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal, and on that basis alleges, the Complaint and each cause of action set forth therein is barred by the equitable doctrine of waiver. Defendant reserves the right to amend its answer upon further investigation and discovery of facts supporting this defense.

Thirty-Third Affirmative Defense

(Estoppel)

33. As a separate and distinctive affirmative defense, Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal, and on that basis, alleges, the Complaint and each cause of action set forth therein is barred by the equitable doctrine of estoppel. Defendant reserves the right to amend its answer upon further investigation and discovery of facts supporting this defense.

Thirty-Fourth Affirmative Defense

(Laches)

34. As a separate and distinctive affirmative defense, Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal, and on that basis alleges, the Complaint and each cause of action set forth therein is barred by the equitable doctrine of laches. Defendant reserves the right to amend its answer upon further investigation and discovery of facts supporting this defense.

Thirty-Fifth Affirmative Defense

(Unclean Hands)

35. As a separate and distinctive affirmative defense, Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal, and on that basis, alleges,

1 the Complaint and each cause of action set forth therein are barred by the equitable doctrine of
2 unclean hands. Defendant reserves the right to amend its answer upon further investigation and
3 discovery of fact supporting this defense.

4 **Thirty-Sixth Affirmative Defense**

5 **(Breach of Duty)**

6 36. As a separate and distinctive affirmative defense, Defendant is informed and believes
7 that a reasonable opportunity for investigation and discovery will reveal, and on that basis alleges,
8 Plaintiff's claims are barred by his own breach of the duties owed to Defendant under California
9 Labor Code sections 2854, 2856, 2857, 2858, and/or 2859.

10 **Thirty-Seventh Affirmative Defense**

11 **(Preliminary and Postliminary Duties)**

12 37. As a separate and distinctive affirmative defense, Defendant alleges that, assuming
13 Plaintiff and proposed class members are entitled to any overtime, the walking, riding, traveling and
14 preliminary and postliminary activities of Plaintiff and the proposed members of the class must be
15 excluded from compensable hours of work.

16 **Thirty-Eighth Affirmative Defense**

17 **(Adequate Remedy at Law)**

18 38. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff and
19 proposed class members are not entitled to equitable relief insofar as they have an adequate remedy
20 at law.

21 **Thirty-Ninth Affirmative Defense**

22 **(Portal-to-Portal Act Preemption)**

23 39. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff and
24 the proposed class members' state law claims are preempted by the exclusive remedy of the Fair
25 Labor Standards Act and the Portal-to Portal Pay Act.

26 ///

27 ///

Fortieth Affirmative Defense**(Portal-to-Portal Act Preemption)**

40. As a separate and distinctive affirmative defense, Defendant alleges that, assuming Plaintiff or members of the proposed class are entitled to any overtime, Defendant is entitled to a credit or set off. This credit or set off includes but is not limited to, amounts erroneously overpaid to Plaintiff and/or members of the proposed class, as well as work performed not to the benefit of the Defendant. The claims of Plaintiff and/or members of the proposed class are barred because they would be unjustly enriched if they prevailed on any of said claims.

Forty-First Affirmative Defense**(Unjust Enrichment)**

41. As a separate and distinctive affirmative defense, Defendant alleges that the Complaint, and each purported cause of action alleged therein, is barred because any recovery from Defendant would result in Plaintiff's unjust enrichment.

Forty-Second Affirmative Defense**(Work Performed for Employee's Convenience)**

42. As a separate and distinctive affirmative defense, Defendant alleges that the time Plaintiff and the putative class members spent performing any task for Plaintiff and putative class members' own convenience is not compensable time.

Forty-Third Affirmative Defense**(Accord and Satisfaction)**

43. As a separate and distinctive affirmative defense, Defendant alleges Plaintiff's claims are barred by the doctrine of accord and satisfaction. Specifically, Plaintiff was properly and fully compensated for all work performed for Defendant, and Plaintiff's respective acceptances of these payments constitute an accord and satisfaction for all debts, if any, owed by Defendant to Plaintiff.

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Forty-Fourth Affirmative Defense**(No Damages)**

44. As a separate and distinctive affirmative defense, Defendant alleges Plaintiff's claims are barred to the extent Plaintiff was not damaged by any alleged act, omission, or violation of statute or wage order allegedly committed by Defendant.

Forty-Fifth Affirmative Defense**(Election of Remedies)**

45. As a separate and distinctive affirmative defense, Defendant alleges Plaintiff's Complaint, and each claim and purported cause of action alleged therein, is barred in whole or in part to the extent that Plaintiff, and anyone he claims to represent, have previously obtained a final decision on any claims(s) within the scope of this lawsuit, whether before the California Department of Industrial Relations, California Division of Labor Standards Enforcement, other governmental agencies, or any court of competent jurisdiction, or have previously settled any claim(s) within the scope of this lawsuit. Such individuals are therefore precluded from recovering in this matter.

Forty-Sixth Affirmative Defense**(Ambiguity)**

46. As a separate and distinctive affirmative defense, Defendant alleges Plaintiff's Complaint, and each alleged cause of action therein, does not describe the claims against Defendant with sufficient particularity and certainty to enable Defendant to determine what defenses exist. Defendant reserves the right to assert all defenses that may be pertinent to or arise from Plaintiff's claims.

Forty-Seventh Affirmative Defense**(Failure to Exhaust Remedies Through the Labor Commissioner or otherwise)**

47. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff's causes of action are barred to the extent that Plaintiff failed to exhaust available administrative remedies through the Labor Commissioner or other government agencies, including Plaintiff's failures to exhaust administrative remedies as required pursuant to Labor Code section 2699.3

1 before filing a Labor Code Private Attorneys General Act of 2004 (“PAGA”) action.

2 **Forty-Eighth Affirmative Defense**

3 **(ERISA Preemption)**

4 48. As a separate and distinctive affirmative defense, Defendant alleges Plaintiff’s
5 Complaint, and each cause of action therein, is preempted by the Employee Retirement Income
6 Security Act, 29 U.S.C. § 1001, *et seq.*, to the extent Plaintiff seeks damages for the alleged loss of
7 any covered employee benefit.

8 **Forty-Ninth Affirmative Defense**

9 **(Bad Faith)**

10 49. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff has
11 acted in bad faith, and therefore, barring Plaintiff from any and all recovery from this answering
12 Defendant.

13 **Fiftieth Affirmative Defense**

14 **(Consent/Ratification)**

15 50. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff by
16 reason of his knowledge, statements, and conduct, and by reason of the knowledge, statements, and
17 conduct of their agents, has consented to and ratified the acts of Defendant barring Plaintiff from
18 any and all recovery from Defendant.

19 **Fifty-First Affirmative Defense**

20 **(Offset)**

21 51. As a separate and distinctive affirmative defense, Defendant alleges that money owed
22 by Defendant to Plaintiff, if any, which Defendant denies, is offset either in whole or in part, by
23 money owed and due to Defendant by Plaintiff barring Plaintiff from any and all recovery from this
24 answering Defendant.

25 **Fifty-Second Affirmative Defense**

26 **(Attorneys’ Fees)**

27 52. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff’s
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claims against Defendant are frivolous, unreasonable, and groundless and, accordingly Defendant should recover all costs and attorneys' fees incurred herein.

Fifty-Third Affirmative Defense

(No Permission to Work)

53. As a separate and distinctive affirmative defense, Defendant alleges that neither Plaintiff nor any putative class member were suffered or permitted to work during the time for which they were not paid the appropriate wage rate, including the overtime wage rate and provided lunch periods and rest periods in accordance with applicable law.

Fifty-Fourth Affirmative Defense

(No Knowledge)

54. As a separate and distinctive affirmative defense, Defendant alleges that if either Plaintiff or any putative class member "worked" overtime hours for which overtime compensation was not paid, Defendant had no knowledge of such overtime "work" and such overtime "work" was undertaken without the consent, knowledge, or permission of Defendant.

Fifty-Fifth Affirmative Defense

(Legitimate Business Reasons)

55. As a separate and distinctive affirmative defense, Defendant alleges that all actions taken with regard to Plaintiff and the putative class members, if any, were just, fair, honest, in good faith, privileged, and based upon legitimate business reasons.

Fifty-Sixth Affirmative Defense

(Scope)

56. As a separate and distinctive affirmative defense, Defendant alleges that any unlawful or other wrongful acts of any person(s) employed by Defendant was outside the scope of its authority and such act(s), if any, were not authorized, ratified, or condoned by Defendant, nor did Defendant know or have reason to be aware of such conduct.

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Fifty-Seventh Affirmative Defense**(Outside the Scope of Employment)**

57. As a separate and distinctive affirmative defense, Defendant alleges that the acts of the individuals of which Plaintiff complains, and the acts of the fictitiously named Does, were all undertaken outside the scope of their agency and/or employment with Defendant and without the knowledge or consent of Defendant. As a result, Defendant may not be held liable.

Fifty-Eighth Affirmative Defense**(Conformity)**

58. As a separate and distinctive affirmative defense, Defendant alleges that, at all times, its treatment of Plaintiff, and all purported class members, was in good faith, in conformity with and in reliance upon a written administrative regulation, order, ruling or interpretation of the federal Department of Labor Wage and Hour Division, the California Labor Commissioner, the California Industrial Welfare Commission, and/or on administrative practices and policies applicable to Defendant by federal and state agencies.

Fifty-Ninth Affirmative Defense**(Due Process)**

59. As a separate and distinctive affirmative defense, Defendant alleges that, to the extent Plaintiff and the putative class members seek statutory or other penalties, such claims must comport with the due process requirements of *State Farm v. Campbell*, 538 U.S. 408 (2003).

Sixtieth Affirmative Defense**(Meal Period Waiver)**

60. As a separate and distinctive affirmative defense, Defendant alleges that, Plaintiff's claim(s) and/or cause(s) of action for alleged failure to provide an unpaid meal period when employees worked 6 hours or fewer in a workday and/or failed to provide a second unpaid meal period when employees worked more than 10 hours in a workday, fail in whole or in part because Plaintiff, and each member of the purported class Plaintiff purports to represent, waived such unpaid meal periods as provided for by Labor Code section 512 and/or as provided for by the applicable

1 order of the Industrial Welfare Commission, and/or simply failed to avail themselves of such unpaid
2 meal periods.

3 **Sixty-First Affirmative Defense**

4 **(No Willful Failure To Pay)**

5 61. As a separate and distinctive affirmative defense, Defendant alleges that the
6 Complaint fails to state a claim for waiting time penalties, or otherwise, in that Defendant's alleged
7 failure to pay wages at the time of discharge, if any, was not willful.

8 **Sixty-Second Affirmative Defense**

9 **(No Knowledge or Intent)**

10 62. As a separate and distinctive affirmative defense, Defendant alleges that the
11 Complaint fails to state a claim for a violation of California Labor Code section 226, or otherwise,
12 in that Defendant's alleged failure to maintain records, if any, was not knowing or intentional.

13 **Sixty-Third Affirmative Defense**

14 **(Federal Arbitration Act)**

15 63. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff and
16 all other allegedly aggrieved employees signed legally binding arbitration agreements subjecting all
17 claims alleged in Plaintiff's Complaint to Arbitration under the Federal Arbitration Act.

18 **Sixty-Fourth Affirmative Defense**

19 **(PAGA-Standing)**

20 64. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff
21 lacks standing to assert the legal rights or interests on behalf of himself or others, lacks standing to
22 bring an action as a representative of current and/or former aggrieved employees, and lacks standing
23 to bring a claim as a private attorney general and/or representative of the State of California, and
24 any of its agencies, departments, divisions, commissions, or boards, under PAGA.

25 **Sixty-Fifth Affirmative Defense**

26 **(PAGA – Notice and Exhaustion)**

27 65. As a separate and distinctive affirmative defense, Defendant alleges that some or all
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of Plaintiff's claims are barred to the extent Plaintiff, and any person on whose behalf relief is sought, failed to satisfy the notice and exhaustion requirements under California's Private Attorney General Act ("PAGA"), Labor Code section 2698 et seq., and to the extent that they otherwise have failed to exhaust administrative remedies.

Sixty-Sixth Affirmative Defense

(PAGA - Unconstitutionality)

66. As a separate and distinctive affirmative defense, Defendant alleges that although Defendant denies that it committed or has responsibility for any act that could support recovery under the PAGA, if and to the extent, any such liability is found, recovery against Defendant under PAGA is unconstitutionally excessive and violates Defendant's due process rights.

Sixty-Seventh Affirmative Defense

(PAGA - Unlawful Delegation of Executive Authority)

67. As a separate and distinctive affirmative defense, Defendant alleges that the purported cause of action under the PAGA is barred to the extent private actions seeking PAGA penalties manifest an unlawful delegation of executive authority.

Sixty-Eighth Affirmative Defense

(PAGA - No Penalties Beyond "Initial" Violation)

68. As a separate and distinctive affirmative defense, Defendant alleges that the purported cause of action under the PAGA is barred to the extent Plaintiff, and the individuals on whose behalf Plaintiff seeks relief, seek penalties beyond the "initial" violation as described in California Labor Code § 2699(f)(2).

Sixty-Ninth Affirmative Defense

(PAGA – Not "Aggrieved Employees")

69. As a separate and distinctive affirmative defense, Defendant alleges that the purported cause of action under the PAGA is barred to the extent it seeks to recover penalties on behalf of individuals who are not "aggrieved employees."

Seventieth Affirmative Defense**(PAGA - Duplicative Recovery)**

70. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff, and the individuals on whose behalf Plaintiff seeks relief, are not entitled to recovery of penalties under PAGA to the extent that such penalties are sought in addition to penalties for the same claims and such duplicative recovery is barred and constitutes unjust enrichment.

Seventy-First Affirmative Defense**(PAGA – Improper Representative)**

71. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff's claims for violation of the Labor Code are not representative of the claim for violations of the Labor Code of other present and/or former employees of Defendant. Therefore, Plaintiff cannot as a matter of law be a proper PAGA representative seeking compensation on behalf of other allegedly similarly situated present and former employees of Defendant.

Seventy- Second Affirmative Defense**(Reservation of Rights)**

72. As a separate and distinctive affirmative defense, Defendant alleges that Defendant presently has insufficient knowledge upon which to form a belief as to whether any additional, as yet unstated, affirmative defenses to the Complaint are applicable. Defendant reserves the right to assert additional affirmative defenses if appropriate.

PRAYER FOR RELIEF

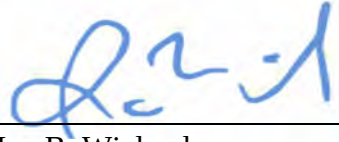
WHEREFORE, Defendant prays for relief as follows:

1. That Plaintiff takes nothing and that the Complaint be dismissed in its entirety with prejudice;
2. That judgment be entered in Defendant's favor;
3. That Defendant be awarded its attorneys' fees and costs of suit herein accordance with Labor Code § 218.5; and
4. That Defendant be awarded such other and further relief as the Court deems just and

proper.

Dated: October 3, 2023

SAGASER, WATKINS & WIELAND PC

By: 
Ian B. Wieland
Amanda K. Miller
Attorneys for Defendant,
DAVIS & ROBERTS CONSTRUCTION,
INC., a California corporation

SAGASER, WATKINS & WIELAND PC

ATTORNEYS AT LAW
5260 North Palm Avenue, Suite 400
Fresno, California 93704
Telephone: (559) 421-7000

PROOF OF SERVICE
(CODE CIV. PROC. § 1013)

STATE OF CALIFORNIA, COUNTY OF FRESNO

I am employed in the County of Fresno, State of California. I am over the age of 18 years and am not a party to the within action; my business address is 5260 North Palm Avenue, Suite 400, Fresno, California 93704.

On **October 3, 2023**, I served the following document(s) described as **DEFENDANT DAVIS & ROBERTS CONSTRUCTION, INC.'S ANSWER TO PLAINTIFF JORGE L. LEON'S SECOND AMENDED COMPLAINT** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

- ☐ **BY MAIL:** I deposited such envelope in the mail at Fresno, California. The envelope(s) was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.
- ☐ **BY OVERNIGHT COURIER:** I sent such document(s) on October 3, 2023, by with postage thereon fully prepaid at Fresno, California.
- ☐ **BY FAX:** I sent such document by use of facsimile machine telephone number (559) 473-1483. Facsimile cover sheet and confirmation is attached hereto indicating the recipients' facsimile number and time of transmission pursuant to California Rules of Court Rule 2.306. The facsimile machine I used complied with California Rules of Court Rule 2.301(3) and no error was reported by the machine.
- ☐ **BY PERSONAL SERVICE:** I placed the above document in a sealed envelope. I caused said envelope to be handed to our messenger service to be delivered by hand to the above address(es).
- ☒ **BY EMAIL:** I sent such document by use of email to the email address(es) above. (CCP § 1013(a)) Such document was scanned and emailed to such recipient and email confirmation is attached hereto indicating the recipients' email address and time of receipt pursuant to CCP § 1013(g).

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

Executed on October 3, 2023, at Fresno, California.



TRISTAN MATTHEWS

SERVICE LIST

ATTORNEYS FOR
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(E-Service agreed to on 3/7/22)

EXHIBIT 7



Sample size calculator

What margin of error can you accept?

5% is a common choice

%

The margin of error is the amount of error that you can tolerate. If 90% of respondents answer *yes*, while 10% answer *no*, you may be able to tolerate a larger amount of error than if the respondents are split 50-50 or 45-55.

Lower margin of error requires a larger sample size.

What confidence level do you need?

Typical choices are 90%, 95%, or 99%

%

The confidence level is the amount of uncertainty you can tolerate. Suppose that you have 20 yes-no questions in your survey. With a confidence level of 95%, you would expect that for one of the questions (1 in 20), the percentage of people who answer *yes* would be more than the margin of error away from the true answer. The true answer is the percentage you would get if you exhaustively interviewed everyone.

Higher confidence level requires a larger sample size.

What is the population size?

If you don't know, use 20000

How many people are there to choose your random sample from? The sample size doesn't change much for populations larger than 20,000.

What is the response distribution?

Leave this as 50%

%

For each question, what do you expect the results will be? If the sample is skewed highly one way or the other, the population probably is, too. If you don't know, use 50%, which gives the largest sample size. See below under **More information** if this is confusing.

Your recommended sample size is

9

This is the minimum recommended size of your survey. If you create a sample of this many people and get responses from everyone, you're more likely to get a correct answer than you would from a large sample where only a small percentage of the sample responds to your survey.

Online surveys with [Vovici](#) have completion rates of 66%!

Alternate scenarios

With a sample size of	100	200	300	With a confidence level of	90	95	99
Your margin of error would be	3.93%	0.00%	0.00%	Your sample size would need to be	7	9	15

Save effort, save time. [Conduct your survey online with Vovici.](#)



More information

If 50% of all the people in a population of 20000 people drink coffee in the morning, and if you were repeat the survey of 377 people ("Did you drink coffee this morning?") many times, then 95% of the time, your survey would find that between 45% and 55% of the people in your sample answered "Yes".

The remaining 5% of the time, or for 1 in 20 survey questions, you would expect the survey response to more than the margin of error away from the true answer.

When you survey a sample of the population, you don't know that you've found the correct answer, but you do know that there's a 95% chance that you're within the margin of error of the correct answer.

Try changing your sample size and watch what happens to the *alternate scenarios*. That tells you what happens if you don't use the recommended sample size, and how M.O.E and confidence level (that 95%) are related.

To learn more if you're a beginner, read **Basic Statistics: A Modern Approach** and **The Cartoon Guide to Statistics**. Otherwise, look at the **more advanced books**.

In terms of the numbers you selected above, the sample size n and margin of error E are given by

$$x = Z(c/100)^2 r(100-r)$$

$$n = N x / ((N-1)E^2 + x)$$

$$E = \text{Sqrt}[(N - n)x / n(N-1)]$$

where N is the population size, r is the fraction of responses that you are interested in, and $Z(c/100)$ is the critical value for the confidence level c .

If you'd like to see how we perform the calculation, view the page source. This calculation is based on the [Normal distribution](#), and assumes you have more than about 30 samples.

About **Response distribution**: If you ask a random sample of 10 people if they like donuts, and 9 of them say, "Yes", then the prediction that you make about the general population is different than it would be if 5 had said, "Yes", and 5 had said, "No". Setting the response distribution to 50% is the most conservative assumption. So just leave it at 50% unless you know what you're doing. The sample size calculator computes the critical value for the normal distribution. Wikipedia has good articles on statistics.

How do you like this web page? ☐ Good as-is ☐ Could be even better

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Print

Done



EXHIBIT 8

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Case title: Jorge L. Leon v. Davis & Roberts Construction, Inc.
Case no.: 22CECG00407
Court: Fresno
Judge: The Honorable D. Tyler Tharpe, Dept. 501, 5th Floor
Page subject: **Data**

*numbers highlighted in green were provided by Defendant

**number highlighted in yellow were calculated based on the sample records processed

Important Dates

Unfair Competition, Bus.&Prof. § 17200 ("UCL") period begins:	Friday, February 9, 2018
Lab.Code § 203 (waiting time penalties) period begins:	Saturday, February 9, 2019
Lab.Code § 2699 (civil penalties) period begins:	Wednesday, December 23, 2020
Lab.Code § 226 (pay stub penalties) period begins:	Monday, February 8, 2021
LWDA Notice:	Thursday, December 23, 2021
Lawsuit:	Tuesday, February 8, 2022
Sample begin (sample was only produced/processed for a few months for each year):	Thursday, November 29, 2018
Sample end (sample was only produced/processed for a few months for each year):	Wednesday, May 18, 2022
Sample calendar days:	1,266.00
Mediation:	Thursday, November 3, 2022
Anticipated Settlement Period end date:	Friday, March 3, 2023

Classes / Groups sizes

UCL Class Members:	119
UC Class Members (unsettled):	35
UCL Workweeks:	9,686
UCL Workweeks (unsettled):	871
UCL Wage Statements:	
UCL Workdays:	38,260
UCL Calendar days:	1,728
UCL Months:	56.81
Waiting Time Penalties Class Members:	91
Waiting Time Penalties Class Members (unsettled):	29
PAGA Aggrieved Employees:	58
PAGA Wage Statements:	2,865
Wage Statement Class Members:	58
Wage Statement Class Wage Statements:	2,865
% of settled Workweeks:	88%

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% of Settled Employees 66%

Averages

Average Hourly Rate:	\$	21.17
Average Overtime Rate:	\$	31.76
Average Doubletime Rate:	\$	42.34
Average Work Hours Per Day:		8.15
Average Work Hours Per Week:		32.19
Average Workdays Per Week:		3.95
Workdays to Calendar Days (%):		56.43%
Paycycle:	weekly (52 paychecks/year)	
Paychecks Per Year:		52

Confidential Settlement Communication

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Case title:	Jorge L. Leon v. Davis & Roberts Construction, Inc.
Case no.:	22CECG00407
Court:	Fresno
Judge:	The Honorable D. Tyler Tharpe, Dept. 501, 5th Floor
Page subject:	Unpaid wages
Authority:	Lab.Code §§ 510, 1194, 1194.2, and 1198

Minimum Wage	\$	15.00
Unpaid hours per pay week (30 min for on-duty meal periods and additional 30 min for work that was not recorded on timesheets per workday):		3.95
Actionable workweeks:		871
Interest:		10%
Unpaid wages:	\$	56,767.43
Liquidated damages:	\$	56,767.43

Confidential Settlement Communication

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Case title: Jorge L. Leon v. Davis & Roberts Construction, Inc.
Case no.: 22CECG00407
Court: Fresno
Judge: The Honorable D. Tyler Tharpe, Dept. 501, 5th Floor
Page subject: **Unprovided Meal Periods**
Authority: Lab.Code §§ 226.7, 512, and 1198

Average Hourly Rate:	\$	21.17
Actionable workdays:		3,440
>>Percentage qualifying for meal periods:		91%
Violation rate (%)		53%

Meal period premium wages:	\$	35,128.00

Confidential Settlement Communication

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Case title: Jorge L. Leon v. Davis & Roberts Construction, Inc.
Case no.: 22CECG00407
Court: Fresno
Judge: The Honorable D. Tyler Tharpe, Dept. 501, 5th Floor
Page subject: **Unprovided Rest Periods**
Authority: Lab.Code §§ 226.7 and 1198

Average Hourly Rate:	\$	21.17
Actionable workdays:		3,440
>>Percentage qualifying for rest periods:		96%
Violation rate (%)		53%

Rest period premium wages:	\$	37,058.11

Confidential Settlement Communication

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Case title:	Jorge L. Leon v. Davis & Roberts Construction, Inc.
Case no.:	22CECG00407
Court:	Fresno
Judge:	The Honorable D. Tyler Tharpe, Dept. 501, 5th Floor
Page subject:	Itemized Wage Statements
Authority:	Lab.Code § 226
Wage Statement Class Members:	19
Wage Statement Class Wage Statements:	333
Initial penalty:	\$ 50.00
Subsequent penalty:	\$ 100.00
Statutory wage statement penalties:	\$ 32,316.61

Confidential Settlement Communication

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Case title:	Jorge L. Leon v. Davis & Roberts Construction, Inc.
Case no.:	22CECG00407
Court:	Fresno
Judge:	The Honorable D. Tyler Tharpe, Dept. 501, 5th Floor
Page subject:	Waiting Time / Final Wages
Authority:	Lab.Code § 203

Waiting Time Penalties Class Members:	29
Days waiting:	30
Average Hourly Rate:	\$ 21.17
Average Overtime Rate:	\$ 31.76
Average Doubletime Rate:	\$ 42.34
Average Work Hours Per Day:	8.15
Regular Hours Per Day:	8.00
Overtime Hours Per Day:	0.15
Doubletime Hours Per Day:	-
Waiting time penalties:	\$ 151,487.23

Confidential Settlement Communication

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Case title:	Jorge L. Leon v. Davis & Roberts Construction, Inc.
Case no.:	22CECG00407
Court:	Fresno
Judge:	The Honorable D. Tyler Tharpe, Dept. 501, 5th Floor
Page subject:	PAGA Civil Penalties
Authority:	Lab.Code §§ 2698, <i>et seq.</i>

Labor Code violation	Labor Code Civil Penalty Statute	Initial penalty	Subsequent penalty	Pay periods	Total
Minimum wages (Lab.Code § 1197):	Lab.Code § 1197	\$ 100.00	\$ 250.00	2,865	\$ 716,100.00
Overtime wages (Lab.Code § 510):	Lab.Code § 558	\$ 50.00	\$ 100.00	2,865	\$ 286,450.00
Meal periods Lab.Code § 512):	Lab.Code § 558	\$ 50.00	\$ 100.00	2,865	\$ 286,450.00
Rest periods (Lab.Code § 1198):	Lab.Code § 2699	\$ 100.00	\$ 200.00	2,865	\$ 572,900.00
Improper pay stubs (Lab.Code § 226):	Lab.Code § 226.3	\$ 250.00	\$ 1,000.00	2,865	\$ 2,864,250.00
Untimely wages (Lab.Code §§ 201-204):	Lab.Code § 2699	\$ 100.00	\$ 200.00	2,865	\$ 572,900.00
Total:				\$	5,299,050.00

Confidential Settlement Communication

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Case title:	Jorge L. Leon v. Davis & Roberts Construction, Inc.
Case no.:	22CECG00407
Court:	Fresno
Judge:	PAGA Civil Penalties
Page subject:	Totals
Authority:	Various

Restitution	Reduction		Demand
Unpaid wages:	\$ 56,767.43	5%	\$ 53,929.05
Liquidated damages:	\$ 56,767.43	5%	\$ 53,929.05
Meal period premium wages:	\$ 35,128.00	5%	\$ 33,371.60
Rest period premium wages:	\$ 37,058.11	5%	\$ 35,205.20
Restitution subtotal:	\$ 185,720.95	\$	176,434.90
Penalties			
Statutory wage statement penalties:	\$ 32,316.61	5%	\$ 30,700.78
Waiting time penalties:	\$ 151,487.23	5%	\$ 143,912.87
Minimum wages (Lab.Code § 1197):civil penalties:	\$ 716,100.00	85%	\$ 107,415.00
Overtime wages (Lab.Code § 510):civil penalties:	\$ 286,450.00	85%	\$ 42,967.50
Meal periods Lab.Code § 512):civil penalties:	\$ 286,450.00	85%	\$ 42,967.50
Rest periods (Lab.Code § 1198):civil penalties:	\$ 572,900.00	85%	\$ 85,935.00
Improper pay stubs (Lab.Code § 226):civil penalties:	\$ 2,864,250.00	85%	\$ 429,637.50
Untimely wages (Lab.Code §§ 201-204):civil penalties:	\$ 572,900.00	85%	\$ 85,935.00
Penalties subtotal:	\$ 5,482,853.84	\$	969,471.15
Grand total:	\$ 5,668,574.79	\$	1,145,906.05

EXHIBIT 9

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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
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.

Meal Periods Class: All persons employed by Defendants in California
who were not provided with uninterrupted thirty (30) minute meal periods
during each work period of five (5) or more hours during the period
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

THE
SPIVAK
LAW FIRM

EXHIBIT 10

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

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

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

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

21 (A PAUSE IN THE PROCEEDINGS.)

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

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

1 (A PAUSE IN THE PROCEEDINGS.)

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

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

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

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

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

28 I SAY THAT BECAUSE THE CASE OF WHITTINGTON

1 VERSUS MCKINNEY -- WHITTINGTON IS SPELLED

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

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

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

19 IT READS NOW, (READING:)

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

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

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

28 (4) DIRECT THAT THE TENTATIVE DECISION

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

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

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

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

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

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

8 MR. SABZEVAR: DEFENSE PREFERENCE IS NUMBER ONE.

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

12 MR. SABZEVAR: YES, YOUR HONOR.

13 THE COURT: PLAINTIFF?

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

16 THE COURT: ALL RIGHT.

17 MR. SPIVAK: BY "WE" I MEAN WE BELIEVE IT SHOULD BE
18 PREVAILING PARTY.

19 THE COURT: UH-HUH. I'M GOING TO USE -- I
20 APPRECIATE -- I'M GOING TO USE METHOD (4). THIS TENTATIVE
21 DECISION WILL BECOME THE STATEMENT OF DECISION UNLESS WITHIN
22 TEN DAYS AFTER ANNOUNCEMENT, AND SO FORTH. THAT'S
23 3.1590(C)(4).

24 SO WHAT I'M GOING TO DO NOW IS ANNOUNCE A
25 TENTATIVE WHICH, AS YOU CAN SEE, IS ALSO A CONDITIONAL
26 STATEMENT OF DECISION.

27 THIS CASE CAME BEFORE ME PRESIDING IN THIS
28 DEPARTMENT 41 ON THE 10TH OF APRIL, 2012, FOR TRIAL WITHOUT

1 JURY. DAVID G. SPIVAK, STATE BAR 179684, APPEARED AS
2 ATTORNEY FOR PLAINTIFFS ALINA GHRDILYAN AND EVGENIA
3 SULTANIAN, AND F. MICHAEL SABZEVAR, STATE BAR 172312 APPEARED
4 AS ATTORNEY FOR DEFENDANT, RAMIL ABALKHAD.

5 THE CASE WAS SUBMITTED FOR DECISION TODAY, THE
6 23RD OF APRIL, 2012.

7 IN THIS CASE, TWO PLAINTIFFS CLAIM THAT
8 DEFENDANT ABALKHAD IS LIABLE TO THEM ON VARIOUS
9 EMPLOYMENT-DERIVED THEORIES INCLUDING AND ESPECIALLY FOR
10 PENALTIES AND THAT THEY CAN ENFORCE VARIOUS REMEDIES AGAINST
11 THEM UNDER THE LABOR CODE PRIVATE ATTORNEY GENERAL ACT, WHICH
12 IS AT LABOR CODE 2698, AND FOLLOWING.

13 IN OPEN COURT ON THE 10TH OF APRIL, 2012, THE
14 ATTORNEYS CONFIRMED THAT THE OPERATIVE PLEADINGS ARE THE
15 PLAINTIFFS'S FIRST AMENDED COMPLAINT, ET CETERA, FILED
16 FEBRUARY 24, 2010, AND THE DEFENDANT'S ANSWER TO THEIR FIRST
17 AMENDED COMPLAINT FILED SEPTEMBER 13, 2010. I WILL MAKE A
18 COUPLE OF QUICK COMMENTS ABOUT THOSE TWO DOCUMENTS NOW.

19 THE FULL NAME OF THE PLAINTIFFS'S OPERATIVE
20 PLEADING IS FIRST AMENDED COMPLAINT FOR -- AND THEN THERE ARE
21 NINE THEORIES LISTED: FAILURE TO COMPENSATE EMPLOYEES FOR
22 ALL HOURS WORKED; NUMBER TWO IS FAILURE TO PROVIDE BOTH REST
23 AND MEAL PERIODS; NUMBER THREE IS FORFEITURE OF VESTED
24 VACATION BENEFITS; NUMBER FOUR IS FAILURE TO PROVIDE ACCURATE
25 WRITTEN WAGE STATEMENTS; NUMBER FIVE IS FAILURE TO TIMELY PAY
26 ALL FINAL WAGES; NUMBER SIX IS UNAUTHORIZED DEDUCTIONS;
27 NUMBER SEVEN IS FAILURE TO INDEMNIFY; NUMBER EIGHT IS UNFAIR
28 COMPETITION; AND NUMBER NINE IS CIVIL PENALTIES.

1 THE DEFENDANT'S ANSWER TO THE FIRST AMENDED
2 COMPLAINT WAS ON A JUDICIAL COUNCIL FORM PLEADING.

3 INSOFAR AS IT'S PERTINENT TO THIS PORTION OF
4 MY ANALYSIS, LABOR CODE 2699 READS, (READING:)

5 SUBSECTION (A), NOTWITHSTANDING ANY OTHER
6 PROVISION OF LAW, ANY PROVISION OF THIS CODE
7 THAT PROVIDES FOR A CIVIL PENALTY TO BE
8 ASSESSED AND COLLECTED BY THE LABOR AND
9 WORKFORCE DEVELOPMENT AGENCY OR ANY OF ITS
10 DEPARTMENTS, DIVISIONS, COMMISSIONS, BOARDS,
11 AGENCIES, OR EMPLOYEES FOR A VIOLATION OF THIS
12 CODE MAY, AS AN ALTERNATIVE, BE RECOVERED
13 THROUGH A CIVIL ACTION BROUGHT BY AN AGGRIEVED
14 EMPLOYEE ON BEHALF OF HIMSELF OR HERSELF AND
15 OTHER CURRENT OR FORMER EMPLOYEES PURSUANT TO
16 THE PROCEDURES SPECIFIED IN SECTION 2699.3.

17 THE PLAINTIFFS HAD ORIGINALLY DENOMINATED THIS
18 CASE AS A CLASS ACTION AND THEY CONTINUED THAT DESIGNATION
19 THROUGH VARIOUS OTHER FILINGS, BUT THEY HAVE NEVER OBTAINED
20 AN ORDER CERTIFYING THE CLASS. THEY CLAIM, THOUGH, THAT THEY
21 ARE ENTITLED TO PROCEED ON BEHALF OF OTHERS PURSUANT TO THE
22 CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL ACT AS TO
23 DEFENDANT ABALKHAD.

24 THE PLAINTIFFS HAD TRIED THIS CASE BEFORE ME
25 SOLELY AS TO CAUSE OF ACTION NINE. THEY CONCEDE THAT THIS
26 CASE IS STAYED IN THIS COURT IN PART BECAUSE OF THE FACT THAT
27 DEFENDANT RJ FINANCIAL, INC., ORIGINALLY THE ONLY NAMED
28 DEFENDANT, BUT BY VIRTUE OF THE FIRST AMENDED PLEADING, A

1 CODEFENDANT, THAT CORPORATION IS A DEBTOR IN CHAPTER 11
2 PROCEEDING, WHICH IS STILL PENDING.

3 PURSUANT TO 11 U.S.C. 362, THIS CASE WOULD BE
4 STAYED AS TO THAT PARTY. BUT MR. ABALKHAD HAS NOT BEEN SHOWN
5 TO BE A DEBTOR IN A BANKRUPTCY PROCEEDING AND DURING CLOSING
6 ARGUMENT OF THE 17TH OF APRIL, 2012, MR. SPIVAK CONFIRMED HIS
7 CLIENTS HAVE CLAIMS PENDING IN THE BANKRUPTCY CASE. THAT
8 WILL MEAN THAT THE CASE CAN PROCEED AND HAS PROCEEDED ON THE
9 BASIS PLEADED AGAINST MR. ABALKHAD AS AN INDIVIDUAL.

10 ALTHOUGH BECAUSE OF 11 U.S.C. 362, IT IS STAYED AS TO THE
11 CORPORATION.

12 THE PERSONS WHO GAVE TESTIMONY AT THE TRIAL
13 WERE JOSEPH HARSANY, H-A-R-S-A-N-Y, AN EMPLOYEE OF PAYROLL
14 CHECK WRITING SERVICE USED BY THE DEFENDANTS; BREK OYAMA --
15 BREK IS SPELLED B-R-E-K; AND OYAMA IS O-Y-A-M-A, MR. SPIVAK'S
16 PARALEGAL; RAMIL ABALKHAD, ONE OF THE DEFENDANTS, THE
17 PRESIDENT AND CHIEF EXECUTIVE OFFICER OF DEFENDANT RJ
18 FINANCIAL AND, INDEED, THAT -- APPARENTLY THAT COMPANY'S ONLY
19 OFFICER AND ONLY DIRECTOR. THE FOURTH WITNESS WAS ALINA
20 GHRDILYAN, ONE OF THE PLAINTIFFS, AND THE FIFTH WAS EVGENIA
21 SULTANIAN, ONE OF THE PLAINTIFFS, THE OTHER PLAINTIFF.

22 I'M GOING TO REFER TO THE LABOR CODE PRIVATE
23 ATTORNEY GENERAL ACT IN THE WAY THE ATTORNEYS HAVE -- IT
24 SEEMS TO ME TO BE SERVICEABLE -- AND I'M GOING TO REFER --
25 I'M GOING TO USE THE ACRONYM PAGA, P-A-G-A.

26 PAGA ACTIONS DO NOT HAVE BEEN MAINTAINED AS
27 CLASS ACTIONS. THEY CAN BE, BUT THEY ARE NOT REQUIRED TO BE.
28 THE AUTHORITY ON THAT IS ARIAS VERSUS SUPERIOR COURT, (2009),

1 46 CALIFORNIA 4TH, 969, 981 TO 982.

2 WE WILL GO INTO RECESS NOW. COME BACK AT
3 1:30, PLEASE.

4 (AT 11:58 A.M., A LUNCH RECESS WAS TAKEN.)

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(THE FOLLOWING PROCEEDINGS WERE HELD AT 1:47 P.M.)

THE COURT: NOW, WE WILL GO BACK TO THE GHRDILYAN
AGAINST RJ CASE.

OKAY. WHEN WE LEFT, I HAD, I THINK, TALKED
ABOUT SOME GENERAL POINTS OF LAW HAVING TO DO WITH PAGA
ACTIONS, AND I WILL JUST OVERLAP SLIGHTLY.

I WAS SAYING THAT PAGA ACTIONS DO NOT HAVE TO
BE HAVE MAINTAINED AS CLASS ACTIONS. THEY CAN BE, BUT ARE
NOT REQUIRED TO BE. AND ONE OF AUTHORITIES ON THAT IS ARIAS,
A-R-I-A-S, VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH
969 FROM PAGES 981 TO 982. PAGA IS NOT THE EMPLOYEE'S
EXCLUSIVE REMEDY. THEY MAY SEPARATELY OR CONCURRENTLY SEEK
OTHER REMEDIES. LABOR CODE 2699(G) AND CALIBER BODY WORKS
VERSUS SUPERIOR COURT, (2005) 134 CALIFORNIA APPELLATE 4TH
365 AT 375.

THE KINDS OF PENALTIES THAT PAGA PLAINTIFFS
CAN SEEK TO RECOVER, ASSUMING THAT THE FACTS SUPPORT IT, ARE
THOSE FOR FAILURE TO PAY STATUTORILY PRESCRIBED WAGES --
THAT'S LABOR CODE 210 -- UNLAWFULLY WITHHELD WAGES -- THAT'S
LABOR CODE 225.5 -- OR FOR VIOLATING, FOR EXAMPLE, AN
INDUSTRIAL WELFARE COMMISSION ORDER -- THAT'S LABOR CODE 558.
AN AGGRIEVED EMPLOYEE -- THAT WOULD MEAN ANYONE EMPLOYED BY
THE ALLEGED VIOLATOR AND AGAINST WHOM ONE OR MORE VIOLATIONS
WAS COMMITTED -- AND I PICKED UP THAT DEFINITION FROM LABOR
CODE 2699(C) AND FROM THE COMMENTS IN AMALGAMATED TRANSIT
UNION VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH 993 AT
1004 TO 1005 -- AN AGGRIEVED EMPLOYEE CAN SUE TO RECOVER
CIVIL PENALTIES FOR VIOLATIONS OF THE LABOR CODE ON BEHALF OF

1 HIMSELF, OR HERSELF, AND OTHER CURRENT OR FORMER EMPLOYEES
2 AGAINST WHOM ONE OR MORE OF THE ALLEGED VIOLATIONS WAS
3 COMMITTED. THAT'S LABOR CODE 2699(G)(1).

4 THE ATTORNEYS HAVE FROM TIME TO TIME REFERRED
5 TO WHAT THEY HAVE CALLED THE BRINKER CASE.

6 NOW, WHAT THEY ARE REFERRING TO IS THE CASE
7 ENTITLED BRINKER RESTAURANT CORPORATION VERSUS SUPERIOR
8 COURT, REAL PARTY IN INTEREST, HOHNBAUM H-O-H-N-B-A-U-M. THE
9 VERSION OF THAT THAT I HAVE USED IN MY ANALYSIS AND
10 PREPARATION IS THE VERSION THAT WAS PRINTED AT 2012 DAILY
11 JOURNAL, DAILY APPELLATE REPORT, PAGE 4615, AND FOLLOWING.

12 I HAVE BEEN REQUIRED TO EVALUATE THE TESTIMONY
13 OF THE PARTY WITNESSES IN THIS CASE, THAT IS, MS. GHRDILYAN,
14 MS. SULTANIAN, AND MR. ABALKHAD WITH SOME CAUTION AND
15 RESERVATIONS. THOSE THREE PERSONS IN THEIR CAPACITIES AS
16 WITNESSES ARGUED AND 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 AWARDED ARE FOR THE BENEFIT OF THE APPELLATE COURT
23 IN ASSISTING IT TO FRAME A DISPOSITIONAL ORDER IF THE CASE IS
24 SENT BACK TO THE SUPERIOR COURT UPON A REVERSAL IN PART OR IN
25 WHOLE.

26 I WANT TO PUT THESE PEOPLE IN A POSITION SO
27 THEY WILL HAVE A REMEDY ON BOTH SIDES WITHOUT THE NECESSITY
28 OF THE SUPERIOR COURT HAVING TO REVISIT THIS AND BY THE

1 SUPERIOR COURT TELLING THE APPELLATE COURT WHAT THE SUPERIOR
2 COURT WOULD HAVE DONE HAD THE SUPERIOR COURT'S REASONING NOT
3 FORECLOSED IT.

4 I AM EXTREMELY CONCERNED TO STATE THIS IN THAT
5 WAY SO THAT THE BANKRUPTCY PROCEEDINGS ARE NOT IN SOME WAY
6 SPOILED OR IMPROPERLY AFFECTED BY THE WORK DONE HERE IN THE
7 -- IN THE TRIAL COURT. AND I AM TRYING TO SUPPLY ALL OF THE
8 INFORMATION THAT I CAN WHILE STILL BEING TRUE TO AND
9 OBSERVANT OF THE NECESSITY FOR TRYING TO ACHIEVE AS MUCH
10 FINALITY AS I CAN WHILE STILL ASSISTING IN THE LITIGATION
11 PROCESS AS MUCH AS THIS COURT CAN.

12 NOW, I HAVE PREVIOUSLY DISCUSSED AND I WILL
13 MAKE A PART OF MY STATEMENT OF DECISION HERE THE SET OF DATES
14 THAT PIVOT AROUND THE APPEAL. AS I HAVE SAID PREVIOUSLY, THE
15 CASE THAT I HAVE BEEN TRYING, THIS CASE, WAS FILED ON THE
16 26TH OF JANUARY, 2010. THE DEFENDANT WAS AT THAT TIME ONLY
17 RJ FINANCIAL, AND THE CASE WAS DENOMINATED A CLASS ACTION. A
18 LITTLE LESS THAN MONTH AFTER THAT, ON THE 24TH OF FEBRUARY,
19 2010, THE PLAINTIFFS FILED A FIRST AMENDED COMPLAINT. THEY
20 ADDED MR. ABALKHAD AS A NAMED DEFENDANT. THEY CONTINUED WITH
21 THE DESIGNATION OF THIS CASE AS A CLASS ACTION.

22 ON THE 8TH OF MARCH, 2010, THE PLAINTIFFS
23 FILED A 170.6 AS TO JUDGE WILLIAM FAHEY OF THIS COURT.

24 ON THE 22ND OF MARCH, 2010, THE LAWYER WHO THE
25 TESTIMONY HAS IDENTIFIED AS MR. SANFORD FREY, F-R-E-Y -- THAT
26 NAME ALSO APPEARS ON THE DOCUMENT I'M GOING TO DESCRIBE --
27 FILED A NOTICE OF STAY AS TO THE CORPORATE DEFENDANT,
28 REFERRING TO THE CHAPTER 11 BANKRUPTCY. THAT BANKRUPTCY

1 PETITION APPEARS TO HAVE BEEN FILED ON THE 7TH OF JANUARY,
2 2010, THAT IS, BEFORE THE CASE WAS EVER FILED.

3 THAT ACCOUNTS FOR THE MODIFICATION OF THE NAME
4 OF THE PARTIES TO INCLUDE ABALKHAD AS AN INDIVIDUAL. I THINK
5 IT IS THAT OBVIOUS THAT -- BUT I WANT TO MAKE IT VERY, VERY
6 CLEAR THAT THIS IS NOT ONLY OBVIOUS, BUT IT IS A FACT THAT --
7 THIS CASE IS STAYED AS TO THE RJ FINANCIAL CORPORATION UNDER
8 THE STATUTORY CITATION I HAVE GIVEN, 11 U.S.C. 362.

9 MR. ABALKHAD'S DEFAULT WAS TAKEN IN THIS CASE
10 AND IN AUGUST OF 2010, HE MOVED TO SET ASIDE THE DEFAULT. IN
11 THAT SET OF PAPERS, THERE WAS THE CLAIM MADE THAT PLAINTIFFS
12 ADDED ABALKHAD ON THE 26TH OF MARCH, 2010. AS I HAVE
13 INDICATED, THAT WAS NOT TRUE. IT WAS ON THE 26TH -- 24TH OF
14 FEBRUARY, 2010, BUT THAT WAS NOT A SIGNIFICANT INACCURACY
15 BECAUSE IN THE COURT'S VIEW, ABALKHAD WAS ENTITLED TO HAVE
16 THE DEFAULT SET ASIDE.

17 NOW IS THERE ANYTHING THAT I AM SUPPOSED TO
18 SAY?

19 MR. SPIVAK: I DON'T THINK SO, YOUR HONOR.

20 THE COURT: OKAY. HOW ABOUT YOU, MR. SABZEVAR?

21 MR. SABZEVAR: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT. HERE'S WHAT I'M GOING TO DO
23 THEN.

24 I'M GOING TO SET A HEARING OUT IN THE FUTURE.
25 FIRST OF ALL, THE STATEMENT OF DECISION IS SUFFICIENT IF IT
26 STATES ALL THE FACTS. IT NEED NOT STATE EVIDENTIARY FACTS.
27 I THINK THE STATEMENT OF DECISION I HAVE MADE DOES THAT.

28 SECONDLY, I'M GOING TO ORDER THE PLAINTIFFS

1 THROUGH COUNSEL TO PREPARE, SERVE, OBTAIN APPROVAL AS TO FORM
2 FROM DEFENDANT ABALKHAD. THIS MAY REQUIRE A MEET AND CONFER
3 AND COURT EXPECTS COUNSEL TO BE ATTENTIVE AND COOPERATIVE IN
4 THIS REGARD. SO SUBMIT THAT TO DEFENSE COUNSEL AND LODGE
5 WITH THE COURT A JUDGMENT SUITABLE FOR COURT'S SIGNATURE IN
6 CONFORMITY WITH THE FOREGOING.

7 I AM GOING TO ORDER ALSO THAT THE PARTIES
8 AND/OR COUNSEL PICK UP ALL EXHIBITS LODGED WITH THE CLERK AND
9 ALL EXHIBITS MARKED AND/OR RECEIVED IN EVIDENCE, EACH SIDE TO
10 PICK UP THE ITEM PROFFERED BY THAT SIDE FOR RECEIPT INTO
11 EVIDENCE WITHIN FIVE DAYS FROM THE COURT'S SIGNING OF THE
12 JUDGMENT.

13 NOW, TODAY IS THE 23RD OF APRIL, 2010 -- 2012,
14 I SHOULD SAY. I WANT TO HAVE A HEARING AT WHICH THE JUDGMENT
15 IS PRESENTED TO ME FOR SIGNATURE AND I WANT TO DO THESE
16 THINGS AT THAT HEARING. I WANT TO SETTLE THE FORM AND
17 SUBSTANCE OF THE DECISION -- OF THE JUDGMENT. IF THERE'S ANY
18 OTHER WORK THAT NEEDS TO BE DONE, I WANT TO DO THAT AT THIS
19 HEARING. I WANT TO DETERMINE WHAT, IF ANYTHING, REMAINS TO
20 BE DONE REGARDING FUTURE PROCEEDINGS IN THIS CASE, AND I WANT
21 TO DETERMINE WHAT THE STATUS OF THIS CASE IS AND I WANT TO
22 HAVE THE LAWYERS FOR THE PARTIES PERSONALLY PRESENT.

23 MY IDEA WOULD BE THE JUDGMENT SHOULD BE
24 SUBMITTED BEFORE THE HEARING BUT THAT PLAINTIFFS'S COUNSEL
25 SHOULD BRING WITH HIM A DUPLICATE ORIGINAL OF THE JUDGMENT IN
26 CASE THE PAPERWORK HANDLING PRODUCES A SITUATION WHERE I
27 CAN'T LAY MY HANDS ON THE JUDGMENT THAT I AM SUPPOSED TO SIGN
28 IMMEDIATELY. I LOOK TO THE ATTORNEYS NOW FOR SOME

1 SUGGESTIONS AS TO THE DATE WHEN THAT HEARING SHOULD BE
2 SCHEDULED.

3 MR. SABZEVAR, DO YOU HAVE ANY IDEAS ABOUT WHEN
4 I SHOULD SCHEDULE IT?

5 MR. SABZEVAR: FORTY-FIVE DAYS, YOUR HONOR?

6 THE COURT: FORTY-FIVE DAYS.

7 MR. SPIVAK: THAT'S FINE FOR PLAINTIFFS.

8 THE COURT: SO TODAY IS THE 23RD. LET'S SET IT FOR
9 HEARING ON THE -- LET'S GO OUT MORE THAN 45 DAYS.

10 AS YOU CAN SEE, FROM THE 4TH TO THE 8TH, I
11 WON'T BE ABLE TO WORK WITH YOU -- OF JUNE. I WON'T BE ABLE
12 TO WORK WITH YOU. SO WOULD IT ALL RIGHT WITH YOU LAWYERS IF
13 I PICK THE 21ST OF JUNE, 2012, 8:30, THIS DEPARTMENT?

14 MR. SABZEVAR: THAT'S FINE, YOUR HONOR.

15 THE COURT: ARE YOU GOING TO BE AVAILABLE ON THOSE
16 DATES?

17 MR. SPIVAK: YES, YOUR HONOR.

18 THE COURT: ARE YOU GOING TO BE ABLE TO DO THE
19 THINGS I TALKED ABOUT, SETTLING THE FORM AND SUBSTANCE OF THE
20 JUDGMENT?

21 MR. SPIVAK: YES, YOUR HONOR.

22 MR. SABZEVAR: THAT'S FINE.

23 THE COURT: THANK YOU VERY MUCH. I APPRECIATE YOUR
24 PARTICIPATION AND -- AND YOUR ADVOCACY, AND I WILL SEE YOU
25 WHEN WE NEXT HAVE TO WORK ON THE CASE.

26 NOW, I WILL TELL YOU SOMETHING ELSE. PLEASE
27 STAY ALERT AND PLEASE LOOK IN ADVISES TO ATTORNEYS, OR
28 NOTICES, OR WHATEVER WE ARE GOING TO DO IN THE NEXT THREE OR

1 FOUR WEEKS. HERE'S OUR SITUATION.

2 AS OF 15TH OF MAY, WE WON'T HAVE REPORTERS IN
3 THESE DEPARTMENTS ANYMORE FOR TRIAL MATTERS -- THEY WILL HAVE
4 TO BE SUPPLIED BY THE PARTIES -- AND WE WON'T HAVE THE
5 REPORTERS EXCEPT TWO LAW AND MOTION SESSIONS A WEEK. THE
6 IDEA IS IT WILL BE ONE MORNING AND ONE AFTERNOON. THAT WILL
7 BE ALL THE REPORTERS WE ARE GOING TO HAVE SUPPLIED BY THE
8 COURT.

9 MOREOVER, THEY ARE GOING TO, AS I MENTIONED TO
10 YOU PREVIOUSLY, THEY ARE GOING TO REDUCE THE STAFF.

11 SO I HAD GIVEN YOU DATE, BUT I AM NOT ONE
12 HUNDRED PERCENT CERTAIN ABOUT HOW THAT DATE IS GOING TO WORK.
13 PLEASE KEEP YOUR EYES AND EARS OPEN. IF THERE'S SOME FOUL UP
14 OR SOMETHING, DO WHATEVER YOU NEED TO DO TO MAKE IT RIGHT. I
15 MEAN, WE ARE -- I WISH I COULD SAY SOMETHING THAT SOUNDED
16 MORE EMPHATIC AND MORE DEFINITIVE, BUT I CAN'T. I JUST DON'T
17 KNOW WHAT'S GOING TO HAPPEN.

18 WHAT I WANT TO DO IS TO FINISH UP YOUR CASE
19 AND GET YOU ALONG FOR THE NEXT STEP FOR OBVIOUS REASONS. AND
20 I DON'T WANT THE COLLAPSE OF THE SYSTEM'S ABILITY TO HANDLE
21 MATTERS TIMELY TO REDOUND TO YOUR DISADVANTAGE OR TO
22 ADDITIONAL EXPENSE ON THE PART OF EITHER SIDE THAT MIGHT
23 OTHERWISE BE AVOIDED IF YOU LAWYERS KEPT YOUR EYES PEELED FOR
24 WHAT'S HAPPENING IN THE COURTS AND IF I WERE ABLE TO PREDICT
25 A LITTLE BIT, I JUST CAN'T PREDICT THAT. I DON'T EVEN KNOW.
26 BUT KEEP YOUR EYES OPEN. TRY TO DO WHAT'S RIGHT, AND I WILL
27 TRY TO DO WHAT'S RIGHT. IT'S ABOUT THE BEST I CAN DO FOR
28 YOU.

1 ALL RIGHT. THANK YOU ALL VERY MUCH.

2 MR. SPIVAK: THANK YOU, YOUR HONOR.

3 MR. SABZEVAR: THANK YOU, YOUR HONOR.

4 THE COURT: SEE YOU WHEN WE NEXT HAVE TO WORK ON

5 THE CASE.

6 (PROCEEDINGS CONCLUDED.)

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DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE

CASE NO. BC430633
CERTIFIED COPY

MONDAY, APRIL 23, 2012

REPORTED BY:
ANGELA ZARATAN PARADELA
OFFICIAL COURT REPORTER
CSR NO. 9659

EXHIBIT 11

2013 WL 766535
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.
Court of Appeal,
Second District, Division 2, California.

Pearline ZALEWA et al., Plaintiffs and Respondents,
v.
TEMPO RESEARCH CORPORATION et al., Defendants and Appellants.

B238142 | Filed March 1, 2013

APPEAL from a judgment of the Superior Court of Los Angeles County. [Charles F. Palmer](#), Judge. Reversed and remanded.
(Los Angeles County Super. Ct. No. BC319156)

Attorneys and Law Firms

Dickstein Shapiro, [Arthur Silbergeld](#), [Christine de Bretteville](#) for Defendants and Appellants.

Altshuler Berzon, [Michael Rubin](#), [Eileen B. Goldsmith](#); Law Offices of Joseph D. Tuchmayer, [Joseph D. Tuchmayer](#); Law Offices of Todd Arron, [Todd S. Arron](#) for Plaintiffs and Respondents.

Opinion

[BOREN](#), P.J.

*1 We remanded this employment case to the trial court to determine (1) if attorney fees are authorized by statute following our reversal of the judgment in favor of plaintiffs, and (2) if fees are authorized, are they warranted by the facts of the case. On remand, both sides submitted demands for attorney fees to the trial court. The court awarded fees to plaintiff former employees as the “[prevailing](#) party” under [Labor Code section 218.5](#).¹

We reverse. Plaintiffs were not the [prevailing](#) party: they lost the case because their demands for bonuses were unfounded. Given that plaintiffs had no right to bonuses after they were laid off, defendants’ payment of money to some former employees during the litigation was a gift that cannot be viewed—as a matter of law—as a “catalyst” warranting an award of attorney fees to plaintiffs.

*FACTS*²

Plaintiffs are former employees of defendant Rifocs, a fiber optics company. In 1999, Rifocs merged with codefendant Textron. The merged entity was subsequently acquired by codefendant Tempo Research Corporation. The 1999 merger agreement contained a bonus clause. The bonus was intended to reward key employees for past performance and give them an incentive to remain with the company after the merger. Plaintiff employees were not third party beneficiaries of the merger agreement, which expressly forbids them from suing to enforce its terms.

To qualify for a bonus, plaintiffs had to be employed by the corporation at the end of the calendar year from 2000 through 2003. Plaintiffs received bonuses pursuant to the merger agreement beginning in December 2000. Plaintiff Laws received a bonus of \$10,000 for 2000–2001 and Zalewa received a bonus of \$75,000 for 2000–2002.

In 2001, defendants began employee layoffs because the market for fiber optics cooled. Defendants’ employment roster declined from 125 employees in April 2001 to seven employees in 2003. After being laid off, plaintiffs received no further

bonuses; however, they were entitled to—and received—severance pay. They signed releases agreeing not to sue on any claim arising from their employment with defendants.

In 2004, plaintiffs filed suit alleging Labor Code violations, unfair business practices, breach of contract, conversion, promissory estoppel, bad faith, and private attorney general (PAGA) penalties. In July 2005, defendants offered payments to laid-off employees, though not to the plaintiffs. After defendants made the payments, plaintiffs amended their complaint to allege a class action and assert a new claim for a “residual bonus.” A class was certified in 2007.

A bench trial was conducted in 2008. The court found that plaintiffs are entitled to recover a direct bonus, but no residual bonus. Because the bonus was unpaid wages, plaintiffs were awarded prejudgment interest and attorney fees under § 218.5. The court denied penalties to plaintiffs, finding that it would be unjust because defendants voluntarily tendered almost all of the outstanding direct bonus amounts to class members. The court awarded 11 employees \$0 because they were paid *more* money by defendants than they were owed. The remaining eight former employees were awarded sums ranging from \$455 to \$35,719. The court awarded plaintiffs’ counsel attorney fees of \$881,715. The court rejected plaintiffs’ claim under PAGA for lack of standing, because plaintiffs left defendants’ employ before PAGA took effect in 2004.

*2 Plaintiffs appealed the judgment because they felt entitled to residual bonuses and waiting time penalties, among other things. Defendants cross-appealed, challenging the trial court’s award of a direct bonus, its invalidation of the releases signed by plaintiffs, and the court’s award of attorney fees.

This Court reversed the judgment in favor of plaintiffs.

First, the trial court improperly invalidated the releases signed by plaintiffs after finding that defendants reasonably and in good faith believed that they did not owe plaintiffs a bonus. In a bona fide dispute over wages, defendants can legitimately offer plaintiffs money in return for their release of all claims. There was no evidence that the releases were coerced or improperly obtained. We wrote that plaintiffs “could, and did, accept payments that exceeded their earned severance, in return for releasing all claims, when there was a bona fide dispute over the wages owing. This is proper, even if the payment made by defendants was less than the bonus amounts claimed by the employees.”

Second, the trial court erred by finding that plaintiffs are entitled to a direct bonus. Although plaintiffs benefit from the bonus clause, the merger agreement prohibits them from suing to enforce its terms. Further, plaintiffs did not rely on any written or oral promises from defendants that they would receive a bonus even if they were laid off from their jobs due to depressed economic conditions. Because plaintiffs are not entitled to a bonus after they were laid off, they are not entitled to waiting time penalties, other Labor Code penalties, or prejudgment interest.

Finally, we reversed the trial court’s award of \$881,715 in attorney fees. We remanded the case to the trial court to determine whether an award of attorney fees is authorized by statute and warranted by the facts. Notably, we did *not* specify that either plaintiffs or defendants might be entitled to fees.³

On remand, the parties filed cross-motions for attorney fees. Plaintiffs requested an award of \$307,146 as the **prevailing** party pursuant to § 218.5, reasoning that this litigation was the catalyst for defendants’ July 2005 payments. Plaintiffs did not request attorney fees for litigation occurring after the 2005 payments, because the claims that went to trial were found by this Court to lack merit.

Defendants countered with a request for \$2,210,360 in costs and attorney fees incurred at trial and on appeal. Defendants argued that they are the **prevailing** parties: the appeal showed that they had no obligation to pay anything to plaintiffs. Like plaintiffs, defendants relied upon § 218.5 as authority for their right to recover attorney fees. In opposition to plaintiffs’ request for fees, defendants observed that their 2005 payments were made to nonparties, not to plaintiffs, and plaintiffs are not the **prevailing** parties because they did not recover any relief against defendants at trial. In defendants’ view, the “catalyst” theory is inapposite because no public interest was vindicated by plaintiffs’ lawsuit.

THE TRIAL COURT’S RULING

*3 The trial court denied defendants' motion for attorney fees. Citing § 218.5, the court granted plaintiffs' motion for fees, finding that plaintiffs are the prevailing parties, even if they did not obtain a favorable judgment in the litigation. The court reasoned that plaintiffs' lawsuit was a catalyst, provoking defendants to make the 2005 payments to some former employees. Plaintiffs initially won their lawsuit in the trial court and other employees recovered their bonuses from defendants in administrative proceedings: these factors demonstrated that the lawsuit was not frivolous, groundless or unreasonable. Finally, plaintiffs made demands for their bonus before the action was filed but were rebuffed, demonstrating that the litigation was necessary. Plaintiffs' attorneys were awarded a total of \$346,947.

DISCUSSION

1. Appeal and Review

The appeal arises from a postjudgment order awarding attorney fees and costs. (Code Civ. Proc., § 904.1, subd. (a)(2); *Raff v. Raff* (1964) 61 Cal.2d 514, 519; *Breckler v. Thaler* (1978) 87 Cal.App.3d 189, 193.) An attorney fee award generally is reviewed for an abuse of discretion; however, when the parties dispute whether the trial court was legally authorized to make an award because "the criteria for making an award" were unmet, this calls for statutory construction and presents a question of law. (*Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1213–1214; *Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169, 1175.) Specifically, we are asked whether § 218.5 permits, under a catalyst theory, an award of attorney fees to plaintiffs who did not prevail on any of the claims made in their lawsuit. Review is de novo, because the issue is whether there is a legal basis for awarding attorney fees. (*Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 1426; *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 149.)

2. Overview of § 218.5

Section 218.5 reads, in relevant part, "In any action brought for the nonpayment of wages ... the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action." The statute is a reciprocal fee recovery provision that works in favor of either employees or employers, whichever is the prevailing party in a lawsuit claiming unpaid wages. (*Earley v. Superior Court, supra*, 79 Cal.App.4th at p. 1427.) In employee class action suits, class representatives assume a fiduciary responsibility on behalf of absent parties and are potentially responsible for defense fees if their case fails. (*Id.* at pp. 1434–1436.) An unpaid bonus is treated as a claim for unpaid wages. (*Hunter v. Ryan* (1930) 109 Cal.App. 736, 738.)

3. The Catalyst Theory

The catalyst theory arises from the private attorney general doctrine codified in Code of Civil Procedure section 1021.5.⁴ It allows courts to award attorney fees to a "successful party" in an action that results in "the enforcement of an important right affecting the public interest" if there is (a) a significant benefit conferred on the general public or a large class of persons, (b) the financial burden of private enforcement makes the award appropriate, and (c) the fees should not be paid out of any recovery. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565 (*Graham*).)

*4 The doctrine " "rests upon the recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible." " (*Graham, supra*, 34 Cal.4th at p. 565.) It does not apply when a lawsuit's "primary effect was the vindication of [plaintiff's] personal right and economic interest." (*Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 637.)

"Under the catalyst theory, attorney fees may be awarded even when litigation does not result in a judicial resolution if the defendant changes its behavior substantially because of, and in the manner sought by, the litigation.... In order to be eligible for attorney fees[,] a plaintiff must not only be a catalyst to defendant's changed behavior, but the lawsuit must have some merit [] and the plaintiff must have engaged in a reasonable attempt to settle its dispute with the defendant prior to

litigation.” (*Graham, supra*, 34 Cal.4th at pp. 560–561.)

“ ‘A plaintiff will be considered a “successful party” where an important right is vindicated “by activating defendants to modify their behavior.” ’ ” (*Graham, supra*, 34 Cal.4th at p. 567.) Plaintiff need not secure a favorable final judgment to succeed: the case may be won on a preliminary issue; or by convincing a public agency to implement state law; or by reaching a settlement with a corporation in a shareholder derivative suit. (*Id.* at pp. 565–567, citing cases.) In *Graham*, the plaintiffs sued Chrysler for making false statements about the towing capacity of its trucks, inspiring the company to offer to repurchase or replace the trucks. The lawsuit caused Chrysler to change its behavior, “implicated an issue of public safety, and [] benefited thousands of consumers and potentially thousands more by acting as a deterrent to discourage lax responses to known safety hazards.” (*Id.* at pp. 577–578.)

4. Plaintiffs’ Right to Recover Attorney Fees

Plaintiffs originally brought suit in 2004 “on behalf of themselves and the general public.” They requested attorney fees pursuant to § 218.5. While the case was pending, but before plaintiffs amended their complaint to include class allegations, defendants paid money to some of the laid-off employees, but not to plaintiffs. Plaintiffs proceeded to trial, where they won their unpaid bonus money. The victory was short-lived, as defendants had a successful appeal.

To determine the prevailing party under § 218.5, we import the definition used in the Code of Civil Procedure (*On-Line Power, Inc. v. Mazur* (2007) 149 Cal.App.4th 1079, 1085–1087), which defines a prevailing party as “the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant.” (Code Civ. Proc., § 1032, subd. (a)(4).) Plaintiffs did not have a net monetary recovery against defendants. In fact, they recovered nothing. Under the plain language of § 218.5, plaintiffs were not the prevailing party because all of their claims against defendant were denied.

While no court has yet applied the catalyst theory to a case arising from § 218.5, plaintiffs argue that the theory should apply, based on defendants’ July 2005 payments to some former employees. It is unclear whether the permissive fee shifting described in the catalyst theory applies to a statute like § 218.5, which mandates an award of attorney fees to the “prevailing party.” Assuming the catalyst theory applies to Labor Code cases, its application does not assist plaintiffs in their quest for attorney fees.

*5 The opinion in the prior appeal shows that plaintiffs had no right to collect a bonus after they were laid off from their jobs with defendants. By extension, the laid-off, nonparty employees who received payments from defendants in July 2005 also had no right to collect a bonus. Had the employees not accepted the 2005 payments, they would have received nothing in the litigation. In the eyes of the law, defendants’ 2005 payments were a gift, not a contractual or statutory obligation to remit unpaid wages.

When deciding whether to award attorney fees, the court reviews the facts “not only to determine the lawsuit’s catalytic effect but also its merits. Attorney fees should not be awarded for a lawsuit that lacks merit.” (*Graham, supra*, 34 Cal.4th at p. 576.) Plaintiffs cannot be a “successful party” if a reviewing court flatly rejects their case on the merits. (*Marine Forests Society v. California Coastal Com.* (2008) 160 Cal.App.4th 867, 877.) Although plaintiffs’ lawsuit provoked the 2005 payments, the lawsuit itself lacked merit, because plaintiffs demanded bonuses and penalties that they were not entitled to collect.

A lawsuit that provokes a defendant to make a gift is not a ground for awarding attorney fees: no significant benefit is conferred on the public or a large class of persons by such a lawsuit (*Graham, supra*, 34 Cal.4th at p. 578), and defendants engaged in no detrimental behavior that needed to be changed. As discussed in our prior opinion, defendants had the right to behave the way they did, laying off employees they could not afford to keep and denying bonuses to employees who were not on the payroll at year’s end. (Compare *Tipton–Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 607–610 [city instituted remedial practices in its police department after plaintiff sued for race and sex discrimination, justifying application of the “catalyst” theory of fee recovery]; *Harbor v. Deukmejian* (1987) 43 Cal.3d 1078, 1103 [catalyst theory applied when plaintiffs successfully challenged the governor’s constitutional veto authority, which conferred a significant benefit on the general public]; *Hogar Dulce Hogar v. Community Development Com. of City of Escondido* (2007) 157 Cal.App.4th 1358,

1368 [plaintiffs successfully obtained an amendment to a tax sharing agreement and a \$1.35 million reimbursement to a city housing fund, giving rise to catalyst fees].)

In sum, this lawsuit was instigated by a handful of employees who felt entitled to collect a bonus for years after they stopped working. By no stretch of imagination did this lawsuit aim to vindicate an important right affecting the public interest; nor did it confer a significant benefit on the general public or a large class of persons; nor did it cure detrimental behavior by defendants, who did not engage in improper conduct. This was not a lawsuit “ ‘that genuinely provide[d] a public benefit.’ ” (*Vasquez v. State of California* (2008) 45 Cal.4th 243, 255.) The catalyst theory does not apply here.

5. Defendants’ Right to Recover Attorney Fees

Section 218.5 is a reciprocal attorney fees statute that requires an award of fees to the “prevailing party” so long as one of the parties demands those fees upon the initiation of the action. Here, plaintiffs demanded fees pursuant to § 218.5 when they filed suit. Defendants were the prevailing parties on appeal, which resolved the entire lawsuit in their favor. (Code Civ. Proc., § 1032, subd. (a)(4) [prevailing party is the defendant if neither plaintiff nor defendant obtains any relief, and the defendant when the plaintiff recovers no relief against that defendant].) Plaintiffs did not prevail on any claims.

*6 Plaintiffs contend that their claims for fees under § 218.5 were inextricably intertwined with their PAGA claim, making it impossible to award attorney fees to defendants as the prevailing party under § 218.5. As the trial court found, plaintiffs had no standing to bring a PAGA claim because PAGA did not exist when plaintiffs were terminated from their employment with defendants. In any event, § 218.5 lists only one remotely pertinent exception: “This section does not apply to any action for which attorney’s fees are recoverable under Section 1194.”⁵ Plaintiffs did not proceed under section 1194, a one-way fee shifting statute authorizing attorney fees to employees who prevail on their minimum wage or overtime compensation claims.

Section 218.5 contains no equitable exemption allowing the courts to give a pass to employees who invoke its provisions then lose their case, causing the employer to become the prevailing party in the litigation. Defendants are the prevailing party under § 218.5, and are entitled to recover reasonable attorney fees they incurred in this litigation, including the two appeals.⁶

DISPOSITION

The postjudgment order awarding attorney fees and costs to plaintiffs is reversed. The case is remanded to the trial court to determine a reasonable award of attorney fees and costs for defendants. Defendants are entitled to recover their costs on appeal, as the prevailing party.

We concur:

ASHMANN–GERST, J.

FERNS, J.*

Footnotes

¹ Labor Code section 218.5 will be referred to in this opinion as § 218.5.

² The facts are largely derived from our opinion in *Zalewa v. Tempo Research Corporation* (Sept. 27, 2010) B210429 (nonpub. opn., as modified Oct. 27, 2010).

³ Plaintiffs misinformed the trial court that the case was remanded to resolve “whether and in what amount *plaintiffs are entitled to*

reasonable fees for having achieved [a] substantial result for so many of the affected employees.” (Italics added.) The opinion does not give a nod to plaintiffs’ claim for fees.

- 4 The statute reads, in relevant part, “Upon motion, a court may award attorneys’ fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement ... are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any.”
- 5 [Section 218.5](#) contains several express exceptions: it does not apply to an action brought by the Labor Commissioner; it does not apply to a surety issuing a bond pursuant to the Business and Professions Code; and it does not apply to an action to enforce a mechanics lien under the Civil Code. The statute does not mention PAGA.
- 6 The issue of attorney fees following reversal of the judgment first arose in plaintiffs’ petition for rehearing, when it was procedurally inopportune to resolve a new issue, hence the remand. We never intended to confuse the trial court by remanding for further proceedings on the issue of attorney fees.
- * Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).

EXHIBIT 12

2011 WL 5979937
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
Only the Westlaw citation is currently available.

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.

Court of Appeal, First District, Division 5, California.

Maria Tun CUN, Plaintiff and Appellant,
v.
CAFE TIRAMISU LLC, Defendant and Respondent.

No. A131241. | (San Francisco County Super. Ct. No. CGC–09–484879). | Nov. 30, 2011.

Attorneys and Law Firms

[Michael Paul Guta](#), Law Offices of John E. Hill, Oakland, CA, for Plaintiff and Appellant.

[Wesley Jerome Fastiff](#), [Michael Gayland Pedhirney](#), Littler Mendelson, San Francisco, CA, for Defendant and Respondent.

Opinion

[NEEDHAM](#), J.

*1 Maria Tun Cun appeals from an order awarding attorney fees to respondent Café Tiramisu LLC, pursuant to [Labor Code section 218.5](#), after the court granted respondent’s motion for summary judgment. Appellant contends: (1) [Labor Code section 218.5](#) did not apply, because the action she brought for unpaid wages was really for unpaid overtime, for which an award of attorney fees is available only to successful plaintiffs under [Labor Code section 1194](#); (2) the court should have apportioned the attorney fees between appellant’s unpaid wages claim and her constructive termination claim, for which no attorney’s fee award is available; and (3) the court improperly awarded amounts for attorney services rendered in defense of claims other than those asserted by appellant. We will affirm the order.

I. FACTS AND PROCEDURAL HISTORY

In February 2009, appellant Maria Tun Cun, along with Vicente Tapia Gonzalez and Evangelina Tun Cun, filed a complaint against respondent Café Tiramisu LLC.¹

Maria asserted three causes of action. In a cause of action for recovery of unpaid wages, she alleged that she was employed by Café Tiramisu between February 9, 2005 until her termination on March 21, 2007, she was “owed wages” and was “owed for accrued paid time off,” and she was entitled to a statutory penalty for unpaid wages under [Labor Code section 203](#) and reasonable attorney fees and costs pursuant to [Labor Code section 218.5](#). In a cause of action for constructive termination in violation of public policy, Maria alleged that Café Tiramisu’s “conduct in refusing to pay plaintiffs wages owed created an intolerable working condition, necessitating plaintiffs to leave employment.” In her cause of action for unfair business practices, she alleged that Café Tiramisu violated [Business and Professions Code section 17200](#) by committing these same acts.

In her prayer for relief, Maria sought, among other things, damages and “reasonable attorney’s fees, pursuant to [Labor Code Section 218.5](#).” Nowhere in the complaint did Maria allege that Café Tiramisu owed her for unpaid overtime.

A first amended complaint, filed in April 2010, retained Maria's allegations and causes of action. Like the original complaint, it did not allege entitlement to unpaid overtime.

Café Tiramisu filed a motion for summary judgment or, in the alternative, summary adjudication. In September 2010, the court granted the motion, finding that Maria could not prevail on any of her causes of action as a matter of law because, before the lawsuit, the parties had entered into settlement agreements by which Maria released all of her employment-related claims.

Judgment was entered against Maria on September 21, 2010. The judgment noted that Café Tiramisu, as the prevailing party, was eligible to recover its reasonable attorney fees and costs.²

Café Tiramisu filed a motion for attorney fees on November 18, 2010, contending it was the prevailing party and entitled to recover its fees and costs under Labor Code section 218.5. Café Tiramisu requested \$36,612.50 in fees, supporting its request with a declaration from one of its attorneys and invoices for the fees incurred.

*2 Maria opposed the motion. She contended that Café Tiramisu was not entitled to recover attorney fees under Labor Code section 218.5, which authorizes recovery by the prevailing party, because her action was for overtime wages governed by Labor Code section 1194, which authorizes recovery only by successful plaintiffs. She further contended that Café Tiramisu could not recover for the portion of attorney fees incurred in connection with her claim for wrongful termination. Café Tiramisu's reply brief addressed these arguments.

By written order filed on or about January 5, 2011, the court granted the motion and awarded Café Tiramisu attorney fees in the full amount of \$36,612.50. This appeal followed.

II. DISCUSSION

As mentioned, Maria contends the court erred because: (1) Labor Code section 218.5 was inapplicable because her claim for unpaid wages was really a claim for unpaid overtime; (2) the court failed to apportion the attorney fees spent on the claim for unpaid wages as opposed to her claim for wrongful termination; and (3) Café Tiramisu should not recover for fees incurred in defending against claims by others. We address each contention in turn.

A. Recovery of Attorney Fees Under Labor Code Section 218.5

Café Tiramisu sought recovery for its attorney fees, and the trial court awarded them, pursuant to Labor Code section 218.5.³ Section 218.5 provides in pertinent part: "In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action." (Italics added.)

Each requirement of section 218.5 was met. First, Maria brought an action for the nonpayment of wages. In her original and amended complaints, Maria claimed that she was "owed wages" and, in addition, had accrued and was owed "paid time off pursuant to Labor Code [sections] 226.7 and 227.3." Section 226.7 refers to pay for time worked during mandated meal periods, and section 227.3 refers to vested vacation pay; both are considered "wages." (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1114 [time worked during mandatory meal periods]; *Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal.3d 774, 784 [vested vacation pay].)

Second, Café Tiramisu was the prevailing party. Its summary judgment was granted, and judgment was entered in its favor, with Maria taking nothing by her amended complaint. (Code Civ. Proc. § 1032, subd. (a)(4).)

Third, Maria expressly requested attorney fees and costs pursuant to section 218.5 upon the initiation of her action, in both the original and amended complaints. Accordingly, Café Tiramisu was entitled to recover its reasonable attorney fees under

section 218.5.

Maria's sole argument to the contrary is that her cause of action for unpaid wages was really a claim for unpaid *overtime*, such that section 1194, rather than section 218.5, should govern. Section 1194, subdivision (a) provides for one-way fee shifting to a successful plaintiff only: "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." (Italics added.)

*3 Because section 1194 authorizes an award of attorney fees only to a successful plaintiff, and not to the prevailing party, Maria contends that the trial court erred and Café Tiramisu was not entitled to an award of attorney fees. Indeed, section 218.5 provides: "This section does not apply to any action for which attorney's fees are recoverable under Section 1194." The question Maria presents, therefore, is whether her claim for unpaid wages was really a claim for overtime compensation.

Maria's effort to recast her complaint as one seeking recovery for unpaid overtime is unpersuasive. Neither her original complaint nor the amended complaint mentions "overtime," "overtime wages," or section 1194. It refers instead to "wages," paid time off (also wages), and section 218.5.

Ignoring this, Maria argues that the claim she eventually tried to *prove* was that she was not paid wages at the overtime rate. In particular, in opposition to respondent's summary judgment motion, she contended that she repeatedly worked overtime hours, presented payroll records evincing overtime hours, and purportedly asserted that it was her exhaustion from overtime hours that led to her constructive termination.⁴

Maria's argument is unconvincing. The fact that she was eventually unable to support her broadly-alleged claim for unpaid wages except with evidence of unpaid overtime does not mean that her "action" was really for overtime compensation. (See §§ 218.5, 1194.) Nor does it convert the action she brought into a different action she had never specifically alleged. To hold otherwise would reward a plaintiff for not having any evidence to support her claims as pled, and penalize a defendant who incurs attorney fees in defending against the claims *as they were pled*. Thus, while Maria may have tried to prove her cause of action for unpaid wages with evidence of unpaid overtime, the court did not err in concluding that the "action" Maria actually "brought" was for nonpayment of wages within the meaning of section 218.5, not for nonpayment of overtime within the meaning of section 1194.

Maria further argues that this court, by its August 2011 decision in appeal number A129899 from the grant of summary judgment, characterized her claim as one for overtime wages. Her argument has no merit. In the first place, our August 2011 opinion in appeal number A129899 was not before the trial court when it granted the attorney fees motion in January 2011, and Maria does not explain how the trial court could have erred in January based on our characterization of her claim in August. Furthermore, any characterization of Maria's cause of action in appeal number A129899 would not be germane to this case, because it did not involve the issue we address now. At issue in appeal number A129899 was whether the settlement release was enforceable; we were not called upon in that case, as we are in this case, to decide whether her cause of action for unpaid wages was really a cause of action for unpaid overtime. Lastly, contrary to Maria's representations, we did *not* characterize Maria's claim as one for overtime wages. Rather, we stated: "On April 2, 2010, a First Amended Complaint (Complaint) was filed; appellant alleged causes of action for recovery of *unpaid wages*, constructive termination and unfair business practices." (Italics added.) While we acknowledged that Maria ended up claiming damages for unpaid overtime in her summary judgment motion, we also noted that her underlying complaint to the Department of Labor contended that she was "entitled to additional unpaid wages, *including* for unpaid overtime," but not exclusively for unpaid overtime. (Italics added.) In short, for all of these reasons, our opinion in appeal number A129899 does not establish that the trial court erred in deciding respondent's motion for attorney fees.

*4 Maria also refers us to *Earley v. Superior Court* (2000) 79 Cal.App.4th 1420 (*Earley*). There, petitioners had brought a class action to recover unpaid overtime compensation. (*Id.* at p. 1423.) They objected to an order requiring petitioners to notify absent class members that they might be liable for attorney fees and costs if their claim was unsuccessful. (*Id.* at pp. 1423–1424.) To decide the appeal, the appellate court had to determine, among other things, if section 1194 alone governed whether attorney fees could be awarded in the defendant's favor, or if section 218.5 also applied, such that the two statutes could be read together to allow the prevailing party to recover attorney fees. (*Earley*, at p. 1426.) The court ruled that only

section 1194 applied to the petitioner's cause of action for unpaid overtime, in light of legislative history, the distinct legislative source of the right to overtime compensation, and the fact that the Legislature specifically provided that only plaintiffs should recover attorney fees in overtime cases. (*Earley*, at pp. 1429–1431.) The court concluded: “The only reasonable interpretation which would avoid nullification of section 1194 would be one which bars employers from relying on section 218.5 to recover fees in any action for *minimum* wages or *overtime* compensation. Section 218.5 would still be available for an action brought to recover nonpayment of contractually agreed-upon or bargained-for ‘wages, fringe benefits, or health and welfare or pension fund contributions.’ [Footnote omitted.]” (*Earley*, at p. 1430.)

Maria's reliance on *Earley* is unavailing. There, the plaintiffs expressly *alleged* a claim for unpaid overtime. (*Earley*, *supra*, 79 Cal.App.4th at p. 1424.) Here, Maria did not bring a claim specifically for unpaid overtime, but a broader claim for unpaid wages, which did not refer to overtime but instead to other types of wages. In other words, while *Earley* decided that only section 1194 applies to an action alleged explicitly and solely to recover unpaid overtime, Maria did not *allege* such an action to recover unpaid overtime.⁵

B. Apportionment Among Causes of Action

Maria argues that the trial court erred in failing to apportion the attorney fees between the first cause of action for unpaid wages and her cause of action for wrongful termination. We disagree.

In general, where attorney fees are recoverable for one cause of action but not another, a court need not apportion attorney fees between the causes of action if there is an issue common to the causes of action or the issues are so interrelated that it would be impossible to separate them. (See, e.g., *Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 129–130; *Erickson v. R.E.M. Concepts, Inc.* (2005) 126 Cal.App.4th 1073, 1083–1086; *Akins v. Enterprise Rent-A-Car Co.* (2000) 79 Cal.App.4th 1127, 1133.)

Here, Maria expressly based her wrongful termination claim on her allegation that her resignation from Café Tiramisu was due to its “refusal to pay [her] wages owed.” As such, the issue of whether Café Tiramisu owed Maria wages was common to both the unpaid wages claim and the constructive termination claim. Furthermore, Maria's unfair business practice claim was based on the acts underlying her other claims. Thus, from the outset, all of Maria's causes of action required resolution of one common issue: whether Café Tiramisu owed Maria “wages.”

*5 Moreover, the successful defense to *all* of Maria's causes of action was the same: Maria was not entitled to pursue any of the claims, or obtain any recovery by her lawsuit, because of the settlement agreement in which she released all of her employment-related claims. For this reason as well, the court did not err in deciding not to apportion fees among the causes of action.

C. Apportionment as to Other Plaintiffs

Maria further argues that the trial court awarded fees for work Café Tiramisu's attorneys performed in defending against the claims of the other plaintiffs. She asserts the trial court awarded attorney fees for the “deposition of Spinoso and Scopetta which necessarily involved all three plaintiff's cases.” She also states: “respondent's attorneys time records does not distinguish between deposition time for Mr. Scopetta and Spinosso [sic] spent on the claim of Tapia–Gonzalez which was settled and Evangelina Tun Cun [record citation] which respondent sought attorney fees by a separate Motion and which appeal is pending before this court.”

As Café Tiramisu points out, however, Maria did not raise this argument in the trial court. Although she argued that the court should apportion the time spent on the wrongful termination claim, she did not raise any issue concerning time purportedly spent on other cases or with respect to other plaintiffs. The issue is therefore waived. (See *North Coast Business Park v. Nielsen Construction Co.* (1993) 17 Cal.App.4th 22, 28–29.)

Maria fails to establish error.

III. DISPOSITION

The order is affirmed.

We concur: [SIMONS](#), Acting P.J., and [BRUINIERS](#), J.

Footnotes

- ¹ The appeal of Evangelina Tun Cun is pending in appeal number A131240. Because Evangelina Tun Cun and Maria Tun Cun have the same last names, we will refer to them by their first names for purposes of clarity, without disrespect.
- ² Maria appealed from the summary judgment (appeal number A129899), contending that the settlement agreements were void under [Labor Code section 206.5](#). In August 2011, we affirmed the judgment.
- ³ Except where otherwise indicated, all statutory references hereafter are to the Labor Code.
- ⁴ Maria's opposition to the motion for attorney fees quoted an excerpt from her opposition to the summary judgment motion as follows: " 'Maria Tun Cun's pay stubs for several periods immediately before she was constructively terminated show she worked as many as 140 hours in a bimonthly pay period.... It is mathematically impossible to work more than 96 hours in a bimonthly pay period without working overtime hours (i.e. more than 40 hours in any week).' "
- ⁵ It might be argued that Maria's first "cause of action" covered both a claim for unpaid overtime *and* a claim for other unpaid wages, and an attorney fees award cannot include amounts incurred in defense of the unpaid overtime claim. Maria does not make an apportionment argument on this ground, so we need not and do not decide this issue.

EXHIBIT 13

2003 WL 352422
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
Only the Westlaw citation is currently available.

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.

Court of Appeal, Fourth District, Division 1, California.

Cecilia CSASZI, Plaintiff and Appellant,
v.
SHARP HEALTHCARE, Defendant and Respondent.

No. D038558. | (Super.Ct.No. 740594). | Feb. 18, 2003.

Former employee brought action against former employer, claiming employer was liable for unlawful discrimination and unpaid wages pertaining to on-call time. The Superior Court, San Diego County, No. 740594, [S. Charles Wickersham, J.](#), granted employer's motion for summary adjudication with respect to discrimination claims, and, following a bench trial, entered judgment for employer on wage claim. Employee appealed. The Court of Appeal, [Haller, J.](#), held that: (1) employee's motion to reconsider summary adjudication order based on new or different facts was untimely; (2) employee failed to set forth any new or different facts, and thus motion to reconsider summary adjudication order was properly denied; (3) employee did not qualify for mandatory relief from summary adjudication order allegedly entered as a result of attorney's neglect or mistake; (4) attorney who failed to file an opposition to employer's summary adjudication motion engaged in positive misconduct, justifying relief from summary adjudication order; (5) employer was not required to compensate employee for time spent on-call but not actually answering calls at same rate established for time she spent on-call and actually answering calls; and (6) statute authorizing award of attorney fees only to successful plaintiff in actions seeking to recover unpaid overtime did not prohibit award of attorney fees to employer.

Affirmed in part and reversed in part.

APPEAL from a judgment of the Superior Court of San Diego County, [S. Charles Wickersham](#), Judge. Affirmed in part and reversed in part.

Opinion

[HALLER, J.](#)

*1 Cecilia Csaszi sued her former employer, Sharp Healthcare¹ (Sharp), claiming Sharp was liable for unlawful discrimination and unpaid wages pertaining to on-call time. The court granted summary adjudication on all claims except for the unpaid wages cause of action. After a court trial on this claim, the court found Csaszi did not prove she was owed any wages, and entered final judgment in Sharp's favor on all of Csaszi's causes of action. The court denied Csaszi's motions seeking relief from the summary adjudication ruling. ([Code Civ. Proc.](#), §§ 473, 1008.) Csaszi appeals.

We affirm the portions of the judgment finding in Sharp's favor on Csaszi's claim for unpaid wages and awarding Sharp attorney fees for prevailing on this claim. ([Lab.Code](#), § 218.5.) We reverse the portion of the judgment entered on the summary adjudication of Csaszi's employment discrimination causes of action. The trial court shall vacate its order granting summary adjudication on these causes of action, permit the parties to file opposition and reply briefs, and then consider Sharp's summary adjudication motion on its merits.

FACTUAL AND PROCEDURAL SUMMARY

In March 1996, Sharp hired Csaszi as a utilization review/quality assurance nurse responsible for evaluating patients for discharge at Tri-City Medical Center. Two and one-half years later, Csaszi's supervisors readjusted the workloads of Csaszi and a co-worker. Csaszi was unhappy about the change in her assignment, and complained about what she believed was unfair treatment. In March 1999, Csaszi was given several written notices regarding perceived problems with her performance and the need to improve to avoid being terminated. Two months later, in May 1999, Sharp terminated Csaszi, stating she had failed to properly perform her job assignments and acted in an improper manner toward other health care employees.

In December 1999, Csaszi filed a complaint against Sharp, alleging (1) employment discrimination claims (wrongful termination in violation of public policy, unlawful discrimination and retaliation in violation of the Fair Employment and Housing Act (FEHA), and wrongful demotion in retaliation for complaining about racial discrimination); and (2) a claim for the failure to properly pay "on-call" wages in violation of [Labor Code section 201](#).

Sharp moved for summary adjudication on Csaszi's discrimination claims on the grounds that Csaszi could not establish she was performing her job in a satisfactory manner, Sharp had legitimate, nondiscriminatory reasons for terminating Csaszi, and Csaszi had no evidence that Sharp's stated reasons were a pretext for unlawful discrimination. Csaszi's attorney, Michael W. Loker, did not file an opposition to that motion, even though (as detailed below) Loker told Csaszi that he *had* filed an opposition.

On November 22, 2000, the court granted Sharp's summary adjudication motion, ruling that Sharp met its burden to establish a legitimate reason for Csaszi's termination and Csaszi failed to present any evidence that the proffered reason for the termination was untrue or pretextual.

*2 On the date scheduled for trial on her remaining claim, Csaszi appeared with attorney Loker, and informed the trial court that she wished to terminate Loker. The trial court granted the request and, over Sharp's objections, granted Csaszi's request for a 90-day trial continuance.

On December 14, 2000, Csaszi, represented by new counsel William Evans, filed a [Code of Civil Procedure section 1008](#) motion ([section 1008](#)), requesting the court to reconsider its summary adjudication ruling. The court denied the motion, finding the motion was not timely (it was filed more than 10 days after the summary adjudication order was entered) and Csaszi "fail[ed] to set forth any 'new or different facts, circumstances, or law' that would affect the outcome of" the summary adjudication motion.

On March 9, 2001, a court trial began on Csaszi's remaining claim for unpaid wages relating to her on-call time. After considering all the evidence (which will be detailed below), the court found Csaszi failed to meet her burden to show she was entitled to unpaid wages for her on-call time.

The next month, on April 6, 2001, Csaszi moved for relief from the summary adjudication order under [Code of Civil Procedure section 473](#) ([section 473](#)). In support, Csaszi submitted her declaration, the declaration of her former attorney (Loker), and proposed responsive papers to Sharp's summary adjudication motion. The court denied the [section 473](#) motion, stating Csaszi "made no showing that a judgment, dismissal, order, or other proceeding has been taken against her as a result of her or her attorney's mistake, inadvertence, surprise, or excusable neglect, as is required by the section."

Sharp then moved for its attorney fees as the prevailing party on the FEHA and unpaid wage claims. The court initially granted the motion on both grounds, but after oral argument, concluded that Csaszi's "discrimination case was not totally groundless" and therefore awarded only those fees pertaining to the unpaid wage claim (\$20,269) based on [Labor Code section 218.5](#).

On appeal, Csaszi challenges the denial of her motions to vacate the summary adjudication and the court's rulings pertaining to the unpaid wage claim.

DISCUSSION

I. Motion for Reconsideration

Csaszi first contends the court abused its discretion in denying her motion to reconsider the summary adjudication order under [section 1008](#), which permits a court to revoke a previous order based on new or different facts and an adequate justification for the failure to previously produce those facts. The contention is unavailing.

^[1] First, the motion was untimely. [Section 1008](#) requires that a reconsideration motion be brought “within 10 days after service upon the party of written notice of entry of the order....” (See *Advanced Building Maintenance v. State Comp. Ins. Fund* (1996) 49 Cal.App.4th 1388, 1392, 57 Cal.Rptr.2d 310.) Sharp served written notice of entry of the order on November 22, 2000, and Csaszi filed her reconsideration motion 22 days later, on December 14, 2000.

*3 ^[2] Additionally, the trial court properly denied the motion on the basis that Csaszi “fail[ed] to set forth any ‘new or different facts, circumstances, or law’ that would affect the outcome of” the summary adjudication motion. Csaszi did not proffer any new facts or law relevant to the summary adjudication ruling. Instead, she focused exclusively on explaining the circumstances of her prior attorney’s failure to adequately represent her. These circumstances do not constitute the type of “new or different facts” that permit a reconsideration of the trial court’s order under [section 1008](#).

II. Section 473 Ruling

Csaszi alternatively contends the trial court erred in denying her [section 473](#) motion seeking to vacate the summary adjudication order because of her attorney’s neglect.

A. Relevant Facts

In moving for relief under [section 473](#), Csaszi requested the trial court to vacate the summary adjudication order because the motion was granted without the benefit of her opposition papers and the failure to file an opposition was caused by her attorney’s misconduct. In support, she submitted her own declaration and copies of facsimiles (faxes) received from attorney Loker, which set forth the following facts:

Csaszi retained Loker in September 1999. Loker thereafter filed the complaint and, in April 2000, “began discovery requests.” In May 2000, Loker notified Csaszi he had attended a case management conference, and the trial date was scheduled for October 20, 2000. During the next two months, Csaszi made numerous attempts to contact Loker, but Loker did not return any of Csaszi’s telephone calls or respond to her written correspondence. In August 2000, Csaszi’s husband went to the superior court and discovered that Sharp had obtained a continuance of the trial to December 1, 2000.

On September 7, 2000, Loker called Csaszi and told her Sharp wanted to take her deposition. Csaszi expressed her concern about being unable to contact Loker, but Loker did not explain why he failed to respond to her calls and letters, and said only that he now intended to “move” on Csaszi’s case. Csaszi thereafter met with Loker on two separate days to prepare for her deposition. Sharp deposed Csaszi on three different dates, and each time Loker was present to represent her.

On October 12, Sharp filed its summary adjudication motion, but Loker did not tell Csaszi of this filing. Loker thereafter scheduled depositions of three Sharp employees, but these depositions were postponed for unspecified reasons and later rescheduled to October 30. On October 26, Csaszi met with Loker to review her deposition transcript, and she also gave Loker \$1,000 to pay for the three upcoming Sharp employee depositions. On that date, Loker also informed Csaszi about Sharp’s summary adjudication motion for the first time. Loker told her he would be filing an opposition to the summary judgment motion, but did not tell her the opposition was due on October 26.

*4 On October 30, Csaszi met with Loker to determine why the Sharp employees’ depositions were cancelled that morning. During that meeting Loker did not tell Csaszi that he had filed an ex parte application to continue the hearing on the summary judgment motion.

Ten days later, on November 9, Loker faxed Csaszi a note stating that he was in the library and that he would:

“[F]ile our response in opposition to the summary judgment today and argument is on [November] 17th, for which you will be present. Contrary to my message yesterday, I do not need your signature at this time, but I do need to see you Saturday, and I need you to drop off today the filing fee for the opposition to the Summary Judgment, payable to the Clerk of the Superior Court, in the amount of \$116. Also, the copies of your deposition are payable at this time, because I am using them in our opposition, in the amount of \$615.46, which should be by separate check, made payable to this office.... Therefore, though I need not, and cannot meet today (*because of the fact that I am in the law library today all day working on the opposition*), please drop off two drafts for the filing fee and deposition copy fee, in the amounts noted respectively. Also please leave a time in which we may meet Saturday, if you are not otherwise occupied. *I am optimistic.*” (Italics added.)

Csaszi thereafter wrote the requested checks, but Loker was not in his office when she delivered them. Csaszi telephoned Loker on a daily basis for the next eight days, but was unable to reach him and Loker did not respond to these calls. In the early morning of November 17 (the date scheduled for oral argument on the summary adjudication motion), Csaszi received a fax from Loker stating:

“The court announced yesterday that it will review the briefs submitted and rule telephonically on 22 Dec. (on the summary judgment). *I will fax you our opposition if you haven’t received.* Therefore there are no hearings today. P.S. *There was no charge for filing the opposition, a rule change.* You may ‘void’ that check, which I will destroy. Tx.” (Italics added.)

In fact, Loker never filed an opposition. Further, the applicable rules have never required a party opposing a summary judgment to pay a fee. (See Super. Ct. San Diego County, Fee Schedule & Forms List.)

In response to this fax, Csaszi repeatedly attempted to contact Loker, but was unable to reach him. Csaszi then directly contacted the superior court, and learned from the court that a trial call on her remaining claim was scheduled for December 1, 2000. The morning of December 1, Loker faxed Csaszi a note stating there was no hearing and that he intended to meet with her during the weekend to discuss the overtime pay claim. Csaszi nonetheless attended the trial call, and at the hearing, the court said that Loker was scheduled to call the court at 9:30 a.m. Csaszi confirmed that Loker was still her attorney.

*5 That weekend, Csaszi met with Loker and discussed the unpaid wage claim, but Loker refused to discuss the court’s summary adjudication ruling. The next day, Csaszi appeared at court with a written statement stating that she wanted to obtain new counsel, and the court granted the motion.

In support of her [section 473](#) motion, Csaszi also submitted Loker’s declaration which stated in relevant part: “I did not prepare an opposition to Defendant Sharp’s motion for summary adjudication on the discrimination claims. I did not feel that Csaszi would prevail on the discrimination claims and I felt that to oppose Sharp’s motion might impair her credibility on the remaining issues dealing with the overtime claim and that she would incur additional costs in opposing the discrimination part of the case. However, I was apparently unable to adequately convey my feelings regarding her chances of prevailing on these issues to her. I thought I had convinced her of my recommendations prior to the scheduled opposition to Sharp’s summary adjudication motion. She did inform me that she wanted to proceed with her discrimination claims at the December 4, 2000, hearing. [¶] There was no fault attributable to Plaintiff in any failure to make a timely filing of the opposition to Defendant’s Motion For Summary Adjudication.”

B. Legal Analysis

Under [section 473](#), a party may potentially seek two types of relief for orders entered as a result of an attorney’s neglect or mistake: one that is mandatory and one that is discretionary. (*Metropolitan Service Corp. v. Casa de Palms, Ltd.* (1995) 31 Cal.App.4th 1481, 1486, 37 Cal.Rptr.2d 575 (*Metropolitan Service*)).

First, under the mandatory provision, a court “shall” grant relief whenever an application for relief meets the six-month statutory time period *and* the motion is “accompanied by an attorney’s sworn affidavit attesting to his or her mistake,

inadvertence, surprise, or neglect” (§ 473; see *In re Marriage of Hock & Gordon-Hock* (2000) 80 Cal.App.4th 1438, 1442, 96 Cal.Rptr.2d 546.) “The purpose of this law is to relieve the innocent client of the burden of the attorney’s fault, to impose the burden on the erring attorney, and to avoid precipitating more litigation in the form of malpractice suits.” (*Metropolitan Service, supra*, 31 Cal.App.4th at p. 1487, 37 Cal.Rptr.2d 575.)

^[3] This mandatory relief provision is inapplicable here because Loker, Csaszi’s former attorney, did not “attest[] to [a] mistake, inadvertence, surprise, or neglect....” Instead, in his affidavit, attorney Loker said he did not file an opposition because he made the tactical decision not to oppose the motion. This assertion does not satisfy the statute’s requirement that the attorney admit a “mistake, inadvertence, surprise, or neglect.” (§ 473, see *Metropolitan Service, supra*, 31 Cal.App.4th at p. 1487, 37 Cal.Rptr.2d 575 [mandatory relief provisions apply “if the attorney *admits* neglect”], italics added.)²

^[4] But even if a party cannot satisfy section 473’s mandatory relief requirements, the party may obtain relief under the statute’s discretionary provisions. Specifically, a court “may” grant relief if the moving party shows an order was taken against him or her because of the attorney’s *excusable neglect*. (§ 473; see *Metropolitan Service, supra*, 31 Cal.App.4th at pp. 1486-1487, 37 Cal.Rptr.2d 575.) Generally, conduct falling below the professional standard of care is considered inexcusable and therefore discretionary relief cannot be granted based on such conduct. (See *Carroll v. Abbott Laboratories, Inc.* (1982) 32 Cal.3d 892, 895, 187 Cal.Rptr. 592, 654 P.2d 775 (*Carroll*); *Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 682, 68 Cal.Rptr.2d 228.) Csaszi asserts Loker’s conduct in failing to oppose the summary judgment was the result of professional incompetence. Therefore Loker’s conduct was not “excusable” under section 473.

*6 However, an exception to the rule requiring a showing of excusable neglect applies if the party establishes the attorney’s neglect was of an extreme degree amounting to “‘positive misconduct.’” (*Carroll, supra*, 32 Cal.3d at pp. 898-899, 187 Cal.Rptr. 592, 654 P.2d 775; see *Fleming v. Gallegos* (1994) 23 Cal.App.4th 68, 72-73, 28 Cal.Rptr.2d 350.) “‘Positive misconduct is found where there is a total failure on the part of counsel to represent his client.’” (*People v. One Parcel of Land* (1991) 235 Cal.App.3d 579, 584, 286 Cal.Rptr. 739; *Aldrich v. San Fernando Valley Lumber Co.* (1985) 170 Cal.App.3d 725, 738-739, 216 Cal.Rptr. 300.) The attorney’s conduct is said to obliterate the existence of the attorney-client relationship and therefore cannot be imputed to the client. (*Carroll, supra*, 32 Cal.3d at p. 898, 187 Cal.Rptr. 592, 654 P.2d 775 [“‘[a]n attorney’s authority to bind his client does not permit him to impair or destroy the client’s cause of action or defense,’” quoting *Orange Empire Nat. Bank v. Kirk* (1968) 259 Cal.App.2d 347, 353].)

Carroll held an attorney who “grossly mishandled” a document production did not engage in “‘positive misconduct’” because he otherwise acted on behalf of his client in the litigation including attending his client’s deposition, propounding and timely responding to interrogatories, propounding requests for admissions, settling with one of the defendants, and timely filing a section 473 motion. (*Carroll, supra*, 32 Cal.3d at pp. 899-900, 187 Cal.Rptr. 592, 654 P.2d 775.) *Carroll* contrasted these circumstances with the situations in *Daley v. County of Butte* (1964) 227 Cal.App.2d 380, 38 Cal.Rptr. 693 and *Orange Empire Nat. Bank v. Kirk, supra*, 259 Cal.App.2d 347, 66 Cal.Rptr. 240, where the courts found attorney misconduct had effectively deprived a party of representation. (*Carroll, supra*, 32 Cal.3d at pp. 899-900, 187 Cal.Rptr. 592, 654 P.2d 775.) In *Daley*, the plaintiff’s attorney abandoned his client by failing to communicate with the plaintiff, serve necessary parties, and appear at critical hearings. (*Daley v. County of Butte, supra*, 227 Cal.App.2d at pp. 391-392, 38 Cal.Rptr. 693.) In *Orange Empire*, the defendant’s attorney failed to assert a defense, appear at the trial, or file relief from a default judgment within the statutory period. (*Orange Empire Nat. Bank v. Kirk, supra*, 259 Cal.App.2d at p. 354, 66 Cal.Rptr. 240.)

We conclude the circumstances here fall within the *Daley-Orange Empire* line of cases. Although Loker filed the complaint and was initially involved in some limited discovery, Loker completely abandoned Csaszi at a critical time by failing to file an opposition to the summary adjudication motion. Further, by falsely telling Csaszi that he was filing, *and had filed*, an opposition to the summary adjudication motion, Loker did more than abandon his client—he affirmatively precluded Csaszi from protecting herself and seeking other counsel to file an opposition or seeking timely section 1008 relief. Loker additionally continued to affirmatively harm Csaszi’s interests when he asserted in his declaration in support of her section 473 motion that his decision not to file the summary judgment motion was a tactical decision, an assertion that is flatly contradicted by his own words reflected on the faxes sent to his client. This false assertion prevented Csaszi from obtaining mandatory relief under the statute.

*7 In light of Loker’s misrepresentations to Csaszi and his submission of a declaration that contradicts his written correspondence to his client, Loker’s activities amounted to positive misconduct justifying relief under section 473. In so

concluding, we are unpersuaded by Sharp's reliance on a list of the various contacts between Loker and Csaszi during the relevant times. If anything, Loker's sporadic contacts with Csaszi made the situation worse by misleading Csaszi into believing he was taking care of her interests. (See *Fleming v. Gallegos*, *supra*, 23 Cal.App.4th at p. 73, 28 Cal.Rptr.2d 350 [trial court erred by failing to find attorney abandonment where plaintiff's "attorneys displayed an unwillingness to either prosecute her lawsuit or to cease representing her"].) Further, these contacts do not show a lack of abandonment, instead they reveal merely that Loker remained Csaszi's attorney of record. *Carroll* does not require that an attorney-client relationship be formally severed before positive misconduct may be proven.

Although a [section 473](#) motion lies within the sound discretion of the trial court, " 'the trial court's discretion is not unlimited and must be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice.' [Citation.] The law strongly favors trial and disposition on the merits. Therefore any doubts in applying [section 473](#) must be resolved in favor of the party seeking relief. When the moving party promptly seeks relief and there is no prejudice to the opposing party, very slight evidence is required to justify relief. We will more carefully scrutinize an order denying relief than one which permits a trial on the merits." (*Mink v. Superior Court* (1992) 2 Cal.App.4th 1338, 1343, 4 Cal.Rptr.2d 195; see *Stafford v. Mach* (1998) 64 Cal.App.4th 1174, 1180-1181, 75 Cal.Rptr.2d 809.) Applying these principles here, we conclude the trial court abused its discretion in failing to vacate the summary adjudication based on Csaszi's showing that her counsel engaged in "positive misconduct."

¹⁵¹ We note that Sharp does not argue, nor does the law permit, this court to sustain the trial court's denial of the [section 473](#) motion on the alternate ground that Csaszi's proposed opposition to the summary adjudication motion does not raise a triable issue of fact. In considering the propriety of a court's ruling on a [section 473](#) motion, an appellate court is limited to the question whether the court abused its discretion in granting or denying the motion, and may not reach the substantive issue as to whether the position proffered by the party seeking relief has merit. (*Uriarte v. United States Pipe & Foundry Co.* (1996) 51 Cal.App.4th 780, 786-787, 59 Cal.Rptr.2d 332; see 8 Witkin, Cal. Procedure (4th ed. 1997) Attack on Judgment in Trial Court, § 184 at p. 692, 59 Cal.Rptr.2d 332.)³

Finally, we reject Sharp's argument that the trial court properly denied the [section 473](#) motion because the motion constituted an "end-run" around [section 1008](#) governing reconsideration motions. Because Csaszi satisfied the requirements of a [section 473](#) motion, the fact that the motion was not timely under [section 1008](#) does not defeat the grounds for granting the motion under [section 473](#).

III. Unpaid Wage Claim

*8 Csaszi next contends the court erred in failing to find in her favor on the unpaid wage claim, which was tried before the court sitting without a jury.

The evidence at trial showed that Csaszi was assigned to on-call shifts during which she was given a pager and was responsible for answering telephone calls pertaining to patients discharged outside of regular business hours. Sharp paid its on-call employees \$2.50 per hour for time spent on-call but not actually working, i.e., being available for a call. For time spent actually answering a call (known as "call-back time"), Sharp paid its employees one and one-half times the employee's regular hourly rate of pay, regardless whether this time reflected overtime work. Csaszi was paid \$2.50 for each hour that she reported she was on-call, and would have been paid her overtime rate if she had reported any time answering calls.

The essential basis of Csaszi's unpaid wages claim at trial was that Sharp was required to pay her time and one-half for her on-call time (when she was not actually answering calls) instead of \$2.50 because this time was devoted primarily to her employer's interests. In support, Csaszi relied on federal law providing that an employee should be fully compensated for on-call time if the time is spent " 'primarily for the benefit of the employer and his business.' " (*Armour & Co. v. Wantock* (1944) 323 U.S. 126, 132, 65 S.Ct. 165, 89 L.Ed. 118.)

To show that her on-call time was spent primarily for Sharp's benefit, Csaszi testified that when she was on-call she was unable to attend to her personal activities and she was paged "very frequently." She said that during her entire on-call period, she would sit in a room with a telephone, facsimile machine and documents needed to perform her job duties. Csaszi claimed she could not shop, cook, sleep, travel, interact with her family or otherwise engage in any personal activities. Csaszi sought \$40,380, calculated as the total number of on-call hours multiplied by the time and one-half rate subtracted by the amount she

was paid per hour (\$2.50). Csaszi had no record of the time she actually responded to calls, explaining that she never identified this time on her timesheets because she did not understand how to do so.⁴

In contrast to this evidence, Sharp presented the testimony of its human resource director who said that employees were instructed on the manner in which they should report call-back time and that the employees did not need to limit their activities while waiting for a call. Sharp employees corroborated this testimony. These employees testified that while on-call, they wore pagers and attended to various personal activities, including cooking, shopping, attending church services, and entertaining. The pagers given to the employees had a range of at least 250 miles, and therefore the employees were free to travel throughout Southern California. Csaszi's co-workers testified they received varying numbers of calls while on-call, which averaged two to four per week, and that they knew how to claim this call-back time on their timesheets. The employees were required to respond to a pager within a 15- or 20-minute period. The employees were always paid time and one-half for the time they were actually answering a call.

*9 After considering the evidence, the court stated: "The issue to be decided is whether the requirements of being on-call as a discharge planner precluded [Csaszi] from using the time effectively for her own purposes, thus entitling her to back wages. [Citations.] [¶] The Court finds that although [Csaszi] may have subjectively believed that she needed to avoid engaging in personal activities while on-call, the evidence shows that the job duties of being on-call did not require her to do so. The fact that Ms. Csaszi elected not to engage in personal activities while on-call may be laudable, but it does not transform the on-call time to working time compensable under statute. Both the written policies of the employer as well as the actions of the employees indicate that the express and implied agreement was that employees would be paid \$2.50 for time spent on-call but not actually working and one and one-half times their regular hours rate for time spent actually working while on-call. [¶] Based on the above-stated findings and the fact that [Csaszi] did not offer any evidence specifying the dates or hours she actually worked while on-call, the Court finds that [Csaszi] has failed to meet her burden to show that she is entitled to back wages...."

[6] We find no error. Although there is no California law directly on point, federal law sets forth appropriate standards for determining Csaszi's claim to additional wages for on-call time. Under this law, an employee must be fully compensated for on-call time spent primarily for the employer's benefit, and the question whether the time is spent primarily for the employer depends on numerous factors and a consideration of these factors in the context of the particular circumstances of the case. (See *Armour & Co. v. Wantock*, *supra*, 323 U.S. at p. 133; *Berry v. County of Sonoma* (9th Cir.1994) 30 F.3d 1174, 1183.) Although no single factor is dispositive, the predominant considerations are the agreement of the parties and the degree to which the employee is free to engage in personal activities. (*Owens v. Local No. 169, Assn. of Western Pulp & Paper Workers* (9th Cir.1992) 971 F.2d 347, 350-354.) The court must balance the factors permitting personal pursuits against the factors restricting personal pursuits to determine whether the employee is "so restricted that he is effectively engaged to wait." (*Berry v. County of Sonoma*, *supra*, 30 F.3d at p. 1183.)

Applying these principles, the trial court found Sharp's evidence credible, and concluded that the time Csaszi spent on-call was not time that was required to be spent predominately for the employer's benefit. Substantial evidence supports the court's factual conclusion. The court, as the finder of fact, was entitled to reject Csaszi's contrary evidence.

In nonetheless challenging the court's factual conclusions, Csaszi contends that Sharp's agreement to pay \$2.50 during on-call hours "amounted to an admission that [Sharp] maintained control over the employees" and therefore the trial court was required to find as a matter of law that Sharp was under a mandatory obligation to pay the same pay rate that it applied for call-back work.

*10 This argument is unsupported factually and legally.

First, the fact that Sharp paid employees \$2.50 per hour to be available to respond to phone calls was not an admission that the time spent was primarily for Sharp's benefit. Instead, Sharp's human resources director specifically testified that employees were paid for being on-call as "an incentive for carrying the pager and being available on call." She explained the pay was "additional compensation that was paid to carry the pager, to be available during a specific time should additional work be needed by that individual." She emphasized that during this waiting time, the "time is not controlled [by Sharp]" and that employee "is free to move around, engage in personal activities."

Csaszi's position is also legally unsupported. Csaszi relies solely on *Paniagua v. City of Galveston, Texas* (5th Cir.1993) 995 F.2d 1310 and *Berry v. County of Sonoma, supra*, 30 F.3d at p. 1178. In *Paniagua*, the court specifically rejected the identical argument asserted here—that an employer's agreement to compensate employees for the inconvenience of being on call “automatically render[s] the time spent on standby ‘working time’....” (995 F.2d at p. 1317.) In *Berry*, the court noted that an employer's agreement to provide “at least some type of compensation for on-call waiting time may suggest the parties characterize waiting time as work” but the court made clear that this was merely one of many factors in the overall analysis. (*Berry v. County of Sonoma, supra*, 30 F.3d at p. 1181 .)

The trial court here expressly noted the evidence showing that Sharp paid \$2.50 for on-call waiting time, but stated that based on the totality of the circumstances, this payment was merely compensation for the inconvenience of carrying a pager and did not reflect that the time spent by on-call employees was for the employer's benefit. Substantial evidence supported the trial court's conclusion.

Csaszi failed to establish that the trial court erred in reaching its factual conclusions with respect to the unpaid wage claim or that the court erred in applying these factual findings to the applicable legal principles.

IV. Attorney Fees

^[7] The trial court awarded \$20,269 in attorney fees to Sharp under [Labor Code section 218.5](#), which provides in relevant part: “In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action.”⁵

Csaszi contends the court erred in awarding fees under this section because the applicable statute is [section 1194](#), which contains a “one-way” fee provision, permitting attorney fees only for a prevailing employee and not for a prevailing employer. [Section 1194](#), subdivision (a) states: “[n]otwithstanding 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 ..., including interest thereon, reasonable attorney's fees, and costs of suit.”

*11 Both [sections 218.5](#) and [1194](#) potentially apply to an action seeking overtime wages, but establish different attorney fees rules. In *Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 95 Cal.Rptr.2d 57, the court noted the potential conflict between the code sections, and concluded the Legislature intended that [section 1194](#) alone applies to recovery of attorney fees for overtime compensation claims, even though such claims could be construed as seeking payment of wages under [section 218.5](#). In a well-reasoned decision, the court explained that the only reasonable interpretation of the Legislature's one-way fee shifting rule in [section 1194](#) “would be one which bars employers from relying on [section 218.5](#) to recover fees in any action for *minimum* wages or *overtime* compensation. [Section 218.5](#) would still be available for an action brought to recover nonpayment of contractually agreed-upon or bargained for ‘wages....’ [¶] Such a harmonization of these two sections is fully justified. An employee's right to wages and overtime compensation clearly have different sources. Straight-time wages ... are a matter of private contract between the employer and employee. Entitlement to overtime compensation, on the other hand, is mandated by statute and is based on an important public policy.... ‘California courts have long recognized [that] wage and hour laws “concern not only health and welfare of the workers themselves, but also the public health and general welfare.” ... [¶] There can be no doubt that the one-way fee-shifting rule in [section 1194](#) was meant to ‘encourage injured parties to seek redress-and thus simultaneously enforce [the minimum wage and overtime laws]-in situations where they otherwise would not find it economical to sue.’ [Citation.] To allow employers to invoke [section 218.5](#) in an overtime case would defeat that legislative intent and create a chilling effect on workers who have had their *statutory* rights violated. Such a result would undermine statutorily-established public policy. That policy can only be properly enforced by a recognition that [section 1194](#) alone applies to overtime compensation claims.” (*Earley v. Superior Court, supra*, 79 Cal.App.4th at p. 1430, 95 Cal.Rptr.2d 57.)

We agree with the *Earley* court that when an employee seeks overtime wages, the attorney fees rules are exclusively set forth in [section 1194](#). However, that principle is inapplicable here because Csaszi never alleged, or sought to prove at trial, that Sharp failed to pay her for overtime work. Instead, Csaszi brought her claim to enforce Sharp's alleged agreement that it would pay time and one-half for time spent working outside of the hospital's physical environment and that on-call time constituted “working” under established legal principles. The claim at issue concerned solely a matter of private contract

between the employer and employee, i.e., that Sharp had agreed to pay a certain wage for time answering calls, and that because her time spent waiting for those calls primarily benefited Sharp, Sharp was required to compensate her at this same established wage rate. Because Csaszi never claimed or presented evidence that she was working overtime without overtime pay, the case does not come within the ambit of [section 1194](#). Thus, the court properly concluded that attorney fees were mandatory to the prevailing employer under [section 218.5](#).

*12 Csaszi alternatively argues that even if [section 218.5](#) is the correct statute to apply, the code section does not permit a defendant to recover attorney fees because the fees must be requested at “the initiation of the action.” (§ 218.5.) Csaszi, however, ignores the beginning part of this sentence which provides for reasonable attorney fees “if *any* party to the action requests attorney’s fees and costs upon the initiation of the action .” (§ 218.5, italics added.) Read in context, this statutory language does not limit an attorney fees award to a plaintiff, and instead merely requires that the prevailing party show it had sought attorney fees at the beginning of the litigation. Here, Sharp stated in its answer that it was seeking to be “awarded its costs of suit and attorney fees incurred therein....” That statement is sufficient to satisfy [section 218.5](#)’s requirement that attorney fees be requested at the “initiation of the action.”

DISPOSITION

We affirm the portions of the judgment finding in Sharp’s favor on Csaszi’s claim for unpaid wages and awarding attorney fees to Sharp for prevailing on this claim. We reverse the portion of the judgment dismissing Csaszi’s first, second, third and fifth causes of action based on the summary adjudication. The court is ordered to vacate its order granting summary adjudication on these causes of action, permit Csaszi to file an opposition, and consider Sharp’s motion on the merits.

The parties to bear their own costs on appeal.

WE CONCUR: [KREMER](#), P.J., and [BENKE](#), J.

Footnotes

¹ Although it appears that the correct name of Csaszi’s former employer is Sharp Mission Park, the defendant is named in the caption of Csaszi’s complaint as Sharp Healthcare. Our review of the record on appeal does not reveal an amendment to the complaint correcting the defendant’s name.

² Because Csaszi did not submit an attorney fault declaration satisfying the mandatory relief provision requirements, we do not reach the issue raised by the parties in their supplemental briefs whether [section 473](#)’s mandatory provision applies to provide relief for summary adjudication orders, an issue that has been the subject of different conclusions by the appellate courts. (Compare *English v. Ikon Business Solutions, Inc.* (2001) 94 Cal.App.4th 130, 114 Cal.Rptr.2d 93 with *Avila v. Chua* (1997) 57 Cal.App.4th 860, 67 Cal.Rptr.2d 373.)

³ We recognize that this rule may lead to an empty victory for Csaszi if she is unable to come forward with any real evidence that she was discriminated against based on her race. However, the standard of review on a [section 473](#) motion does not permit this court to reach the merits of the underlying claim. Moreover, the policy of providing a party with a hearing on the merits of his or her claim in the trial court outweighs any possible judicial economy objectives that would be served if we were to consider the merits of the discrimination claim based solely on Csaszi’s proposed opposition filings contained in the appellate record.

⁴ Although it appears that Csaszi was not paid the time and one-half for all of her call-back time, at trial she never claimed any unpaid wages for such time, presumably because she never recorded this *call-back* time on her timesheets except for one occasion. Thus, this appeal concerns only the question whether Csaszi was owed any wages for her *on-call* time.

⁵ All further statutory references are to the Labor Code.

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EXHIBIT 14

2009 WL 4718721

Only the Westlaw citation is currently available.
United States District Court,
E.D. California.

Boanerges VILLALOBOS, et al., Plaintiffs,
v.
James GUERTIN, et al., Defendants.

No. CIV. S-07-2778 LKK/GGH. | Dec. 3, 2009.

Attorneys and Law Firms

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Kimberley Ann Worley, [Stephen R. Holden](#), Holden Law Group, Auburn, CA, for Defendant.

Opinion

ORDER

[LAWRENCE K. KARLTON](#), Senior District Judge.

*1 On August 19, 2009, the court granted defendants' motion for judgment on the pleadings, dismissing four of plaintiffs' causes of action for failure to state a claim, and dismissing the fifth and sole remaining cause of action for lack of subject matter jurisdictions. Defendants have submitted a bill of costs and separately moved for attorneys' fees, both of which have been opposed by plaintiffs. The court resolves the matter on the papers and after oral argument. For the reasons stated below, defendants' motion for fees and costs is granted in part.

I. BACKGROUND

Defendants Heidi and James Guertin allegedly operate a business under the name Norcal Plastering. Plaintiffs, four individuals formerly employed by Norcal, filed suit purporting to represent themselves and others similarly situated. The complaint stated five causes of action, for violations of (1) [California Labor Code section 1194](#), (2) the Fair Labor Standards Act, (3) [California Labor Code section 226.7](#), (4) [California Labor Code section 203](#), and (5) [California Business and Professions Code section 17203](#).

On August 19, 2009, the court held that plaintiffs' allegations were insufficient to support the second through fifth claims. The Fair Labor Standards Act claim failed because plaintiffs had not alleged facts sufficient to support the inference that Norcal Plastering or plaintiffs themselves engaged in interstate commerce, a predicate for liability under the act. Order at 8-11. The Third, Fourth, and Fifth claims failed because the allegations therein pertained to entities not party to this suit. *Id.* at 11-12. The court denied plaintiff's request for leave to amend to correct these deficiencies, explaining that plaintiffs had notice of these deficiencies before the scheduling order was entered, but that plaintiffs had taken no action to correct them until discovery in the case had closed. The court dismissed these claims, and declined to retain supplemental jurisdiction over plaintiffs' sole remaining claim. Judgment on the pleadings under [Fed.R.Civ.P. 12\(c\)](#) was entered for defendants on August 19, 2009.

Defendants filed a bill of costs and motion for attorneys fees. Plaintiffs oppose both, arguing that defendants were not

“prevailing parties” because, as plaintiffs understood this court’s August 19, 2009 order, the state law claims had been dismissed without prejudice, and plaintiffs were free to refile the federal claim in federal court. Plaintiffs alternatively argue that even if defendants prevailed, they are not entitled to a fee award under the court’s inherent power or under any statute.

II. DISCUSSION

A. Defendants Are A Prevailing Party

Under all of the fee shifting authorizations at issue in this case, fees and costs are only available to prevailing parties. Under California law, “a defendant in whose favor a dismissal is entered” is a prevailing party. [Cal.Code Civ. P. § 1032\(a\)\(4\)](#). Under federal law, a party has not prevailed unless it “experienced an alteration in the legal relationship” with the other parties. [Avery v. First Resolution Management Corp.](#), 568 F.3d 1018, 1024 (9th Cir.2009). Plaintiffs argue that the court’s order permits plaintiffs to refile each of their claims, and that as a result, no such change has occurred. *Id.*, [Oscar v. Alaska Dep’t of Educ. & Early Dev.](#), 541 F.3d 978, 982 (9th Cir.2008).

*2 Plaintiffs misunderstand the nature of the prior order and its effect under California and federal law. [Fed.R.Civ.P. 41\(b\)](#) provides that “[u]nless the dismissal order states otherwise ... any dismissal not under [Rule 41]—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.” Thus, although the dismissal order did not specifically state that it was “on the merits” or “with prejudice,” dismissal of the second through fifth claims was precisely such an adjudication. [Stewart v. United States Bancorp](#), 297 F.3d 953, 956 (9th Cir.2002). Plaintiffs’ contention that a dismissal for failure to allege the elements of a cause of action is not a substantive dismissal is without merit. *Id.*

Plaintiffs’ first claim, which was dismissed for lack of subject matter jurisdiction, was not adjudicated on the merits. [Avery](#), 568 F.3d at 1024. The fact that plaintiff may refile this one claim does not defeat defendants’ claim to prevailing party status as to the others.

B. Particular Fee Shifting Provisions

Defendants argue that they are entitled to fees under [28 U.S.C. section 1927](#), under [Cal. Lab.Code section 218.5](#), and under the court’s inherent authority. The court discusses each in turn.

1. [28 U.S.C. § 1927](#)

“Any attorney ... who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys’ fees reasonably incurred because of such conduct.” [28 U.S.C. § 1927](#). Here, defendants have not identified any act by which plaintiffs multiplied the proceedings. Filing of the initial complaint cannot itself violate this section. “Because the section authorizes sanctions only for the ‘multipli[cation of] proceedings,’ it applies only to unnecessary filings and tactics once a lawsuit has begun.” [Moore v. Keegan Mgmt. Co. \(In re Keegan Mgmt. Co., Sec. Litig.\)](#), 78 F.3d 431, 435 (9th Cir.1996). Nor did plaintiffs’ counsel’s response to depositions noticed by defendants “multipl[y] the proceedings.”

Rather than identify affirmative acts, defendants argue that plaintiffs’ counsel multiplied proceedings by failing to withdraw and dismiss the case after the close of discovery. The only authority provided for this interpretation of [section 1927](#) is a case from the Southern District of Florida. See [Murray v. Playmaker Servs., LLC](#), 548 F.Supp.2d 1378, 1383 (S.D.Fla.2008). The court respectfully disagrees, and thereby declines to conclude that an attorney multiplies proceedings simply by failing to voluntarily dismiss an existing lawsuit.

2. The Court's Inherent Powers

The court has an inherent authority to order payment of fees as a sanction “when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons, delaying or disrupting litigation, or has taken actions in the litigation for an improper purpose.” *Fink v. Gomez*, 239 F.3d 989, 992 (9th Cir.2001) (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45–46 and n. 10, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991)); see also *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 767, 100 S.Ct. 2455, 65 L.Ed.2d 488 (1980). In this case, defendants argue that plaintiffs have done a poor job of litigating this case, and that this demonstrates that they filed their a purported class action for the allegedly improper purpose of pressuring defendants to settle, rather than for any belief as to the action's merits. This argument is unsupported. Although, as noted in the order granting defendants' motion for judgment on the pleadings, plaintiffs did little in the litigation of this case, this does not demonstrate bad faith or other grounds for sanction under the court's inherent authority.

*3 Defendants also argue that plaintiffs have demonstrated bad faith by filing a complaint in state court that re-alleges the four the state-law claims previously filed in this court. Whether that filing is in bad faith is an issue for the state court.

3. Cal. Lab.Code § 218.5

Lastly, defendants argue that the court should award fees under [California Labor Code section 218.5](#). This statute provides that “in any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party.” [Cal. Lab.Code § 218.5](#). The Ninth Circuit has held that this provision may be applied in suits filed in federal court. *Winterrowd v. Am. Gen. Annuity Ins. Co.*, 556 F.3d 815 (9th Cir.2009) (affirming award of fees to a prevailing plaintiff); see also *Diamond v. John Martin Co.*, 753 F.2d 1465, 1467 (9th Cir.1985) (“federal courts in diversity actions apply state law with regard to the allowance (or disallowance) of attorneys' fees.”). The court concludes that this section applies to one of plaintiffs' claims, that an award of fees is mandatory and not limited to cases in which plaintiffs acted wrongfully, and that defendants prevailed for purposes of this statute.

First, [section 218.5](#) does not apply to all wage claims. The statute contains an exemption, specifying that “[t]his section does not apply to any action for which attorney's fees are recoverable under [\[California Labor Code\] Section 1194](#).”¹ [Section 1194](#) governs actions alleging failure to pay minimum wages or overtime. Of the claims brought in this suit, plaintiffs concede that their claim for failure to pay for missed meal periods is a claim “for nonpayment of wages” under [section 218.5](#).² See *Murphy v. Kenneth Cole Production, Inc.*, 40 Cal.4th 1094, 1115, 56 Cal.Rptr.3d 880, 155 P.3d 284 (2007) (characterizing money owed for missed meal periods as wages rather than a penalty). Plaintiffs argue that their claims for waiting time penalties and for restitution of unpaid overtime do not fall within [section 218.5](#), and defendants do not dispute this argument.

Second, plaintiffs request that the court apply federal cases interpreting fee shifting under Title VII of the Civil Rights Act to the California Labor Code. Under Title VII, a court awards fees to a prevailing defendant only when the plaintiff's claim was frivolous, unreasonable, groundless, or brought in bad faith. *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 422, 98 S.Ct. 694, 54 L.Ed.2d 648 (1978). *Christiansburg*'s holding was predicated on the fact that Title VII grants courts discretion to award fees. *Christiansburg*, 434 U.S. at 416; see also 42 U.S.C. § 2000e–5(k) (“the court, in its discretion, may allow the prevailing party, ... a reasonable attorney's fee.”).³ The Court's holding directed the lower courts in their exercise of this discretion. [Section 218.5](#), in contrast, provides that the court “shall” award fees. “As used in the Labor Code, ‘shall’ is mandatory.” *Smith v. Rae–Venter Law Group*, 29 Cal.4th 345, 357, 127 Cal.Rptr.2d 516, 58 P.3d 367 (2002), *superceded on other grounds as stated in Eicher v. Advanced Business Integrators, Inc.*, 151 Cal.App.4th 1363, 1384, 61 Cal.Rptr.3d 114 (2007) (citing Cal. Stats.2003, ch. 93, § 1). Under California law, when a statute provides for a mandatory fee award, a court has only discretion to deny the award when it is unclear whether the party prevailed, a circumstance not present here. [Cal.Code. Civ. P. § 1032\(a\)\(4\)](#), *On–Line Power, Inc. v. Mazur*, 149 Cal.App.4th 1079, 1087, 57 Cal.Rptr.3d 698 (2007). It appears that no published California case, nor any federal case, has held that when a claim is of a type encompassed by [section 218.5](#), a party must show anything more than that it prevailed to be entitled to a mandatory award of fees.⁴

*4 Finally, plaintiffs argue that defendants did not prevail on this claim because it was not brought as to them. As noted above, the court dismissed plaintiffs' meal period claim in part because the allegations supporting the claim referred to persons other than defendants. Plaintiffs now argue that in so doing, the court concluded that this claim was not brought as to defendants in this suit, such that defendants were not party to, and therefore did not prevail on, this claim. This argument fails. Although plaintiffs' allegations of particular conduct referred to other persons, plaintiffs' prayer for relief sought from defendants an award of meal time premium payments. Defendants therefore prevailed on this claim.

C. Reasonableness and Scope of The Fees

Although defendants are entitled to an award of fees only in connection with one of plaintiffs' claims, defendants may recover all fees incurred on issues pertinent to this claim regardless of whether those issues were also pertinent to other claims. *Diamond*, 753 F.2d at 1467 (quoting *Reynolds Metals Co. v. Alperson*, 25 Cal.3d 124, 129, 158 Cal.Rptr. 1, 599 P.2d 83 (1979)).

Defendants request \$29,964.00 in fees, for 85.6 hours of work in the case not including the time spent on the motion for a fee award, billed at \$315 per hour.⁵ The court has previously held that \$300 per hour is a reasonable local rate for attorneys with defense counsel's experience, and reduces the hourly rate accordingly.

Defendants have not specified how this time was spent. At least some of this time must have been spent on issues not pertinent to plaintiffs' meal period claim. Notably, a significant fraction of the memorandum submitted in support of defendants' motion for judgment on the pleadings was specific to plaintiffs' Fair Labor Standards Act claim. (Doc. No. 23–1 pages 4–6; Doc. No. 26 pages 4–5). Defendants are not entitled to recover fees expended in connection with this issue. *Diamond*, 753 F.2d at 1467. Defendants' contention that disclosure of the amount of time spent on this issue would breach attorney-client or work-product privileges is meritless. "Where the documentation of hours is inadequate, the district court may reduce the award accordingly." *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) (concerning fee awards under 42 U.S.C. § 1988). Here, the court reduces the number of hours by the maximum amount that the court estimates were likely to have been spent on issues not pertinent to the meal period claim (which in this case means on issues solely pertinent to the FLSA claim). The record indicates that defendant's stated 85.6 hours were spent on preparation and filing of an answer, status report, motion for judgment on the pleadings, and on preparation for and attendance of a status conference, at least two depositions, and the hearing on the motion for judgment on the pleadings. *See* Declaration of Kimberly A. Worley Setting Forth Memorandum of Costs (Doc. No. 32–2). The court concludes that at most 15 hours of this time were spent on the FLSA issue, and reduces the fee award accordingly.

*5 Thus, defendants are entitled to a fees for 70.6 hours of work at \$300 per hour, or \$21,180. Plaintiff has not objected to defendants' statement of costs (other than to argue that defendants are not a prevailing party). Defendants are therefore further entitled to an award of \$1,525.80 in costs.

D. Who Pays The Fees

Cal. Labor Code section 218.5 provides that fees shall be awarded to the prevailing party, but does not specify where the award shall come from. Nothing in the parties' briefing indicates whether fees awarded under section 218.5 should be paid by plaintiffs' counsel or by plaintiffs themselves. Moreover, had plaintiffs' counsel offered argument on this issue, it would have been against his clients' interests. None of the cases citing section 218.5 have addressed this issue, and the court is not aware of any California law regarding fee awards generally.

It may be that as a general rule, fee awards, rather than sanctions, are to be paid by the party rather than counsel. In this particular case, however, where there is no controlling authority, equity demands that the award be paid by plaintiffs' counsel. As explained more fully in the prior order, dismissal resulted from counsel's failure to properly plead, and counsel's subsequent failure to identify his mistakes or to prosecute this litigation. It may be that defendants would have prevailed absent these failings, but the court has no way to evaluate that possibility. Although plaintiff's counsel's conduct is not sanctionable under federal law, when California law compels an award of fees, the exceptional circumstances of this case compel the court to conclude that this award should lie against plaintiff's counsel.

IV. CONCLUSION

For the reasons stated above, defendants' motion for attorney fees, Doc. No. 35 is GRANTED IN PART.

1. Plaintiff's counsel is ordered to pay \$21,180 in fees and \$1,525.80 in costs to defense counsel.
2. Counsel shall file an affidavit accompanying the payment which states that it is paid personally by counsel, out of personal funds, and is not and will not be billed, directly or indirectly, to the client or in any way made the responsibility of the client as attorneys' fees or costs.

IT IS SO ORDERED.

Footnotes

- ¹ The statute contains several other exceptions not pertinent here. In addition, for [section 218.5](#) to apply, at least one party must have requested fees at the initiation of the action. In this case, both the complaint and the answer request fees.
- ² Plaintiffs refer to this claim as their fourth. However, plaintiffs' meal break claim was enumerated as their third claim. Complaint ¶¶ 28–32.
- ³ *Christiansburg* explicitly juxtaposed Title VII's fee shifting provision, which provided discretion to award fees to any prevailing party, against statutes providing a mandatory award of fees to prevailing plaintiffs, e.g. the Fair Labor Standards Act, [29 U.S.C. § 216\(b\)](#), and against statutes providing discretion to award fees but only as to certain parties, e.g., the Privacy Act, [5 U.S.C. § 552a\(g\)\(2\)\(B\)](#). *Christiansburg*, 434 U.S. 415–16, n. 5, n. 6.
- ⁴ Although not citable as precedent by California courts, an unpublished decision of the California Court of Appeal held that [section 218.5](#) provided for mandatory fee awards to plaintiffs and defendants, despite possible policy concerns akin to those identified in *Christiansburg*. *Torres v. Auto Chlor Sys. of N. Cal.*, 2007 Cal.App. Unpub. LEXIS 7706, 2007 WL 2774706 (Cal.App. 6th Dist. Sept. 25, 2007).
- ⁵ Defense counsel declares that this is her standard rate, as an attorney with fifteen years of experience.

EXHIBIT 15

05-30-2013 | 05:13 PM | Author: [Robin Shea](#)

Employees: Better Think Twice Before Suing Your Employer (Four Reasons Why)



Earlier, I busted on "my own side" by giving [four reasons why employers shouldn't be so quick to fire their employees](#). To be fair, this week I'll talk about the other side -- four reasons why employees shouldn't be too quick to sue their employers.

DISCLAIMER: I am a defense lawyer. That means that, in any kind of workplace legal dispute, I am on the employer's side, not the employee's side. Always. Even though many of my best friends are employees and plaintiffs' lawyers. The following is not legal advice.

So, you don't have to believe what I'm about to say. But I make this post in good faith, based on my experience and observations in many years of employment litigation.

Are you still here? Cool! Here we go.

1. Even if you got the shaft at work, it is unlikely that you were treated illegally. The law does not require employers to treat their employees like "family," or to be nice, or even to be particularly fair. In fact, employers can usually be downright jerks as long as they are equally jerky to everybody. They can be arbitrary and play favorites as long as they're not making distinctions based on "protected" categories, like race or sex.

If you read this blog very often, you know that I am a strong advocate of treating employees respectfully, fairly, and with dignity. So is everybody in Human Resources who's worth a darn. But we feel that way because it's the right thing to do, not because it's the law.

The American legal system would collapse in a heap if people could sue every time their feelings were hurt. Our system is designed to prevent only the worst kinds of behavior -- you know, like murder, armed robbery, and driving 70 in a 55. It's supposed to keep us from being at each others' throats. That's it. Anything more is left to our respective senses of common decency. (Scary, I know!)

If you sue your employer, it won't be enough for you to prove that your employer made the wrong decision, or even that your employer was a no-goodnik. If you don't have a valid *legal* claim against your employer, then you will ultimately lose your case. One big reason to think twice before you sue.

2. Litigation is long, drawn-out, stressful, and painful. The only people who really enjoy litigation are lawyers. No one else could possibly be that sick. And, here's a secret: not even lawyers are that crazy about litigation. Judges (who are usually lawyers) are always after the parties to try to settle, which would end the case before the judge has to hear it. Lawyers are usually the same way -- they are rarely averse to settlement, although they'll fight to the death if that's what the client wants. Why do you think most courts nowadays have mandatory mediation? If even lawyers don't necessarily like litigation, just think about how much you will hate it.

"Well," you retort, "if lawsuits are that bad, then my employer will pay any amount to get rid of it, right? So it's still worth it to sue."

Well, no. Or, at least, not necessarily. You see, your employer gets sued a lot. This is what they call a "cost of doing business" in the United States. It is true that your lawsuit will be stressful and disruptive for your company. But it will be a lot more stressful and disruptive for you, who are not used to the court system or dealing with lawyers, and you don't even know whether it's a trap when the employer's lawyer says hello to you and offers to shake hands.

The distraction and stress of a lawsuit may also make it more difficult for you to do well in your new job. And having to continually dwell on an unpleasant experience (as you'll have to do while your lawsuit lasts) is difficult and stressful.

3. You may find out that your co-workers are not on your side. You feel very strongly that your employer did you wrong. You find a lawyer willing to take your case. You sue, and start taking depositions of all of your co-workers, who were your BFFs when you worked there. Well. It turns out that your BFFs weren't such BFFs after all. They say, "I liked Maudie, but I felt that she was out of line, and in my opinion she was treated fairly." And then you have the co-worker who saw you when you were not at your best, and she testifies about all the things you said to her in confidence when you were having a rotten day. Which are embarrassing. And which do not help your case. On the record. In a verbatim transcript, for cryin' out loud.

What happened to these people?

Most plaintiffs' lawyers will tell you that the co-workers are afraid of retaliation by the company if they don't side with the company and diss you. I am sure that happens sometimes, but I don't think it explains the majority of these situations. What I see most of the time are two phenomena:

***Most people consider a lawsuit an "act of war."** They probably *were* on your side when you all worked together and went out for mai tais and kvetched about what was going on at the office. But that was just gossip, harmless venting. Nobody thought you were really going to *sue*! And now, thanks to you, they're being dragged in front of lawyers and court reporters and judges and juries, and they're ticked off. And maybe what they said to you in confidence about the boss is coming out -- while the boss is sitting across the table with a stern-looking lawyer in a pinstripe suit. *AWKWARD!* No wonder they've turned on you.

***Some employees really, sincerely do believe the company was in the right.** Is the boss perfect? Of course not. But he's an overall decent guy who tries to be fair and treat employees right. And maybe you shouldn't have been so stubborn/absent from work/insubordinate/lazy yourself.

Recall No. 2, above. Finding out that your co-workers don't support you is one of the "painful" parts.

4. You may be opening up your own life to scrutiny. This is another "painful" part. In order to get more money, and because you really *were* very upset when you were fired, your lawyer includes a claim for emotional distress in your lawsuit. Next thing you know, the company has asked for your medical and psychiatric records dating back 10 years. And maybe you saw a shrink a few times and have been diagnosed as bipolar. Along with a few physical conditions that are not appropriate to mention in a family blog. Surely you don't have to share that information with the company's lawyers! Do you?

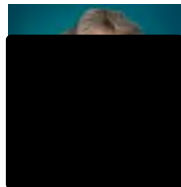
YOU ALMOST CERTAINLY DO. If you claim emotional distress (you don't have to, but you may not get as much money if you don't), most courts say you have put your own emotional condition at issue and the employer is entitled to find out how much of your (just as an example) bipolar disorder was caused by your termination and how much you had all along (in which case the company isn't responsible for it).

Your employer may also be able to dig into your past employment record, including that time you got fired from a previous job after you tested positive for angel dust, your criminal background, your five previous marriages, and your history of filing lawsuits. Perhaps you have nothing to hide. But a lot of people (most?) have a few skeletons that they'd just as soon not have the rest of the world know about.

What you probably *don't* have to worry about

Now, note what I have not mentioned: (1) That your employer will fire you for filing the lawsuit (assuming you did it while still employed); or (2) that your employer will blacklist you, and you'll never work again if you sue. The reason that I did not mention these is that they very rarely happen. Retaliation -- either during employment or afterward -- for filing a lawsuit in good faith against an employer is usually illegal, and almost all employers know that. If it happens and you can prove it, you might have a pretty good case. But don't bet on being able to do that.

Of course, I'm not saying you should never file a lawsuit against an employer, but it should almost always be a last resort. It's better to try resolving your dispute through the company's grievance procedure or open-door policy, or by going to Human Resources. If you're terminated, you may be better off negotiating a nice separation package and shaking the dust from your feet. If all of those fail, and if you've taken a good, critical look at your own performance and behavior, and still feel strongly that you were mistreated, then by all means consult with a lawyer who represents **employees** in workplace disputes. But keep in mind these hidden costs of litigation that you'll face, no matter how strong your case may be.



Visit the [Employment and Labor Law Insider](#) for additional insights from [Robin Shea](#), a partner with the national labor and employment law firm Constangy, Brooks & Smith, LLP.

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Tags: [employee lawsuits](#)

EXHIBIT 16

April 29, 2014

HUFF
POST BUSINESS

What to Expect If You Sue Your Employer

Posted: 01/10/12 02:03 PM ET

In the last half century or so, workers in the U.S. have seen improved working conditions through policies and laws addressing discrimination, harassment, whistleblower protection and safety violations. But when these protective measures are disregarded, enforcing them falls on individual workers who must pursue their claims through arbitration, investigations by external agencies (such as the EEOC) or litigation. Whatever the reason a worker might consider taking such actions, before filing any internal or external complaint or lawsuit -- or even threatening to do so -- there are some things to keep in mind. And the first thing to keep in mind is that there are a lot of myths about what it means to sue an employer.

The first myth is that the employer is afraid of a lawsuit. Employers do not like lawsuits, but they do not fear them. If they did, the worker never would have had a legal claim in the first place. Why? Because if the employer sincerely feared a lawsuit, they would have respected the law in the first place. And not only are managers who violate workplace laws unlikely to be held accountable for their actions, there are many ways they can benefit from a lawsuit, even one their own conduct brought on.

They can benefit by finding a lawful reason to fire the complaining worker, or by providing witnesses against the complainant who are either "similarly situated" (such as members of the same protected group), or who work closely with them and are persuaded to testify against the worker. By courting these people, sympathizing with their conflicting emotions regarding the worker and providing opportunities and benefits previously withheld, the manager conditions the workforce to consider ways in which distancing from the worker, and aligning with the interests of management, are in their own interests.

Once this step is taken, greater acts of distancing -- through gossip, rumors, and shunning - make it easier for former allies and others to turn against the worker. When this happens, the manager who may have instigated the lawsuit in the first place is able to score points with higher management by demonstrating that it is "the difficult employee" -- not the manager, who is the problem, and the manager who has provided a solution -- witnesses to discredit the worker's claims.

The second myth is that once a lawsuit is filed, further adverse action will not be taken against the worker because that would be viewed as retaliation. Your employer can and will retaliate against you in a multitude of ways, many of them legal.

Federal laws protect against retaliation for certain protected acts, such as reporting sexual harassment, discrimination, and some types of "whistle blowing." But federal law also permits employers to fire such employees for legitimate reasons -- such as theft, making threats, or acts of violence.

No matter how law-abiding a worker might be, once involved in litigation against an employer, accusations of wrongdoing are likely to commence, and escalate. For that reason, by encouraging the workforce to view the litigating worker as a threat to their own livelihoods, chronically unhappy and complaining, and mentally unstable, it takes little time before gossip escalates to accusation, and the worker is accused of an escalating series of "inappropriate" behaviors and often, crimes.

Should the worker express any anger or outrage at the mistreatment they receive, that anger will be viewed as a threat. Increasingly, employers are using the slightest pretext of "threats" or accusations of theft to bring in the police and have employees publicly escorted off the premises -- a humiliating tactic that is sure to instill fear in the workforce and further erode the worker's support and reputation, regardless of whether or not there was any basis to the accusation. (And while it remains unlawful to terminate an employee for false pretext, proving pretext is difficult and the damage will have already been done.)

The third myth is that once an employer realizes they could be sued for their actions, they will obey the law. If a worker threatens to sue, or an employer receives a letter from a worker's attorney, they may well clean up their act. But chances are, every level of higher management will be alerted and go on the defense, which to their legal team will mean an offense.

They will immediately notify all coworkers that a lawsuit is pending and not to destroy any emails or other correspondence about, to or from the worker, and not to discuss the case with the worker. And when they get those memos informing them that their (potentially embarrassing) emails will end up in the hands of their bosses, those coworkers are not going to resent their bosses, they are going to resent the worker whose legal action brought it on.

At this stage, the workforce, not management, will fuel the aggression aimed at the worker. Management will encourage the workforce to keep a close eye on the worker, and document any detail, no matter how seemingly benign, that shows the worker is unstable, unproductive, or ineffective. As the workforce takes note of the severe toll on the worker who filed the complaint, they will

not only alter their perceptions of the worker to justify avoiding and testifying against them, but they will also be far less likely to ever voice a similar complaint of their own in the future -- in other words, the more severe the punishment, the less likely management will have to fear future workers coming forward with similar complaints.

The fourth myth is that if a worker does sue, they can win big money, and be vindicated. If a worker does sue, and does win, they will be very, very happy. Why? Because by the time an employment case gets to the point of "winning," the worker will have spent years fighting. They will be emotionally and financially exhausted. They will have gone into great debt to pay legal costs; even if their case was litigated on a contingency fee basis, they will have had to pay a costly retainer, costs of mediations, investigations, depositions and travel expenses. And the worker will have had one heck of a time finding work, because not only will s/he be exhausted by legal battles, they will have had little time or strength to be productive in the process.

They will also be stained by no references, a record of suing an employer -- which no potential employer wants to see -- and a reputation that has been severely damaged through rumors.

And as for that big money verdict? There are caps on what a worker can get and juries are often very conservative -- many a career has been valued at less than a whiplash, because jurors like to think they would never find themselves in such a mess, and that no one should receive big money for not being able to work, when the juror may well work a lifetime for less. And anything over \$150,000 is currently taxed at one-third; a whiplash settlement, however, is currently not taxed.

The fifth myth is that the case will never get to trial and will settle out of court. Most cases do settle out of court, and when they do, they either settle fairly early in the game, or right before trial. In the meantime, the employer's legal team will bank on delays to wear the worker out. Until that time, efforts to resolve the matter will be in vein -- the only early resolution once a suit is filed will likely be at terms favorable to the employer. In the meantime, the worker's work and even home computers will be subpoenaed, along with their medical records. Investigators may have monitored the worker, and contacted past employers -- who will have been told all kinds of unsavory things about their former employee -- even family members, friends and neighbors may be questioned, scrutinized and had their own reputations slandered.

Suing an employer is the last thing a worker should ever do if the aim is a successful career. But sometimes an employer goes so far, breaches so many laws and causes so much damage that a worker cannot possibly recover without a legal remedy. And if that happens, the worker must be prepared. They must safeguard against the assured betrayals from close friends and colleagues, the adversarial scrutiny of their lives and communications, and an avalanche of accusations and smears upon their professional and personal lives.

And for the employer facing potential litigation, it is far easier to resolve a conflict with a worker than it is to close ranks and destroy them. Rare is the lawsuit that an effective manager can't prevent by acting with integrity in the first place, and rare is the lawsuit that an effective employee can't prevent, by knowing when the management is just no good and it's best to walk away.

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Highlighted Most Recent Oldest Most Faved My Conversations

Pippen

287 Fans

2

My question to myself lately has been :

Are we teaching our college age young adults - Profits over People ? Money Talks and BS walks ? Your nothing unless you financially rape your environment and destroy your economic enemies ?

Is this what we're teaching them? Because they are snugly fitting in nicely to the Money Rules All mode of capitalism.

Why can't we start a business without any intent to reflect a profit beyond paying employees a living wage building a community and moving the business into the next year with strength. Profits would not be a priority and people would be valued. The prosperity alone would jolt this countries GNP.

What shocks me are the massive amount of business leaders and upper level managers I know personally who go to church and pretend to be a respected member of the faithful community followers of faith after having offshored 20,000 employees so they can garner a bonus and a shot at CEO even though they have a salary of upper

6 figures for years.

At church they hug people, neighbors, other leaders talk about their childrens future.
How they found God.

I almost want to vomit typing this.

11 JAN 2012 5:02 AM

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1

Another precise and informative article. Well done.

10 JAN 2012 7:11 PM

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kjk326

2 Fans

Excellent article, right on topic. I went through this nightmare & found just how chilling & hostile a formerly friendly environment can become overnight. People who were your close friends hesitate to talk to you and avoid being seen with you. Your every move is put under the microscope and twisted into some type of bad behavior while the person who committed the illegal act is lauded and promoted and you are made to feel like a social outcast at best and I say this even though in the end I prevailed. You are left so emotionally drained, sadly it seems to be the American way; forget ethics, it's the dollar that prevails. Most of all I don't know how HR people sleep at night when they defend someone they know clearly committed an illegal act,

10 JAN 2012 8:34 PM

FAVE SHARE MORE

ARTICLE AUTHOR

Janice Harper

HUFFPOST BLOGGER · 218 Fans

Thank you for sharing your experience. I think it's significant that you say in the end you prevailed -- sadly, that is the sixth myth -- that it will all be worth it. It rarely is. The toll on the worker who pursues an employment claim is enormous, and few attorneys, no matter how skilled, adequately prepare plaintiffs for what's up ahead. I'm so sorry you had to go through it.

Yet we have made great advances in working conditions in the U.S. in part due to lawsuits, and there are cases where workers are left with no recourse but to turn to the courts. In those cases, the more a person knows what to expect and how to be prepared, the better the emotional outcome. Thank you again for sharing your story.

10 JAN 2012 8:55 PM

FAVE SHARE MORE

3 PEOPLE IN THE CONVERSATION

Read Conversation →

noahmarder

512 Fans · Exposing the regressive lies, one by one

There is no justice in this country. What else is new? Risk/reward probably favors stealing from your employer rather than suing them. At least with theft, your career is ruined only if you get caught. You also have a better chance of stealing significant money than of winning anything but an airtight case. I don't see a moral problem either, so long as what is stolen doesn't exceed the damage done by the employer, plus the effort required for the theft, plus the chance of being caught multiplied by the penalty

for being caught. It is the employer, after all, who has taken away any legal remedies through the retaliation mechanisms described in the article.

10 JAN 2012 9:09 PM

FAVE SHARE MORE

Pippen

287 Fans

If you think all of that is bad apply it to Texas where employment is an "at will" state. Another way of putting this would be outright slavery and the slave master can fabricate reality on how they feel that morning and your life is forever changed.

America sets itself apart from 3rd world countries with the arguement that we have a

- 1 Superior Justice System
- 2 Freedom of religion
- 3 Separation of Church and State
- 4 Opportunity to pursue your capitalist dreams of career and family
- 5 That taxes pay for your well being (roads, FDA, national safety etc..)
- 6 National security (threat of invasion and subjugation by an enemy rule...)
- 7 Democratically elected officials (fair voting)

I want you to look hard at those 7 American beliefs. See any of them that are actually working as intended ? Or are they working as intended ?

Did we just wake up or is this something that has emerged from the closet when GW Bush took office?

11 JAN 2012 4:52 AM

FAVE SHARE MORE

EXHIBIT 17

Estimate Number:	20230819-PJI-01	Prepared By:	Patrick J. Ivie
Estimate Date:	8/19/2023	Telephone Number (mobile):	310.995.6455
Estimate Expiration Date:	11/17/2023	Email:	pjvie@simpluris.com

Attorney Contact
Attorney: **Emily Hough Ly**
Firm: The Spivak Law Firm
Email: emily@spivaklaw.com

Opposing Counsel Contact
Attorney:
Firm:
Email:

Case Name: LEON/DAVIS Class and PAGA Settlement

Assumptions

In addition to the assumptions enumerated below, this estimate assumes that

- (1) Simpluris will receive data in a single, complete file; (2) there will be no substantial change to class size or in response rate;
- (3) administration costs will be paid from the QSF, and (4) Simpluris will submit revisions to this estimate to account for any material changes to scope.

Anticipated Class Size:	119	Undeliverable Rate:	10%
Claims Rate:	N/A	Mail Skip Trace Success Rate:	85%
Opt-out Rate:	1%	Call Rate:	4%
Language(s) for Communication	EN/SP	Average Call Length:	3 Minutes
Reminder Mailing:	Yes	Fund Distribution:	Simpluris
Unclaimed Funds:	Escheat	Number of Distributions:	1
State(s):	CA	Tax Year(s):	1
Length of Administration:	9 Months		

Case Setup

- Undertake postings on Simpluris website of key documents as ordered by the Court (e.g. orders and the Settlement Agreement)
- Data compilation: develop case-specific response tracking

Category	Unit Value	# of Units	Total
Project Manager - Case Setup	\$110.00	2	\$220.00
Case Document Web Postings	\$250.00	1	\$250.00
Database Manager - Initial Data Analysis	\$125.00	2	\$250.00
Total:			\$720.00

Notice and Communications

- 7-page Packet: Notice, Opt Out Form and Dispute Form, mailed in English and Spanish
- Single Postcard Reminder Mailing

Category	Unit Value	# of Units	Total
Spanish Translation assuming 3,500 words	\$0.25	3,500	\$875.00
Bilingual Notice Packet assuming total of 14 images	\$3.00	119	\$357.00
Postage	\$0.63	119	\$74.97
NCOA/CASS/LACS	\$0.25	119	\$29.75
Undeliverable Processing and Skip Trace	\$0.50	12	\$6.00
Remail Notice (assuming 85% skip trace success)	\$4.00	10	\$40.80
Remail Postage	\$0.63	10	\$6.43
Single Postcard Reminder Mailing	\$0.20	119	\$23.80
Postage	\$0.48	119	\$57.12
Mailing Supervisor	\$50.00	3	\$150.00
Total:			\$1,620.87

Contact Center

- Establish case-specific toll-free number and 24/7 IVR
- Assuming 3-minute calls

Category	Unit Value	# of Units	Total
IVR Call Center Setup	\$450.00	1	\$450.00
IVR Monthly Maintenance	\$100.00	9 Months	\$900.00
IVR (includes toll-free number charges)	\$15.00	1	\$15.00
Subtotal			\$1,365.00

Administration

- Process incoming class and counsel communications, disputes, opt-outs, and objections

Category	Unit Value	# of Units	Total
Database Manager	\$125.00	2	\$250.00
Project Manager	\$110.00	2	\$220.00
Disputes Processing	\$3.50	6	\$20.83
Opt-out Processing	\$3.50	1	\$3.50
Reporting to Counsel (hours)	\$100.00	4	\$400.00
Total:			\$894.33

Award Disbursement

- Establish 26 CFR § 1.468B-1 compliant Qualified Settlement Fund ("QSF")
- Disburse award payments and tax documents
- Uncashed checks will be sent to the State Unclaimed Property Fund
- Conduct regular and annual IRS-mandated QSF reporting and reconciliation (one per calendar year)
- Complete all required filings with state and federal tax authorities

Category	Unit Value	# of Units	Total
Disbursement Data Preparation	\$125.00	2	\$250.00
Disbursement Manager - Data Validation	\$90.00	2	\$180.00
Setup Banking Account/QSF	\$675.00	1	\$675.00
QSF Monthly Reconciliation and Maintenance	\$100.00	9	\$900.00
Print & Mail Distribution Check with W2 and 1099	\$0.65	119	\$77.35
Postage	\$0.63	119	\$74.97
Process Returned Checks (assuming 5%)	\$0.25	6	\$1.50
Skip Trace Search Undeliverable Checks	\$0.50	6	\$3.00
Remail Checks (includes postage)	\$1.60	6	\$9.60
Escheat Uncashed Checks	\$500.00	1	\$500.00
QSF Reporting and Final Declaration	\$500.00	1	\$500.00
QSF Annual Tax Reporting and Reconciliation	\$1,350.00	1	\$1,350.00
Distribution Manager	\$90.00	2	\$180.00
Total:			\$4,701.42

Case Completion

- Final audit and review
- Send final declaration and reporting to counsel

Category	Unit Value	# of Units	Total
Data Manager-Final Reporting	\$125.00	2	\$250.00
Clerical-Clean Up Any Misc.	\$50.00	2	\$100.00
Project Manager-Wrap-up Final Issues	\$110.00	2	\$220.00
Total:			\$570.00

Total Estimated Cost of Administration:	\$9,872
Less Client Courtesy Discount:	-\$3,872
Total Administration Cost, with Discount:	\$6,000

Terms and Conditions

All administration services to be provided by Simpluris to Client, are provided subject to the following terms and conditions ("Agreement"):

1. Services: Simpluris agrees to provide Client those services set forth in the Proposal (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 Proposal. Simpluris will often take direction from Client's representatives, employees, agents and or professionals (collectively, the "Client Parties") with respect to the Services. The parties agree that Simpluris may rely upon, and Client agrees to be bound by, any direction, advice or information provided by the Client Parties to the same extent as if provided by Client. Client agrees and understands that Simpluris shall not provide Client or any other party with any legal advice.

2. Fee Estimates Not Binding: Simpluris and Client acknowledge that it is difficult to determine all necessary work required for the Services or the total amount of fees that may be incurred in performing the Services. Client agrees that fees for Services described in the Proposal are estimated based on the requirements provided by Client. Actual fees charged by Simpluris may be greater or less than such estimate. Client specifically agrees that it will be responsible for the payment of all such fees. Simpluris will provide estimates and budgets, but they are not intended to be binding; are subject to unforeseen circumstances, and by their nature are inexact.

3. Billing and Payment: Simpluris will invoice Client on a regular basis unless a specific timeframe is otherwise set forth in the Proposal. 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 incurred by Simpluris in performing the Services, regardless of any circumstance that impacts the outcome of Client's matter, including but not limited to, court decisions, actions by the parties, or a failure to consummate a settlement.

4. Further Assurances: Client agrees that it will use its best efforts to include provisions reasonably acceptable to Simpluris in any relevant court order, settlement agreement or similar document that provide for the payment of Simpluris' fees and expenses hereunder. No agreement to which Simpluris is not a party shall reduce or limit the full and prompt payment of Simpluris' fees and expenses as set forth herein and in the Proposal.

5. Rights of Ownership: The parties understand that the software programs and other materials furnished Simpluris to Client and/or developed during the course of the performance of Services are the sole property of Simpluris. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. Client agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished to Client. Fees and expenses paid by Client do not vest in Client any rights in such property, it being understood that such property is only being made available for Client's use during and in connection with the Services provided by Simpluris.

6. Bank Accounts: Simpluris will establish a demand deposit checking account (i.e. non-interest bearing) for funds received related to a distribution, unless directed otherwise in writing by the parties or unless the settlement agreement stipulates otherwise. Simpluris 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 compensation for services Simpluris performs for financial institutions to be eligible for FDIC deposit insurance. The amounts held pursuant to these Terms and Conditions are at the sole risk of Client and, without limiting the generality of the foregoing, Simpluris shall have no responsibility or liability for any diminution of the fund that may result from any deposit made with a financial institution including any losses resulting from a default by such institution or other credit losses. It is acknowledged and agreed that Simpluris will have acted prudently in depositing the fund at such institution.

7. Retention of Documents & Data: Unless otherwise required in writing by the Client or court orders, all returned/undeliverable physical documents will be securely shredded after the data has been confirmed uploaded to our systems. Simpluris will retain bank and tax documents for such period of time as it determines is required to maintain compliance with various federal and state law requirements. Unless otherwise required in writing by the Client or court orders, Simpluris will adhere to the Company's data deletion policies and will destroy all remaining project-related information from our systems three (3) years after the conclusion of the project. Storage beyond three (3) years is available upon request and will be billed as incurred.

8. Limitation of Liability; Disclaimer of Warranties: Simpluris warrants that it will perform the Services diligently, with competence and reasonable care. In no event will Simpluris be liable to Client or any third party for any claims, losses, costs, penalties, fines, judgments, tax activities, lost profits or business opportunities, business interruptions or delay, special, exemplary, punitive, consequential, indirect or incidental damages 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, regardless of whether such damage was foreseeable and whether such party has been advised of the possibility of such damages. Simpluris' cumulative liability for damages to Client hereunder will be limited to 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.

9. Force Majeure: To the extent performance by Simpluris of any of its obligations hereunder is substantially prevented or delayed by reason of any act of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date

that Simpluris began performing Services, epidemic, pandemic, quarantine, civil commotion, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an export or import restriction, quota, or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation or because of any other matter beyond Simpluris' reasonable control, then Simpluris' 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.

10. 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.

11. 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.

12. 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 to the address identified by each Party in the Proposal. Notice 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.

13. 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.

14. Termination: Client may terminate the Services at any time 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 for Services rendered up to the effective date of Termination. Simpluris may terminate this Agreement (i) for any reason upon no less than 60 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.

15. Jurisdiction: These Terms and Conditions will be governed by and construed in accordance with the laws of the state of California, without giving effect to any choice of law principles.

16. 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.

17. 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.

18. Indemnification: Client will indemnify and hold Simpluris (and the officers, employees, affiliates and agents) harmless against any losses whatsoever incurred by Simpluris, arising out of any action by a third party, including governmental agencies, 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.

19. 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.

20. 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.

21. Entire Agreement: These Terms and Conditions together with the Proposal constitutes the entire agreement between the parties with respect of the subject matter hereof and supersede all prior understandings, agreements, or representations by or among the parties, written or oral, to the extent they relate in any way to the subject matter hereof.

EXHIBIT 18

Case Name: LEON/DAVIS re

Monday, August 21, 2023

Requesting Law Firm

Contact

E-Mail

ILYM Contact

E-Mail

Contact Number

The Spivak Law Firm

Emily Houg Ly

emily@spivaklaw.com

Lisa Mullins

Lisa@ilymgroup.com

714.878.8836

ESTIMATE FOR ADMINISTRATION SOLUTIONS

Opt-Out

ASSUMPTIONS

Total Number of Class Members	119
Estimated Percentage of Undeliverable Mail	20%
NCOA	Yes
ILYM Group Static Website	Yes
Certified Spanish Translations	Yes

Activity

Rate Type

Unit Cost

Volume

Amount

CASE STARTUP

Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	1	\$150.00
Programming of Class Database	Hourly	\$175.00	1	\$175.00

**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 \$325.00

PROJECT MANAGEMENT

Project Manager (Case notification and maintenance)	Hourly	\$120.00	2	\$240.00
Staff Hours for Processing Opt-Outs, Disputes & Objections	Hourly	\$70.00	1	\$70.00
Staff Hours for Processing Returned Mailed	Hourly	\$70.00	1	\$70.00
Report Processing	Hourly	\$70.00	2	\$140.00
NCOA	Per Piece	\$75.00	1	\$75.00
Toll-Free Call Center	Flat Fee	\$100.00	1	\$100.00
ILYM Group Static Website, Includes Hosting	Flat Fee	\$750.00	1	\$750.00
Certified Spanish Translations	Flat Fee	\$1,250.00	1	\$1,250.00
Weekly Reports	Flat Fee	\$500.00	1	Waived

Subtotal \$2,695.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity	Rate Type	Unit Cost	Volume	Amount

NOTIFICATION/MAILING				
Fulfillment Notice, English and Spanish	Per Piece	\$1.50	119	\$178.50
USPS First Class Postage	Per Piece	\$0.83	119	\$98.77
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.00	24	\$47.60
Storage, Photocopies, Deliveries	Flat Fee	\$266.91	1	\$266.91

Subtotal \$591.78

DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	1	\$150.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	1	\$125.00
Check, Print & Mail (Including W2/1099 Stub & Release)**	Per Check	\$1.00	119	\$119.00
USPS First Class 1oz Postage	Per Piece	\$0.63	119	\$74.97
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$1.50	12	\$17.85
Check Cashing Reminder Postcard	Per Piece	\$1.00	71	\$71.40
Preparation of Taxes	Hourly	\$120.00	3	\$360.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

***Additional Bank fees may apply*

Subtotal \$2,418.22

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	1	\$100.00
Project Manager Final Reporting	Hourly	\$120.00	1	\$120.00
Process Uncashed Funds to the State	Flat Fee	\$250.00	1	\$250.00
Declaration	Hourly	\$125.00	2	\$250.00

Subtotal \$720.00

Total Case Estimate: \$6,750.00

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 19

CASE NAME: LEON V. DAVIS

Date: August 18, 2023

Requesting Attorney: Emily Houg Ly

Plaintiff or Defense: Plaintiff

Firm Name: The Spivak Law Firm

Telephone: (818) 205-9033

Email: emily@spivaklaw.com

All-In Settlement

Class Size: 119

Opt-Out Rate: 1.5%

No. of Checks Issued: 117

Postage Total: \$213.53

Grand Total: \$12,955.64

DISCOUNTED FLAT FEE: \$10,000.00

The services and numbers reflected herein are an estimate provided by counsel. If the actual services and number are different, our cost estimate will change accordingly.

The attached Terms and Conditions are included as part of our cost proposal. By accepting our costs proposal for this matter, you are thereby agreeing to the Terms and Conditions.

CASE SETUP

Upon Intake of the Data, CPT will Scrub all Records to a Useable Format to Reduce Duplicates, Anomalies and Increase the Success Rate of Deliverability of the Class Notice. Class Members will be Assigned a Unique Mailing ID which will be Used Throughout Administration. All Pertinent Documents will be Posted on a Case Specific Website. The Notice will be Translated into Spanish.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Case Intake & Review	\$95.00	1	\$95.00
Programming: Data Base Setup	\$150.00	1	\$150.00
Spanish Translation	\$1,200.00	1	\$1,200.00
Static Website	\$500.00	1	\$500.00
TOTAL			\$1,945.00

DIRECT MAIL NOTICE

To Ensure Mailing to the Most Current Address Possible, CPT will Perform an Address Update via NCOA and Further Skip Trace if Necessary. CPT will Mail a Full-Length Notice, Dispute Form & 1-Page Exclusion Form in English and Spanish.

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
XML Lex ID Skip Trace	\$0.85	12	\$10.20
Print & Mail Notice Packets	\$1.50	119	\$178.50
First-Class Postage (up to 2 oz.)*	\$0.87	119	\$103.53
TOTAL			\$617.23

*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, 5% of the Notices will be Returned Undeliverable. Upon Receipt, CPT will Perform a Skip Trace in an Attempt to Obtain a Current Address; Thus, 70% of the Undeliverable Notice Packets are Remailled.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Clerical Staff	\$60.00	1	\$60.00
Update Undeliverable Mail Database	\$0.50	6	\$3.00
Skip Trace for Best Address	\$1.00	5	\$5.00
Print & Remail Notice Packets	\$1.50	4	\$6.00
First-Class Postage (up to 2 oz.)	\$0.87	4	\$3.48
TOTAL			\$77.48

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	2	\$3.57
Print & Mail Deficiency/Dispute Notices	\$1.50	1	\$1.50
First-Class Postage (up to 1 oz.)	\$0.66	1	\$0.66
Review & Process Deficiency Responses	\$10.00	1	\$10.00
		TOTAL	\$320.73

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	24	\$72.00
		TOTAL	\$372.00

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	117	\$11.72
		TOTAL	\$446.72

DISTRIBUTION SERVICES

CPT will Establish and Manage the Qualified Settlement Fund (QSF) for up to One Year After Disbursement. Upon Approval, CPT will Perform all Necessary Calculations and Disburse Funds. CPT will Mail an 8.5"x11" MICR Check to Valid Class Members. CPT Uses a Payee Positive Pay System to Reconcile Checks Cash and Conducts Monthly Account Reconciliations for the QSF. All Clas Members who do not Cash their Check will be Sent a Check Reminder Postcard.

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	117	\$293.04
First-Class Postage (up to 1 oz.)*	\$0.66	117	\$77.36
Check Reminder Postcard	\$0.40	94	\$37.51
Postage for Check Reminder Postcard	\$0.51	94	\$47.82
		TOTAL	\$2,445.73

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

POST-DISTRIBUTION & TAX REPORTING

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	9	\$4.50
Skip Trace for Best Address	\$1.00	9	\$9.00
Remail Undeliverable Checks	\$2.50	8	\$20.00
First-Class Postage (up to 1 oz.)	\$0.66	8	\$5.28
Re-Issue Checks as Required	\$5.00	6	\$30.00
First-Class Postage (up to 1 oz.)	\$0.66	6	\$3.96
Project Supervisor: Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming: Weekly & 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			\$4,612.74

*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	25	\$3.75
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	\$8.64	1	\$8.64
Check Reissues for Winter/Spring QTR	\$5.00	3	\$15.00
First-Class Postage (up to 1 oz.)	\$0.66	3	\$1.98
Project Supervisor: June Remittance	\$150.00	1	\$150.00
Project Manager: June Remittance	\$95.00	2	\$190.00
Certified Mail Report to SCO	\$8.64	1	\$8.64
Add'l Account Recons	\$150.00	6	\$900.00
Add'l QSF Annual Tax Reporting	\$500.00	1	\$500.00
TOTAL			\$2,118.01

GRAND TOTAL **\$12,955.64**

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.
 - 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.

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

15. Miscellaneous Provisions.

- a) Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.
- b) Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party's reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
- c) Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
- d) Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
- e) Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.
- f) Assignment. Neither party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other party's prior written consent; provided, however, either party, without the consent of the other party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of the other party are not increased by such assignment and the rights and remedies available to the other party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
- g) No Third-Party Beneficiaries. The representations, warranties, and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns and shall not be construed as conferring any rights on any other persons.
- h) Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("Statistical Data") derived from the operation of the Software, and nothing herein shall be construed as prohibiting CPT from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third-party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.
- i) Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such applicable laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j) Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k) Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other party first written above or at such other address as may hereafter be furnished in writing by either party hereto to the other party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l) Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither party may make any statement that would contradict anything in this section.
- m) Subcontractors. CPT shall notify Client of its use of any subcontractors to perform Client-specific Services. CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n) Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret, or construe its meaning, scope or intent.
- o) Waiver. No failure or delay on the part of either party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power, or remedy.
- p) Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.

EXHIBIT 20

EXHIBIT 21

Ian B. Wieland, State Bar No. 285721
Amanda K. Miller, State Bar No. 298680
SAGASER, WATKINS & WIELAND PC
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Attorneys for Defendant, DAVIS & ROBERTS CONSTRUCTION,
INC., a California corporation

STATE OF CALIFORNIA

SUPERIOR COURT FOR THE COUNTY OF FRESNO

JORGE L. LEON, on behalf of himself, all
others similarly situated, and as an
“aggrieved employee” on behalf of the other
“aggrieved employees” under the Labor
Code Private Attorneys General Act of 2004,

Plaintiff,

v.

DAVIS & ROBERTS CONSTRUCTION,
INC., a California corporation; and DOES 1-
50, inclusive,

Defendant(s).

Case No.: 22CECG00407

**DECLARATION OF JEFF DAVIS FOR
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION**

Complaint Filed: February 8, 2022
Trial Date: None Set

1 I, Jeff Davis, do hereby declare and state:

2 1. I was the owner of Davis & Roberts Construction, Inc. (hereinafter "Defendant" or
3 "Davis & Roberts Construction, Inc."), a defendant in the above-entitled action.

4 2. I have personal knowledge of each fact stated in this Declaration, except as to those
5 matters stated on information and belief, and to those matters, I believe them to be true, and if called
6 as a witness, I could and would testify competently thereto.

7 3. On information and belief, based on Defendant's records (i.e. payroll records and
8 personnel files), the number of persons who worked for Defendant in California as an hourly, non-
9 exempt employee at any time during February 8, 2018 through July 17, 2024 is 119.

10 4. On information and belief, based on Defendant's records (i.e. payroll records and
11 personnel files), the number of persons who worked for Defendant in California as an hourly, non-
12 exempt employee at any time during December 23, 2020 through July 17, 2024 is 58.

13 5. Defendant previously offered its non-exempt employees a Settlement Agreement and
14 Release. At the time of the mediation on May 16, 2023, 84 people who worked for Defendant in
15 California as an hourly, non-exempt employee at any time during February 8, 2018 through the date
16 of mediation signed a Settlement Agreement and Release. Enclosed as **Exhibit "A"** and **Exhibit**
17 **"B"** are true and correct copies of examples of the Settlement Agreement and Release provided to
18 and signed by non-exempt employees. English and/or Spanish versions were provided to the non-
19 exempt employees depending on their preferred language. At the time of the second mediation on
20 March 16, 2023, Defendant paid out a gross amount of \$56,713.47 to these 84 non-exempt
21 employees who signed a Settlement Agreement and Release.

22 6. Davis & Roberts Construction, Inc. is no longer in business. At the time of the
23 mediations in this case (November 3, 2022 and May 16, 2023), I was in the process of winding
24 down the business due to financial concerns relating to the business. As of now, Davis & Roberts
25 Construction, Inc. is no longer in business.

26 I declare under penalty of perjury under the laws of the State of California that the foregoing
27 is true and correct, and that this declaration was executed on this 30th day of August 2024, in

1 Fresno, California.
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Jeff Davis

EXHIBIT A

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement”) is entered into by Jesus A. Arias (the “Claimant”) and Davis & Roberts Construction, Inc. (the “Company”) (collectively referred to as the “Parties”).

RECITALS

- A. On February 8, 2022, the attorneys representing Jorge L. Leon (hereinafter referred to as “Plaintiff”), a former hourly non-exempt employee of the Company, filed a class action complaint against the Company in the Fresno County Superior Court, and on March 7, 2022, Plaintiff filed a first amended complaint (“Complaint”). The class action Complaint is entitled “JORGE L. LEON, on behalf of himself 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, vs. DAVIS & ROBERTS CONSTRUCTION, INC., a California corporation”, and has been assigned Case Number 22CECG00407 (hereinafter referred to as “Class Action Lawsuit”). Plaintiff is represented by David G. Spivak, Caroline Tahmassian, and Maya Cheaitani of The Spivak Law Firm, located at 15303 Ventura Blvd., Suite 900, Sherman Oaks, California 91403, telephone number: (213) 725-9094.
- A. Plaintiff alleges class claims for: (1) Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Cal. Lab. Code §§ 221, 510, 1194, 1197, and 1198); (2) Failure to Provide Rest Breaks (Cal. Lab. Code §§ 226.7 and 1198); (3) Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512 and 1198); (4) Wage Statement Penalties (Cal. Lab. Code § 226); (5) Waiting Time Penalties (Cal. Lab. Code § 203); (6) Unfair Competition (Cal. Bus. & Prof. Code §§ 17200, *et seq.*; and (7) Civil Penalties (Cal. Lab. Code §§ 2698, *et seq.*), on behalf of himself and other similarly situated employees, including you, the Claimant. Plaintiff claims that he should be able to seek damages and penalties for these allegations going back to February 8, 2018.
- B. The Company disputes each of the allegations in the Complaint.
- C. Claimant understands that if the court approves certification of a class, Claimant could be a class member, which means if there is a settlement or judgment in the proposed class or classes’ favor, a possibility exists that Claimant could receive money. If the court approves the class action, the interests of the Company may become adverse to Claimant. The Court has not set a trial date yet. Plaintiff and the Company previously attended mediation to try to resolve the matter on November 3, 2022 but were not able to reach an agreement.
- D. Claimant understands that Claimant will be ineligible to receive compensation in the Class Action Lawsuit for claims settled under this Settlement Agreement.
- E. The Parties have decided to enter into this Settlement Agreement in order to resolve all of the issues set forth above.

TERMS

The Recitals above are fully incorporated as a material term of this Settlement Agreement, and it is hereby agreed by and between the Parties as follows:

1. This Settlement Agreement is a compromise of disputed claims, and nothing contained herein is to be construed as an admission of liability on the part of anyone hereby released.
1. In exchange for the release from Claimant set forth below, the Company will pay Claimant by check the gross amount of \$_____ (the "Settlement Amount"). Twenty-Five Percent (25%) of the Settlement Amount is being treated as unpaid wages and will have required payroll deductions withheld on that part of the Settlement Amount. The remaining Settlement Amount will be treated as interest and penalties for purposes of settlement and paid without payroll deductions. The Settlement Amount will be paid to Claimant within 15 days of returning this executed Settlement Agreement to the Company.
2. In exchange for the Settlement Amount, Claimant, on behalf of himself/herself and his/her heirs, executors, administrators and representatives, hereby releases, as of the date Claimant executes the Settlement Agreement, the Company and its present, former, and future parent companies, subsidiaries, divisions, affiliates, related companies, joint ventures, and each of their respective present, former, and future officers, directors, shareholders, members, agents, employees, insurers, attorneys, accountants, owners, auditors, advisors, representatives, consultants, pension and welfare benefit plans, payroll companies, plan fiduciaries, administrators, trustees, general and limited partners, predecessors, successors and assigns, as well as any individual or entity who or which could be jointly liable with the Company and all persons or entities acting by, through, under, or in concert with any of them (hereinafter collectively "Released Parties"), of any and all claims, demands, rights, liabilities, and/or causes of action of any nature and description whatsoever, whether known or unknown, at law or in equity, whether under state, and/or local law, statute, ordinance, regulation, common law, or other source of law, which are asserted in the Complaint or could have been asserted against the Released Parties in the Complaint including, but not limited to, claims arising out of, derived from, or related to the facts and circumstances alleged in the Complaint (hereinafter collectively "Released Claims"). Released Claims include any and all California wage and hour related claims, constitutional, contractual, or common law claims for wages, damages, costs, penalties, liquidated damages, punitive damages, interest, attorney fees, litigation costs, restitution, equitable relief, declaratory relief, or other relief based on the California Labor Code and the wage orders of the California Industrial Welfare Commission including failure to provide compliant meal periods and/or rest breaks and pay meal period and/or rest period premiums, failure to promptly pay all wages due and owing at the time of Claimant's separation from employment, failure to provide accurate itemized wage statements, failure to pay for all hours worked at the correct rates of pay, unlawfully deducting wages, failure to keep accurate payroll and time records, failure to pay the California minimum wage and/or applicable minimum wage, failure to pay overtime, failure to reimburse business expenses, engaging in unlawful/unfair/fraudulent business practices in violation of California Business & Professions section 17200, *et seq.*, any and all California Labor Code violations, any and all violations of the Fair Labor Standards

Act, and all rights under California Civil Code section 1542 ("Section 1542") in respect of the Released Claims.

3. It is understood and agreed that the Settlement Agreement will **not** release any person, party, or entity from claims, if any, for available rights and remedies pursuant to California Labor Code section 233 (kin care), the Americans with Disabilities Act of 1990, the Family and Medical Leave Act of 1993, the California Family Rights Act, Workers' Compensation, Unemployment Insurance Benefits, or Disability Insurance Benefits of any nature, nor does it release any claims, actions, or causes of action which may be possessed by Claimant under state or federal discrimination/harassment statutes (or common law claims based on the policies recognized in such statutes) including, without limitation, the California Fair Employment and Housing Act, the California Government Code section 12940, *et seq.*; the Unruh Civil Rights Act, the California Civil Code section 51, *et seq.*; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, *et seq.*; the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, *et seq.*; the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 *et seq.*; the Older Workers Benefit Protection Act of 1990; the Age Discrimination in Employment Act of 1967; and all of their implementing regulations and interpretive guidelines.
4. As to the Released Claims only, Claimant agrees that all rights under section 1542 of the Civil Code of the State of California are hereby waived by Claimant. Section 1542 provides as follows:

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

Claimant understands that this paragraph means that if Claimant were to learn later that Claimant had a Released Claim that Claimant did not know about before Claimant signed this Settlement Agreement and Release, Claimant would be barred from bringing such a claim for occurrences or events up to and including the date Claimant signed this Settlement Agreement.

5. Should any provision of this Settlement Agreement be declared or be determined by any court of competent jurisdiction to be wholly or partially illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts, terms, or provisions shall not be affected thereby, and said illegal, unenforceable, or invalid part, term, or provision shall be deemed not to be part of this Settlement Agreement.
6. The Claimant agrees that Claimant will not disclose the amount of monies paid and the fact and terms of this Settlement Agreement, with the exception of the following: (a) spouses, (b) legal and/or tax counsel, (c) as may be required by law, and (d) as set forth in this Agreement. If asked by third parties about this Settlement Agreement or the facts included in the Released Claims, the Claimant shall only state that the matter was resolved.

Nothing in this agreement prevents the Claimant from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that the Claimant has reason to believe is unlawful.

7. This Settlement Agreement sets forth the entire agreement between the Parties and fully supersedes any and all prior agreements or understandings, written or oral, between the Parties, pertaining to the subject matter hereof. This Settlement Agreement may only be modified by way of a written document signed by both Parties.
8. All Parties are aware that certain state and federal income tax consequences may be incurred as a result of the execution of this Settlement Agreement. All Parties are independently relying on their own tax professionals and expert advice in connection with such consequences. Each party agrees not to look to any other party for reimbursement or indemnification of any such taxes.
9. Claimant acknowledges that Claimant has had the option and sufficient opportunity to consult with any attorney of Claimant's choosing about the subject of this Settlement Agreement prior to signing the Settlement Agreement.
10. Claimant represents and warrants that Claimant has not assigned any of the Released Claims to any other person or entity.

**PLEASE READ THIS SETTLEMENT AGREEMENT CAREFULLY.
IT CONTAINS A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS
AS TO THE RELEASED CLAIMS.**

I HEREBY ACKNOWLEDGE THAT I HAVE CAREFULLY READ AND UNDERSTAND ALL OF THE PROVISIONS IN THIS SETTLEMENT AGREEMENT. I VOLUNTARILY ACCEPT AND AGREE TO THE RECITALS AND TERMS OF THIS SETTLEMENT AGREEMENT WITH UNDERSTANDING OF THEIR CONSEQUENCES. I WILLINGLY INTEND TO BE LEGALLY BOUND BY THE SAME.

I VOLUNTARILY ENTER INTO THIS SETTLEMENT AGREEMENT ON MY OWN FREE WILL. I HAVE NOT BEEN COERCED, PRESSURED, OR THREATENED TO SIGN THIS SETTLEMENT AGREEMENT.

IT IS SO AGREED.

Date: _____

CLAIMANT SIGNATURE

Last Four Digits of SSN

CLAIMANT NAME

Date of Birth

Current Phone Number

Address Number & Street Name

City, State, Zip Code

To be completed by the Company:

DAVIS & ROBERTS CONSTRUCTION, INC.

Date: _____

By: _____

ACUERDO DE SOLUCIÓN Y LIBERACIÓN

Este Acuerdo de Solución y Liberación (“Acuerdo de Solución”) se celebra entre Jesus A. Arias (el “Reclamante”) y Davis & Roberts Construction, Inc. (la “Compañía”) (colectivamente referidas como las “Partes”).

RECITALES

- A. El 8 de Febrero de 2022, los abogados que representan a Jorge L. Leon (en lo sucesivo, el “Demandante”), un ex-empleado no exento de por hora de la Compañía, presentaron una demanda colectiva contra la Compañía en el Tribunal Superior del Condado de Fresno, el 7 de Marzo de 2022, Demandante presentó una primera enmenda a la demanda (“Demanda”). La Demanda de colectiva se titula “JORGE L. LEON, en su nombre y en nombre de todos los demás situados de manera similar, y como un ‘empleado agraviado’ en nombre de otros ‘empleados agraviados’ bajo el Código Laboral de la Ley del Fiscal General Privado de California de 2004, vs. DAVIS & ROBERTS CONSTRUCTION, INC., una Corporación de California”, y se le ha asignado el número de caso 22CECG00407 (en lo sucesivo denominado “Demanda Colectiva”). El Demandante está representado por David G. Spivak, Caroline Tahmassian, y Maya Cheaitani de The Spivak Law Firm, ubicado en 15303 Ventura Blvd., Suite 900, Sherman Oaks, California 91403, número de teléfono: (213) 725-9094.
- A. Demandante alega reclamos colectivos por: (1) Falta de Pagar Todos los Salarios Ganados Por Todas las Horas Trabajadas y Otras Horas Compensables a las Tasas Correctas de Pago (Código Laboral de California §§ 221, 510, 1194, 1197, y 1198); (2) Falta de Proporcionar Periodos de Descanso (Código Laboral de California §§ 226.7 y 1198); (3) Falta de Proporcionar Periodos de Comida (Código Laboral de California §§ 226.7, 512 y 1198); (4) Multas de Declaración de Salarios (Código Laboral de California § 226); (5) Multas Por Tiempo de Espera (Código Laboral de California § 203); (6) Competencia Injusta (Código Comercial y Profesional de California §§ 17200, *et seq.*; y (7) Multas Civiles (Código Laboral de California §§ 2698, *et seq.*), en su nombre y en el de otros empleados en situaciones similares, incluido usted, el Reclamante. Demandante afirma que debería poder reclamar daños y perjuicios y multas por estas acusaciones que se remontan al 8 de Febrero de 2018.
- B. La Compañía disputa cada una de las alegaciones en la Demanda.
- C. Reclamante entiende que si la corte aprueba la certificación de una clase, Reclamante podría ser un miembro de la clase, lo que significa que si hay un acuerdo o decisión de la corte a favor de la clase o clases, existe la posibilidad de que Reclamante pueda recibir dinero. Si la corte aprueba la Demanda Colectiva, los intereses de la Compañía pueden volverse adversos a los de Reclamante. La Corte aún no ha fijado fecha para el juicio. Demandante y la Compañía asistieron previamente a una mediación para tratar de resolver el asunto el 3 de Noviembre de 2022, pero no pudieron llegar a un acuerdo.
- D. Reclamante entiende que Reclamante será inelegible para recibir compensación en la Demanda Colectiva por reclamos asentados bajo este Acuerdo de Solución.
- E. Las Partes han decidido entrar en este Acuerdo de Solución para resolver todos los asuntos expuestas anteriormente.

TÉRMINOS

Las Recitales anteriores se incorporan por completo como un término material de este Acuerdo de Solución, y por la presente se acuerda por y entre las Partes lo siguiente:

1. Este Acuerdo es un compromiso de reclamos disputados y nada contenido aquí debe interpretarse como una admisión de responsabilidad por parte de cualquier persona liberada por el presente.
1. A cambio de la liberación de Reclamante que se establece a continuación, la Compañía le pagará a Reclamante mediante un cheque de cantidad bruta de \$_____ (el “Monto de Solución”). Veinticinco Por Ciento (25%) del Monto de Solución se trata como salarios impagados y se le retendrán las deducciones de nómina requeridas sobre esa parte del Monto de Solución. La cantidad restante de la cantidad del acuerdo se tratará como intereses y penalidades para propósitos del Acuerdo de Solución y pagado sin deducciones de nómina. El Monto de Solución se pagará al Demandante dentro de los 15 días posteriores a la devolución de este Acuerdo de Solución ejecutado a la Compañía.
2. A cambio de la cantidad del Acuerdo de Solución, Reclamante, en nombre de Reclamante y sus herederos, ejecutores, administradores y representantes, por el presente libera, a partir de la fecha en que Reclamante ejecuta el Acuerdo de Solución, la Compañía y sus actuales y anteriores matrices, subsidiarias, divisiones, afiliadas incluyendo pero no limitado a compañías relacionadas, empresas conjuntas y cada uno de sus oficiales respectivos actuales y anteriores, directores, accionistas, miembros, agentes, empleados, aseguradores, abogados, contadores, auditores, asesores, representantes, consultantes, planes de beneficios de pensión y bienestar, compañías de nómina, fiduciarios del plan, administradores, fideicomisarios, socios generales y limitados, predecesores, sucesores y cesionarios (de aquí en adelante, “Partes Liberadas”), de todos y cada uno de los reclamos, demandas, derechos, responsabilidades, y/o causas de acción de cualquier naturaleza y descripción de cualquier tipo, ya sea conocida o desconocida, en derecho o en equidad, ya sea bajo el estado, y/o ley local, estatuto, ordenanza, regulación, ley común u otra fuente de ley, que se afirman en la Demanda o podrían haberse afirmado contra las Partes Liberadas en la Demanda, incluyendo, pero no limitado a, reclamaciones surgiendo o derivadas de, o relacionadas con los hechos y circunstancias alegadas en la Demanda (de aquí en adelante colectivamente “Reclamaciones Liberadas”). Las Reclamaciones Liberadas incluyen cualquiera y toda reclamación relacionada con salarios y horas de California, reclamaciones constitucionales, contractuales o de ley común por salarios, daños, costos, penalizaciones, daños liquidados, daños punitivos, intereses, honorarios de abogados, costos de litigios, restitución, compensación equitativa u otro alivio basado en el Código Laboral de California y las órdenes salariales de la Comisión de Bienestar Industrial de California incluyendo la falta de proporcionar períodos de comida y/o descansos que cumplan con los requisitos y pagar las primas del período de comida y/o descanso, falta de oportunamente pagar todos los salarios adeudados en el momento de la separación del de empleo del Reclamante, falta de proporcionar declaraciones de salarios detalladas precisas, falta de pago de todas las horas trabajadas a las tasas de pago correctas, deducción ilegal de salarios, falta de mantener registros precisos de nómina y tiempo, falta de pagar el salario mínimo de California y/o salario mínimo aplicable, falta de pagar horas

extras, falta de reembolsar por gastos de negocio, participar en prácticas comerciales ilegales/desleales/fraudulentas en violación de la Sección 17200, *et seq.*, todas y cada una de las violaciones del Código Laboral de California, cualquier y todas las violaciones de la Ley de Normas Justas Laborales, y todos los derechos bajo sección 1542 del Código Civil de California (“Sección 1542”) con respecto a las Reclamaciones Liberadas.

3. Se entiende y acuerda que el Acuerdo de Solución **no** liberará a cualquiera persona, parte, o entidad de los reclamos, si hay alguno, de los derechos y recursos disponibles de conformidad con sección 233 del Código Laboral de California (cuidado de parentesco), la Ley de Estadounidenses con Discapacidades de 1990, la Ley de Licencia Médica y Familiar de 1993, la Ley de Derechos Familiares de California, Compensación a los Trabajadores, Beneficios de Seguro de Desempleo o Beneficios de Seguro de Discapacidad de cualquier naturaleza, ni tampoco libera ninguna reclamación, acción o causa de acción que pueda ser poseída por Reclamante bajo los estatutos estatales o federales de discriminación/acoso (o reclamos de ley común basados en las políticas reconocidas en dichos estatutos) incluyendo, sin limitación, la Ley de Empleo y Vivienda Justa de California, la sección 12940, *et seq.* del Código de Gobierno de California; la Ley de Derechos Civiles de Unruh, la sección 51 del Código Civil de California, *et seq.*; la Constitución de California; Título VII de la Ley de Derechos Civiles de 1964, 42 U.S.C. § 2000, *et seq.*; la Ley de Estadounidenses con Discapacidades, según enmendada, 42 U.S.C. § 12101, *et seq.*; la Ley de Seguridad de Ingresos de Jubilación para Empleados de 1974, según enmendada, 29 U.S.C. § 1001 *et seq.*; la Ley de Protección de Beneficios para Trabajadores Mayores de 1990; la Ley de Discriminación por Edad en el Empleo de 1967; y todas sus regulaciones de implementación y guías interpretativas.
4. En cuanto a las Reclamaciones Liberadas solamente, Reclamante acuerda que todos derechos bajo la sección 1542 del Código Civil del Estado de California de aquí en adelante se renuncian por Reclamante. La sección 1542 dispone lo siguiente:

Una liberación general no se extiende a reclamaciones que el acreedor o parte de liberación desconoce o sospecha que existen a su favor en el momento de la ejecución de la liberación, que si las conociera el/ella, hubieran afectado materialmente su asentamiento con el deudor o parte liberada.

Reclamante entiende que este párrafo significa que si Reclamante hubiese aprender después que Reclamante tenía una Reclamación Liberada que no conocía antes de que Reclamante firmo este Acuerdo de Solución y Liberación, se le prohibiría a Reclamante presentar tal reclamo por ocurrencias o eventos hasta y incluyendo la fecha en que Reclamante firmó este Acuerdo de Solución.

5. En caso de que alguna disposición de este Acuerdo de Solución sea declarada o sea determinada por cualquier tribunal de jurisdicción competente como total o parcialmente ilegal, inválida, o inaplicable, la legalidad, validez y exigibilidad del resto de las partes, términos o disposiciones no se verán afectados por ello, y dicha parte, término o disposición ilegal, inaplicable, o inválida, se considerará que no forma parte de este Acuerdo de Solución.

6. Reclamante acuerda que Reclamante no revelará la cantidad de dinero pagado y el hecho y los términos de este Acuerdo de Solución, con excepción de los siguientes: (a) cónyuges, (b) asesores legales y/ o fiscales, (c) según lo requiera la ley; y (d) según se establece en este Acuerdo. Si personas terceras le preguntan sobre este Acuerdo de Solución, o los hechos incluidos en las Reclamaciones Liberadas, el Reclamante sólo deberá decir que el asunto fue resuelto. Nada en este acuerdo impide que el Demandante discuta o divulgue información sobre actos ilegales en el lugar de trabajo, como acoso o discriminación o cualquier otra conducta que el Reclamante tenga razones para creer que es ilegal.
7. Este Acuerdo de Solución establece el acuerdo completo entre las Partes y completamente reemplaza cualquiera y todos los acuerdos o entendimientos previos, escritos u orales, entre las Partes, en relación con el objeto del presente. Este Acuerdo de Solución solo puede ser modificado por medio de un documento escrito firmado por ambas Partes.
8. Todas las Partes estan conscientes de que se pueden incurrir en ciertas consecuencias fiscales estatales y federales como resultado de la ejecución de este Acuerdo de Solución. Todas las Partes confían de forma independiente en sus propios profesionales fiscales y en el asesoramiento de expertos en relación con dichas consecuencias. Cada Parte acuerda no solicitar a ninguna otra Parte el reembolso o la indemnización de dichos impuestos.
9. Reclamante reconoce que ha tenido la opción y suficiente oportunidad de consultar con cualquier abogado de su elección sobre el tema de este Acuerdo de Solución antes de firmar el Acuerdo de Solución.
10. Reclamante representa y garantiza que Reclamante no ha asignado cualquiera de las Reclamaciones Liberadas a cualquier otra persona o entidad.

**POR FAVOR LEA ESTE ACUERDO CUIDADOSAMENTE. CONTIENE UNA
LIBERACIÓN DE TODAS LAS RECLAMACIONES CONOCIDAS Y
DESCONOCIDAS EN CUANTO A LAS RECLAMACIONES LIBERADAS.**

POR LO PRESENTE, RECONOZCO QUE YO HE LEÍDO CUIDADOSAMENTE Y ENTENDIDO TODAS LAS DISPOSICIONES DE ESTE ACUERDO DE SOLUCION. YO VOLUNTARIAMENTE ACEPTO Y ACUERDO A LAS RECITALES Y TÉRMINOS DE ESTE ACUERDO CON EL ENTENDIMIENTO DE SUS CONSECUENCIAS. YO VOLUNTARIAMENTE TENGO LA INTENCION DE SER LEGALMENTE OBLIGADO POR EL MISMO.

YO, VOLUNTARIAMENTE ENTRO EN ESTE ACUERDO DE SOLUCION POR MI PROPIA Y LIBRE VOLUNTAD. YO NO HE SIDO FORZADO, PRESURIZADO O AMENAZADO PARA FIRMAR ESTE ACUERDO.

ASÍ SE ACUERDA.

Fecha: _____

FIRMA DE RECLAMANTE

Últimos cuatro dígitos de SSN

NOMBRE DE RECLAMANTE

Fecha de Nacimiento

Número de teléfono actual

Dirección y Nombre de la Calle

Ciudad, Estado, Código Posta

Para ser completado por la Compañía:

DAVIS & ROBERTS CONSTRUCTION, INC.

Fecha: _____

Por: _____

EXHIBIT B

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement”) is entered into by Daniel S. Adams (the “Claimant”) and Davis & Roberts Construction, Inc. (the “Company”) (collectively referred to as the “Parties”).

RECITALS

- A. On February 8, 2022, the attorneys representing Jorge L. Leon (hereinafter referred to as “Plaintiff”), a former hourly non-exempt employee of the Company, filed a class action complaint against the Company in the Fresno County Superior Court, and on March 7, 2022, Plaintiff filed a first amended complaint (“Complaint”). The class action Complaint is entitled “JORGE L. LEON, on behalf of himself 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, vs. DAVIS & ROBERTS CONSTRUCTION, INC., a California corporation”, and has been assigned Case Number 22CECG00407 (hereinafter referred to as “Class Action Lawsuit”). Plaintiff is represented by David G. Spivak, Caroline Tahmassian, and Maya Cheaitani of The Spivak Law Firm, located at 15303 Ventura Blvd., Suite 900, Sherman Oaks, California 91403, telephone number: (213) 725-9094.
- B. Plaintiff alleges class claims for: (1) Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Cal. Lab. Code §§ 221, 510, 1194, 1197, and 1198); (2) Failure to Provide Rest Breaks (Cal. Lab. Code §§ 226.7 and 1198); (3) Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512 and 1198); (4) Wage Statement Penalties (Cal. Lab. Code § 226); (5) Waiting Time Penalties (Cal. Lab. Code § 203); (6) Unfair Competition (Cal. Bus. & Prof. Code §§ 17200, *et seq.*; and (7) Civil Penalties (Cal. Lab. Code §§ 2698, *et seq.*), on behalf of himself and other similarly situated employees, including you, the Claimant. Plaintiff claims that he should be able to seek damages and penalties for these allegations going back to February 8, 2018.
- C. The Company disputes each of the allegations in the Complaint.
- D. Claimant understands that if the court approves certification of a class, Claimant could be a class member, which means if there is a settlement or judgment in the proposed class or classes’ favor, a possibility exists that Claimant could receive money. If the court approves the class action, the interests of the Company may become adverse to Claimant. The Court has not set a trial date yet. Plaintiff and the Company previously attended mediation to try to resolve the matter on November 3, 2022, but were not able to reach an agreement.
- E. Claimant understands that Claimant will be ineligible to receive compensation in the Class Action Lawsuit for claims settled under this Settlement Agreement.
- F. The Parties have decided to enter into this Settlement Agreement in order to resolve all of the issues set forth above.

TERMS

The Recitals above are fully incorporated as a material term of this Settlement Agreement, and it is hereby agreed by and between the Parties as follows:

1. This Settlement Agreement is a compromise of disputed claims and nothing contained herein is to be construed as an admission of liability on the part of anyone hereby released.
2. In exchange for the release from Claimant set forth below, the Company will pay Claimant by check the gross amount of \$_____ (the "Settlement Amount"). A check for this amount is enclosed with this Settlement Agreement. Twenty-Five Percent (25%) of the Settlement Amount is being treated as unpaid wages and will have required payroll deductions withheld on that part of the Settlement Amount. The remaining Settlement Amount will be treated as interest and penalties for purposes of settlement and paid without payroll deductions.
3. **Claimant may accept this Settlement Agreement and its terms either (1) by depositing or cashing the enclosed check, or (2) by signing and returning this Settlement Agreement to Davis & Roberts Construction, Inc., Attention to: Cynthia Dancy, 4171 E. Therese Avenue, Fresno, California 93725, and then depositing or cashing the enclosed check.**
4. In exchange for the Settlement Amount, Claimant, on behalf of himself/herself and his/her heirs, executors, administrators and representatives, hereby releases, as of the date Claimant executes the Settlement Agreement, the Company and its present, former, and future parent companies, subsidiaries, divisions, affiliates, related companies, joint ventures, and each of their respective present, former, and future officers, directors, shareholders, members, agents, employees, insurers, attorneys, accountants, owners, auditors, advisors, representatives, consultants, pension and welfare benefit plans, payroll companies, plan fiduciaries, administrators, trustees, general and limited partners, predecessors, successors and assigns, as well as any individual or entity who or which could be jointly liable with the Company and all persons or entities acting by, through, under, or in concert with any of them (hereinafter collectively "Released Parties"), of any and all claims, demands, rights, liabilities, and/or causes of action of any nature and description whatsoever, whether known or unknown, at law or in equity, whether under state, and/or local law, statute, ordinance, regulation, common law, or other source of law, which are asserted in the Complaint or could have been asserted against the Released Parties in the Complaint including, but not limited to, claims arising out of, derived from, or related to the facts and circumstances alleged in the Complaint (hereinafter collectively "Released Claims"). Released Claims include any and all California wage and hour related claims, constitutional, contractual, or common law claims for wages, damages, costs, penalties, liquidated damages, punitive damages, interest, attorney fees, litigation costs, restitution, equitable relief, declaratory relief, or other relief based on the California Labor Code and the wage orders of the California Industrial Welfare Commission including failure to provide compliant meal periods and/or rest breaks and pay meal period and/or rest period premiums, failure to promptly pay all wages due and owing at the time of Claimant's separation from employment, failure to provide accurate itemized wage

statements, failure to pay for all hours worked at the correct rates of pay, unlawfully deducting wages, failure to keep accurate payroll and time records, failure to pay the California minimum wage and/or applicable minimum wage, failure to pay overtime, failure to reimburse business expenses, engaging in unlawful/unfair/fraudulent business practices in violation of California Business & Professions section 17200, *et seq.*, any and all California Labor Code violations, any and all violations of the Fair Labor Standards Act, and all rights under California Civil Code section 1542 ("Section 1542") in respect of the Released Claims.

5. It is understood and agreed that the Settlement Agreement will **not** release any person, party, or entity from claims, if any, for available rights and remedies pursuant to California Labor Code section 233 (kin care), the Americans with Disabilities Act of 1990, the Family and Medical Leave Act of 1993, the California Family Rights Act, Workers' Compensation, Unemployment Insurance Benefits, or Disability Insurance Benefits of any nature, nor does it release any claims, actions, or causes of action which may be possessed by Claimant under state or federal discrimination/harassment statutes (or common law claims based on the policies recognized in such statutes) including, without limitation, the California Fair Employment and Housing Act, the California Government Code section 12940, *et seq.*; the Unruh Civil Rights Act, the California Civil Code section 51, *et seq.*; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, *et seq.*; the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, *et seq.*; the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 *et seq.*; the Older Workers Benefit Protection Act of 1990; the Age Discrimination in Employment Act of 1967; and all of their implementing regulations and interpretive guidelines.
6. As to the Released Claims only, Claimant agrees that all rights under section 1542 of the Civil Code of the State of California are hereby waived by Claimant. Section 1542 provides as follows:

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

Claimant understands that this paragraph means that if Claimant were to learn later that Claimant had a Released Claim that Claimant did not know about before Claimant signed this Settlement Agreement and Release, Claimant would be barred from bringing such a claim for occurrences or events up to and including the date Claimant signed this Settlement Agreement.

7. Should any provision of this Settlement Agreement be declared or be determined by any court of competent jurisdiction to be wholly or partially illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts, terms, or provisions shall not be affected thereby, and said illegal, unenforceable, or invalid part, term, or provision shall be deemed not to be part of this Settlement Agreement.

8. The Claimant agrees that Claimant will not disclose the amount of monies paid and the fact and terms of this Settlement Agreement, with the exception of the following: (a) spouses, (b) legal and/or tax counsel, (c) as may be required by law, and (d) as set forth in this Agreement. If asked by third parties about this Settlement Agreement or the facts included in the Released Claims, the Claimant shall only state that the matter was resolved. Nothing in this agreement prevents the Claimant from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that the Claimant has reason to believe is unlawful.
9. This Settlement Agreement sets forth the entire agreement between the Parties and fully supersedes any and all prior agreements or understandings, written or oral, between the Parties, pertaining to the subject matter hereof. This Settlement Agreement may only be modified by way of a written document signed by both Parties.
10. All Parties are aware that certain state and federal income tax consequences may be incurred as a result of the execution of this Settlement Agreement. All Parties are independently relying on their own tax professionals and expert advice in connection with such consequences. Each party agrees not to look to any other party for reimbursement or indemnification of any such taxes.
11. Claimant acknowledges that Claimant has had the option and sufficient opportunity to consult with any attorney of Claimant's choosing about the subject of this Settlement Agreement prior to signing the Settlement Agreement.
12. Claimant represents and warrants that Claimant has not assigned any of the Released Claims to any other person or entity.

**PLEASE READ THIS SETTLEMENT AGREEMENT CAREFULLY.
IT CONTAINS A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS
AS TO THE RELEASED CLAIMS.**

I HEREBY ACKNOWLEDGE THAT I HAVE CAREFULLY READ AND UNDERSTAND ALL OF THE PROVISIONS IN THIS SETTLEMENT AGREEMENT. I VOLUNTARILY ACCEPT AND AGREE TO THE RECITALS AND TERMS OF THIS SETTLEMENT AGREEMENT WITH UNDERSTANDING OF THEIR CONSEQUENCES. I WILLINGLY INTEND TO BE LEGALLY BOUND BY THE SAME.

I VOLUNTARILY ENTER INTO THIS SETTLEMENT AGREEMENT ON MY OWN FREE WILL. I HAVE NOT BEEN COERCED, PRESSURED, OR THREATENED TO SIGN THIS SETTLEMENT AGREEMENT.

IT IS SO AGREED.

Date: _____

CLAIMANT SIGNATURE

Last Four Digits of SSN

CLAIMANT NAME

Date of Birth

Current Phone Number

Address Number & Street Name

City, State, Zip Code

To be completed by the Company:

DAVIS & ROBERTS CONSTRUCTION, INC.

Date: _____

By: _____

ACUERDO DE SOLUCIÓN Y LIBERACIÓN

Este Acuerdo de Solución y Liberación (“Acuerdo de Solución”) se celebra entre Daniel S. Adams (el “Reclamante”) y Davis & Roberts Construction, Inc. (la “Compañía”) (colectivamente referidas como las “Partes”).

RECITALES

- A. El 8 de Febrero de 2022, los abogados que representan a Jorge L. Leon (en lo sucesivo, el “Demandante”), un ex-empleado no exento de por hora de la Compañía, presentaron una demanda colectiva contra la Compañía en el Tribunal Superior del Condado de Fresno, el 7 de Marzo de 2022, Demandante presentó una primera enmenda a la demanda (“Demanda”). La Demanda de colectiva se titula “JORGE L. LEON, en su nombre y en nombre de todos los demás situados de manera similar, y como un ‘empleado agraviado’ en nombre de otros ‘empleados agraviados’ bajo el Código Laboral de la Ley del Fiscal General Privado de California de 2004, vs. DAVIS & ROBERTS CONSTRUCTION, INC., una Corporación de California”, y se le ha asignado el número de caso 22CECG00407 (en lo sucesivo denominado “Demanda Colectiva”). El Demandante está representado por David G. Spivak, Caroline Tahmassian, y Maya Cheaitani de The Spivak Law Firm, ubicado en 15303 Ventura Blvd., Suite 900, Sherman Oaks, California 91403, número de teléfono: (213) 725-9094.
- B. Demandante alega reclamos colectivos por: (1) Falta de Pagar Todos los Salarios Ganados Por Todas las Horas Trabajadas y Otras Horas Compensables a las Tasas Correctas de Pago (Código Laboral de California §§ 221, 510, 1194, 1197, y 1198); (2) Falta de Proporcionar Periodos de Descanso (Código Laboral de California §§ 226.7 y 1198); (3) Falta de Proporcionar Periodos de Comida (Código Laboral de California §§ 226.7, 512 y 1198); (4) Multas de Declaración de Salarios (Código Laboral de California § 226); (5) Multas Por Tiempo de Espera (Código Laboral de California § 203); (6) Competencia Injusta (Código Comercial y Profesional de California §§ 17200, *et seq.*; y (7) Multas Civiles (Código Laboral de California §§ 2698, *et seq.*), en su nombre y en el de otros empleados en situaciones similares, incluido usted, el Reclamante. Demandante afirma que debería poder reclamar daños y perjuicios y multas por estas acusaciones que se remontan al 8 de Febrero de 2018.
- C. La Compañía disputa cada una de las alegaciones en la Demanda.
- D. Reclamante entiende que si la corte aprueba la certificación de una clase, Reclamante podría ser un miembro de la clase, lo que significa que si hay un acuerdo o decisión de la corte a favor de la clase o clases, existe la posibilidad de que Reclamante pueda recibir dinero. Si la corte aprueba la Demanda Colectiva, los intereses de la Compañía pueden volverse adversos a los de Reclamante. Actualmente no se ha fijado una fecha de juicio. Demandante y la Compañía asistieron previamente a una mediación para tratar de resolver el asunto el 3 de Noviembre de 2022, pero no pudieron llegar a un acuerdo.
- E. Reclamante entiende que Reclamante será inelegible para recibir compensación en la Demanda Colectiva por reclamos asentados bajo este Acuerdo de Solución.

- F. Las Partes han decidido entrar en este Acuerdo de Solución para resolver todas los asuntos expuestas anteriormente.

TÉRMINOS

Las Recitales anteriores se incorporan por completo como un término material de este Acuerdo de Solución, y por la presente se acuerda por y entre las Partes lo siguiente:

1. Este Acuerdo es un compromiso de reclamos disputados y nada contenido aquí debe interpretarse como una admisión de responsabilidad por parte de cualquier persona liberada por el presente.
2. A cambio de la liberación de Reclamante que se establece a continuación, la Compañía le pagará a Reclamante mediante un cheque de cantidad bruta de \$_____ (el “Monto de Solución”). Se adjunta un cheque por esta cantidad a este Acuerdo de Solución. Veinticinco Por Ciento (25%) del Monto de Solución se trata como salarios impagados y se le retendrán las deducciones de nómina requeridas sobre esa parte del Monto de Solución. La cantidad restante de la cantidad del acuerdo se tratará como intereses y penalidades para propósitos del Acuerdo de Solución y pagado sin deducciones de nómina.
3. **Reclamante puede aceptar este Acuerdo de Solución y sus términos ya sea mediante (1) depositando o cobrando el cheque adjunto, o (2) firmando y devolviendo este Acuerdo de Solución a Davis & Roberts Construction, Inc., a Atención de: Cynthia Dancy, 4171 E. Therese Avenue, Fresno, California 93725, y luego depositando o cobrando el cheque adjunto.**
4. A cambio de la cantidad del Acuerdo de Solución, Reclamante, en nombre de Reclamante y sus herederos, ejecutores, administradores y representantes, por el presente libera, a partir de la fecha en que Reclamante ejecuta el Acuerdo de Solución, la Compañía y sus actuales y anteriores matrices, subsidiarias, divisiones, afiliadas incluyendo pero no limitado a compañías relacionadas, empresas conjuntas y cada uno de sus oficiales respectivos actuales y anteriores, directores, accionistas, miembros, agentes, empleados, aseguradores, abogados, contadores, auditores, asesores, representantes, consultantes, planes de beneficios de pensión y bienestar, compañías de nómina, fiduciarios del plan, administradores, fideicomisarios, socios generales y limitados, predecesores, sucesores y cesionarios (de aquí en adelante, “Partes Liberadas”), de todos y cada uno de los reclamos, demandas, derechos, responsabilidades, y/o causas de acción de cualquier naturaleza y descripción de cualquier tipo, ya sea conocida o desconocida, en derecho o en equidad, ya sea bajo el estado, y/o ley local, estatuto, ordenanza, regulación, ley común u otra fuente de ley, que se afirman en la Demanda o podrían haberse afirmado contra las Partes Liberadas en la Demanda, incluyendo, pero no limitado a, reclamaciones surgiendo o derivadas de, o relacionadas con los hechos y circunstancias alegadas en la Demanda (de aquí en adelante colectivamente “Reclamaciones Liberadas”). Las Reclamaciones Liberadas incluyen cualquiera y toda reclamación relacionada con salarios y horas de California, reclamaciones constitucionales, contractuales o de ley común por salarios, daños, costos, penalizaciones, daños liquidados, daños punitivos, intereses, honorarios de abogados, costos de litigios, restitución, compensación equitativa u otro alivio basado en el Código Laboral de California y las órdenes salariales de la Comisión de Bienestar

Industrial de California incluyendo la falta de proporcionar períodos de comida y/o descansos que cumplan con los requisitos y pagar las primas del período de comida y/o descanso, falta de oportunamente pagar todos los salarios adeudados en el momento de la separación del de empleo del Reclamante, falta de proporcionar declaraciones de salarios detalladas precisas, falta de pago de todas las horas trabajadas a las tasas de pago correctas, deducción ilegal de salarios, falta de mantener registros precisos de nómina y tiempo, falta de pagar el salario mínimo de California y/o salario mínimo aplicable, falta de pagar horas extras, falta de reembolsar por gastos de negocio, participar en prácticas comerciales ilegales/desleales/fraudulentas en violación de la Sección 17200, *et seq.*, todas y cada una de las violaciones del Código Laboral de California, cualquier y todas las violaciones de la Ley de Normas Justas Laborales, y todos los derechos bajo sección 1542 del Código Civil de California (“Sección 1542”) con respecto a las Reclamaciones Liberadas.

5. Se entiende y acuerda que el Acuerdo de Solución **no** liberará a cualquier persona, parte, o entidad de los reclamos, si hay alguno, de los derechos y recursos disponibles de conformidad con sección 233 del Código Laboral de California (cuidado de parentesco), la Ley de Estadounidenses con Discapacidades de 1990, la Ley de Licencia Médica y Familiar de 1993, la Ley de Derechos Familiares de California, Compensación a los Trabajadores, Beneficios de Seguro de Desempleo o Beneficios de Seguro de Discapacidad de cualquier naturaleza, ni tampoco libera ninguna reclamación, acción o causa de acción que pueda ser poseída por Reclamante bajo los estatutos estatales o federales de discriminación/acoso (o reclamos de ley común basados en las políticas reconocidas en dichos estatutos) incluyendo, sin limitación, la Ley de Empleo y Vivienda Justa de California, la sección 12940, *et seq.* del Código de Gobierno de California; la Ley de Derechos Civiles de Unruh, la sección 51, *et seq.* del Código Civil de California; la Constitución de California; Título VII de la Ley de Derechos Civiles de 1964, 42 U.S.C. § 2000, *et seq.*; la Ley de Estadounidenses con Discapacidades, según enmendada, 42 U.S.C. § 12101, *et seq.*; la Ley de Seguridad de Ingresos de Jubilación para Empleados de 1974, según enmendada, 29 U.S.C. § 1001, *et seq.*; la Ley de Protección de Beneficios para Trabajadores Mayores de 1990; la Ley de Discriminación por Edad en el Empleo de 1967; y todas sus regulaciones de implementación y guías interpretativas.
6. En cuanto a las Reclamaciones Liberadas solamente, Reclamante acuerda que todos derechos bajo la sección 1542 del Código Civil del Estado de California de aquí en adelante se renuncian por Reclamante. La sección 1542 dispone lo siguiente:

Una liberación general no se extiende a reclamaciones que el acreedor o parte de liberación desconoce o sospecha que existen a su favor en el momento de la ejecución de la liberación, que si las conociera el/ella, hubieran afectado materialmente su asentamiento con el deudor o parte liberada.

Reclamante entiende que este párrafo significa que si Reclamante hubiese aprender después que Reclamante tenía una Reclamación Liberada que no conocía antes de que Reclamante firmo este Acuerdo de Solución y Liberación, se le prohibiría a Reclamante

presentar tal reclamo por ocurrencias o eventos hasta y incluyendo la fecha en que Reclamante firmó este Acuerdo de Solución.

7. En caso de que alguna disposición de este Acuerdo de Solución sea declarada o sea determinada por cualquier tribunal de jurisdicción competente como total o parcialmente ilegal, inválida, o inaplicable, la legalidad, validez y exigibilidad del resto de las partes, términos o disposiciones no se verán afectados por ello, y dicha parte, término o disposición ilegal, inaplicable, o inválida, se considerará que no forma parte de este Acuerdo de Solución.
8. Reclamante acuerda que Reclamante no revelará la cantidad de dinero pagado y el hecho y los términos de este Acuerdo de Solución, con excepción de los siguientes: (a) cónyuges, (b) asesores legales y/ o fiscales, (c) según lo requiera la ley; y (d) según se establece en este Acuerdo. Si personas terceras le preguntan sobre este Acuerdo de Solución, o los hechos incluidos en las Reclamaciones Liberadas, el Reclamante sólo deberá decir que el asunto fue resuelto. Nada en este acuerdo impide que el Demandante discuta o divulgue información sobre actos ilegales en el lugar de trabajo, como acoso o discriminación o cualquier otra conducta que el Reclamante tenga razones para creer que es ilegal.
9. Este Acuerdo de Solución establece el acuerdo completo entre las Partes y completamente reemplaza cualquiera y todos los acuerdos o entendimientos previos, escritos u orales, entre las Partes, en relación con el objeto del presente. Este Acuerdo de Solución solo puede ser modificado por medio de un documento escrito firmado por ambas Partes.
10. Todas las Partes están conscientes de que se pueden incurrir en ciertas consecuencias fiscales estatales y federales como resultado de la ejecución de este Acuerdo de Solución. Todas las Partes confían de forma independiente en sus propios profesionales fiscales y en el asesoramiento de expertos en relación con dichas consecuencias. Cada Parte acuerda no solicitar a ninguna otra Parte el reembolso o la indemnización de dichos impuestos.
11. Reclamante reconoce que ha tenido la opción y suficiente oportunidad de consultar con cualquier abogado de su elección sobre el tema de este Acuerdo de Solución antes de firmar el Acuerdo de Solución.
12. Reclamante representa y garantiza que Reclamante no ha asignado cualquiera de las Reclamaciones Liberadas a cualquier otra persona o entidad.

**POR FAVOR LEA ESTE ACUERDO CUIDADOSAMENTE. CONTIENE UNA
LIBERACIÓN DE TODAS LAS RECLAMACIONES CONOCIDAS Y
DESCONOCIDAS EN CUANTO A LAS RECLAMACIONES LIBERADAS.**

**POR LO PRESENTE, RECONOZCO QUE YO HE LEÍDO CUIDADOSAMENTE Y
ENTENDIDO TODAS LAS DISPOSICIONES DE ESTE ACUERDO DE SOLUCION. YO
VOLUNTARIAMENTE ACEPTO Y ACUERDO A LAS RECITALES Y TÉRMINOS DE
ESTE ACUERDO CON EL ENTENDIMIENTO DE SUS CONSECUENCIAS. YO
VOLUNTARIAMENTE TENGO LA INTENCION DE SER LEGALMENTE OBLIGADO
POR EL MISMO.**

YO, VOLUNTARIAMENTE ENTRO EN ESTE ACUERDO DE SOLUCION POR MI PROPIA Y LIBRE VOLUNTAD. YO NO HE SIDO FORZADO, PRESURIZADO O AMENAZADO PARA FIRMAR ESTE ACUERDO.

ASÍ SE ACUERDA.

Fecha: _____

FIRMA DE RECLAMANTE

Últimos cuatro dígitos de SSN

NOMBRE DE RECLAMANTE

Fecha de Nacimiento

Número de teléfono actual

Dirección y Nombre de la Calle

Ciudad, Estado, Código Posta

Para ser completado por la Compañía:

DAVIS & ROBERTS CONSTRUCTION, INC.

Fecha: _____

Por: _____

EXHIBIT 22

WEEKLY TIME CARD
TARJETA DE TIEMPO SEMANAL



Jose Leon
Employee Name

Nombre De Empleado

1/8/21
Week Ending Date

Fecha De Fin De Semana

Work Codes/Codigos

Day/Dia	Date Fecha	Job # Trabajo #	Work Code Codigo	Start Time El Tiempo Empezó	1st Break Time Out	1st Descanso Time In	Lunch Break Time Out	Hora de Comer Time In	2nd Break Time Out	2nd Descanso Time In	Time Out Acabo	Total Hours Horas Totales	
													1000 Curb & Gutter
													1001 Side Walk
Monday/Lunes	1/4/21	2056	1000	7:00am	11:00	11:10	12:00	12:30	-	-	4:00	8 1/2	1002 Handicap Ramp
													1003 Curb Only
													1004 V Gutter
Tuesday/Martes	1/5/21	2056	1000	7:00am	10:00	11:10	12:00	12:30			4:00	8 1/2	1005 Cross Gutter
													1008 Slabs
													1010 Channel Drains
Wednesday/ Miercoles	1/6/21	2056	1000	7:00	10:00	10:10	12:00	12:30			3:40	8	1013 Patio/Walkway
													1014 Demolition
													1015 Mow Strip
Thursday/ Jueves	1/7/21	2056	10:00	7:00	10:00	10:10	12:00	12:30			4:00	8 1/2	1018 Drive Approach
													1019 Repairs
													1023 Footings
Friday/Viernes	1/8/21	2056	1000	6:30	10:00	10:10	12:00	12:30			4:00	9 1/2	1027 Miscellaneous
													1031 Trash Enclosure
													1045 Extra's
Saturday/Sabado													
Sunday/Domingo													

Rest and Meal Period and Time Acknowledgement

Período de descanso y tiempo de comida, reconocimiento de tiempo

I understand that I am entitled to be provided: (1) a duty free rest break of at least 10 minutes for every four hours worked or major fraction thereof; (2) a duty free and uninterrupted meal break of at least 30 minutes within the first 5 hours if I work at least five hours in a workday

Entiendo que tengo derecho: (1) un descanso de 10 minutos libre de impuestos; (2) un descanso de 30 minutos libre de impuestos para comer, dentro de las primeras 5 horas de trabajo

I hereby certify and declare that, for each workday that occurred within the pay period covered by this time card, (1) I was provided all my rest and meal periods in accordance with Davis & Roberts meal and rest break for all hourly employees or have notified management as to each date(s) for which a meal or rest break was not provided pursuant to those policies; (2) this time card fully and accurately reports all time that I have worked; and (3) that I have not worked off the clock.

Por la presente certifico y declaro por cada día laboral en este período de pago, (1) Me proporcionaron todas mis comidas y períodos de descanso de acuerdo con las políticas de Davis & Roberts Construction Inc. (2) Esta tarjeta de tiempo informa con precisión todo el tiempo que he trabajado; (3) y que no he trabajado fuera del reloj

[Signature]
Employee Signature
Firma del empleado

1/8/21
Date
Fecha

[Signature]
Supervisor/Foreman Signature
Firma Del Supervisor /Capataz

1-8-21
Date
Fecha

WEEKLY TIME CARD
TARJETA DE TIEMPO SEMANAL



4-9-21
Week Ending Date

Employee Name
Nombre De Empleado

Fecha De Fin De Semana

Work Codes/Codigos

Day/Dia	Date Fecha	Job # Trabajo #	Work Code Codigo	Start Time El Tiempo Empezó	1st Break Time Out	1st Descanso Time In	Lunch Break Time Out	Hora de Comer Time In	2nd Break Time Out	2nd Descanso Time In	Time Out Acabo	Total Hours Horas Totales	1000 Curb & Gutter
Monday/Lunes	4/5/21	21-12	1001	5:00							1:00	6	1001 Side Walk
													1002 Handicap Ramp
													1003 Curb Only
													1004 V Gutter
Tuesday/Martes	4/6/21	21-12	1001	5:00							1:00	6	1005 Cross Gutter
													1008 Slabs
													1010 Channel Drains
Wednesday/ Miercoles	4/7/21	21-12	1001	5:00							1:00	6	1013 Patio/Walkway
													1014 Demolition
													1015 Mow Strip
Thursday/ Jueves	4/8/21	21-12	1001	4:00							12:30	8	1018 Drive Approach
													1019 Repairs
													1023 Footings
Friday/Viernes	4/9/21	21-12	1001	4:00							11:00	8	1027 Miscellaneous
													1031 Trash Enclosure
													1045 Extra's
Saturday/Sabado													
Sunday/Domingo													

Rest and Meal Period and Time Acknowledgement

Período de descanso y tiempo de comida, reconocimiento de tiempo

I understand that I am entitled to be provided: (1) a duty free rest break of at least 10 minutes for every four hours worked or major fraction thereof; (2) a duty free and uninterrupted meal break of at least 30 minutes within the first 5 hours if I work at least five hours in a workday

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Employee Signature
Firma del empleado

Date
Fecha

Supervisor/Foreman Signature
Firma Del Supervisor /Capataz

Date
Fecha

WEEKLY TIME CARD
TARJETA DE TIEMPO SEMANAL



Jorge Leon

Employee Name

Nombre De Empleado

2/26/21
Week Ending Date

Fecha De Fin De Semana

Work Codes/Codigos

Day/Dia	Date Fecha	Job # Trabajo #	Work Code Codigo	Start Time El Tiempo Empezó	1st Break Time Out	1st Descanso Time In	Lunch Break Time Out	Hora de Comer Time In	2nd Descanso Time Out	2nd Descanso Time In	Time Out Acabo	Total Hours Horas Totales	1000 Curb & Gutter
Monday/Lunes	2/22			7:00							3:30	8 1/2	1001 Side Walk
													1002 Handicap Ramp
													1003 Curb Only
													1004 V Gutter
Tuesday/Martes	2/23	2013	1001	4:30							1:30	9	1005 Cross Gutter
													1008 Slabs
													1010 Channel Drains
Wednesday/ Miercoles	2/24	2102	1003	5:00							4:30	11.5	1013 Patio/Walkway
													1014 Demolition
													1015 Mow Strip
Thursday/ Jueves	2/25	2013	1001	4:30							12:30	8	1018 Drive Approach
													1019 Repairs
													1023 Footings
Friday/Viernes	2/26	2013	1001	4:30							12:30	8	1027 Miscellaneous
													1031 Trash Enclosure
													1045 Extra's
Saturday/Sabado													
Sunday/Domingo													

Rest and Meal Period and Time Acknowledgement

Período de descanso y tiempo de comida, reconocimiento de tiempo

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Jorge Leon
Employee Signature
Firma del empleado

2/26/21
Date
Fecha

Bob Allard
Supervisor/Foreman Signature
Firma Del Supervisor /Capataz

2-26-21
Date
Fecha

DR 001848 (Confidential Mediation Production)

+ 225 miles
Per View
Driving

WEEKLY TIME CARD
TARJETA DE TIEMPO SEMANAL



Jorge Leon

Employee Name

Nombre De Empleado

3/12/21

Week Ending Date

Fecha De Fin De Semana

Work Codes/Codigos

Day/Dia	Date Fecha	Job # Trabajo #	Work Code Codigo	Start Time El Tiempo Empezó	1st Break Time Out	1st Descanso Time In	Lunch Break Time Out	Hora de Comer Time In	2nd Break Time Out	2nd Descanso Time In	Time Out Acabo	Total Hours Horas Totales	1000 Curb & Gutter
Monday/Lunes													1001 Side Walk
													1002 Handicap Ramp
													1003 Curb Only
													1004 V Gutter
Tuesday/Martes	<u>3/9</u>	<u>2112</u>	<u>1003</u>	<u>5:00</u>							<u>2:30</u>	<u>9</u>	1005 Cross Gutter
													1008 Slabs
													1010 Channel Drains
Wednesday/ Miercoles													1013 Patio/Walkway
													1014 Demolition
													1015 Mow Strip
Thursday/ Jueves	<u>3/11/21</u>	<u>2112</u>	<u>1003</u>	<u>4:30</u>							<u>3:00</u>	<u>10</u>	1018 Drive Approach
													1019 Repairs
													1023 Footings
Friday/Viernes	<u>3/12/21</u>	<u>2112</u>	<u>1003</u>	<u>5:00</u>							<u>2:00</u>	<u>9</u>	1027 Miscellaneous
													1031 Trash Enclosure
													1045 Extra's
Saturday/Sabado													
Sunday/Domingo													

Rest and Meal Period and Time Acknowledgement

Período de descanso y tiempo de comida, reconocimiento de tiempo

I understand that I am entitled to be provided: (1) a duty free rest break of at least 10 minutes for every four hours worked or major fraction thereof; (2) a duty free and uninterrupted meal break of at least 30 minutes within the first 5 hours if I work at least five hours in a workday

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Employee Signature
Firma del empleado

Date
Fecha

Supervisor/Foreman Signature
Firma Del Supervisor /Capataz

Date
Fecha

DR 001850 (Confidential Mediation Production)

WEEKLY TIME CARD
TARJETA DE TIEMPO SEMANAL



+220 drive miles

3/19/21

Serge Leon

Employee Name
Nombre De Empleado

Week Ending Date
Fecha De Fin De Semana

Day/Dia	Date Fecha	Job # Trabajo #	Work Code Codigo	Start Time El Tiempo Empezó	1st Break Time Out	1st Descanso Time In	Lunch Break Time Out	Hora de Comer Time In	2nd Break Time Out	2nd Descanso Time In	Time Out Acabo	Total Hours Horas Totales	Work Codes/Codigos
													1000 Curb & Gutter
Monday/Lunes													1001 Side Walk
													1002 Handicap Ramp
													1003 Curb Only
													1004 V Gutter
Tuesday/Martes	3/16			5:00							1	8	1005 Cross Gutter
													1008 Slabs
													1010 Channel Drains
Wednesday/ Miercoles	3/17			5:00							1	8	1013 Patio/Walkway
													1014 Demolition
													1015 Mow Strip
Thursday/ Jueves	3/18			5:00							1	8	1018 Drive Approach
													1019 Repairs
													1023 Footings
Friday/Viernes	3/19			5:00							1	19	1027 Miscellaneous
													1031 Trash Enclosure
													1045 Extra's
Saturday/Sabado													
Sunday/Domingo													

Rest and Meal Period and Time Acknowledgement

Periodo de descanso y tiempo de comida, reconocimiento de tiempo

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Employee Signature
Firma del empleado

Date
Fecha

Supervisor/Foreman Signature
Firma Del Supervisor /Capataz

Date
Fecha

3-19-21

DR 001851 (Confidential Mediation Production)

WEEKLY TIME CARD
TARJETA DE TIEMPO SEMANAL



Jorge Leon

Employee Name

Nombre De Empleado

3/26

Week Ending Date

Fecha De Fin De Semana

Work Codes/Codigos

Day/Dia	Date Fecha	Job # Trabajo #	Work Code Codigo	Start Time El Tiempo Empezó	1st Break Time Out	1st Descanso Time In	Lunch Break Time Out	Hora de Comer Time In	2nd Descanso Time Out	2nd Descanso Time In	Time Out Acabo	Total Hours Horas Totales	
Monday/Lunes	3/22			8:00								8	1000 Curb & Gutter
													1001 Side Walk
													1002 Handicap Ramp
													1003 Curb Only
													1004 V Gutter
Tuesday/Martes	3/23			8:00								7	1005 Cross Gutter
													1008 Slabs
													1010 Channel Drains
Wednesday/ Miercoles	3/24			8:00								8	1013 Patio/Walkway
													1014 Demolition
													1015 Mow Strip
Thursday/ Jueves	3/25			8:00								8	1018 Drive Approach
													1019 Repairs
													1023 Footings
Friday/Viernes	3/26			8:00								9.5	1027 Miscellaneous
													1031 Trash Enclosure
													1045 Extra's
Saturday/Sabado													
Sunday/Domingo													

Rest and Meal Period and Time Acknowledgement

Período de descanso y tiempo de comida, reconocimiento de tiempo

I understand that I am entitled to be provided: (1) a duty free rest break of at least 10 minutes for every four hours worked or major fraction thereof; (2) a duty free and uninterrupted meal break of at least 30 minutes within the first 5 hours if I work at least five hours in a workday

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Employee Signature
Firma del empleado

3/26
Date
Fecha

Supervisor/Foreman Signature
Firma Del Supervisor /Capataz

Date
Fecha

WEEKLY TIME CARD
TARJETA DE TIEMPO SEMANAL



+ Plus 220 miles

5/20/21

Employee Name

Nombre De Empleado

Week Ending Date

Fecha De Fin De Semana

Work Codes/Codigos

Day/Dia	Date Fecha	Job # Trabajo #	Work Code Codigo	Start Time El Tiempo Empezó	1st Break Time Out	1st Descanso Time In	Lunch Break Time Out	Hora de Comer Time In	2nd Break Time Out	2nd Descanso Time In	Time Out Acabo	Total Hours Horas Totales	1000 Curb & Gutter
Monday/Lunes	5/17			6:00	—	—	—	—	—	—	3:00	9	1001 Side Walk
													1002 Handicap Ramp
													1003 Curb Only
													1004 V Gutter
Tuesday/Martes	5/18			5:00	—	—	—	—	—	—	3:00	10	1005 Cross Gutter
													1008 Slabs
													1010 Channel Drains
Wednesday/ Miercoles	5/19			5	—	—	—	—	—	—	—	—	1013 Patio/Walkway
													1014 Demolition
													1015 Mow Strip
Thursday/ Jueves	5/20			6:00	—	—	—	—	—	—	3:00	9	1018 Drive Approach
													1019 Repairs
													1023 Footings
Friday/Viernes													1027 Miscellaneous
													1031 Trash Enclosure
													1045 Extra's
Saturday/Sabado													
Sunday/Domingo													

Rest and Meal Period and Time Acknowledgement

Período de descanso y tiempo de comida, reconocimiento de tiempo

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Employee Signature
Firma del empleado

Date
Fecha

Supervisor/Foreman Signature
Firma Del Supervisor /Capataz

Date
Fecha

DR_001875 (Confidential Mediation Production)

WEEKLY TIME CARD
TARJETA DE TIEMPO SEMANAL



Jorge Leon

Employee Name

Nombre De Empleado

2/5/21
Week Ending Date

Fecha De Fin De Semana

Work Codes/Codigos

Day/Dia	Date Fecha	Job # Trabajo #	Work Code Codigo	Start Time El Tiempo Empezó	1st Break Descanso	Lunch Break	Hora de Comer	2nd Break Descanso	Time Out Acabo	Total Hours Horas Totales	
					Time Out	Time In	Time Out	Time In			1000 Curb & Gutter
Monday/Lunes	2/1/21			5:00am					10:00	5.2	1001 Side Walk
											1002 Handicap Ramp
											1003 Curb Only
											1004 V Gutter
Tuesday/Martes	2/2/21	20-33	1001	6:30am					4:00	9	1005 Cross Gutter
											1008 Slabs
											1010 Channel Drains
Wednesday/ Miercoles	2/3/21	20-21		5:00am			left at 12:30		1:30	8.7	1013 Patio/Walkway
											1014 Demolition
											1015 Mow Strip
Thursday/ Jueves	2/4/21	20-10		5:00am					1:30	8	1018 Drive Approach
											1019 Repairs
											1023 Footings
Friday/Viernes	2/5/21	20-10		6:00am					12:30	8	1027 Miscellaneous
											1031 Trash Enclosure
											1045 Extra's
Saturday/Sabado											
Sunday/Domingo											

Rest and Meal Period and Time Acknowledgement

Periodo de descanso y tiempo de comida, reconocimiento de tiempo

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Jorge Leon
Employee Signature
Firma del empleado

2/5/21
Date
Fecha

[Signature]
Supervisor/Foreman Signature
Firma Del Supervisor /Capataz

Date
Fecha

DR 001849 (Confidential Mediation Production)

JOB _____

LOCATION _____

WORK PERFORMED V Gutter / SW

INSPECTION YES _____ NO _____

DATE 10/23/18
JOB # 18-52 PW

EMPLOYEE	TIME IN	TIME OUT	TIME IN	TIME OUT	TTL HRS	EMPLOYEE APPROVAL SIGNATURE
EE-047	5:00			4:30	1.5	
EE-051	5:00			4:30	1.5	
EE-028	5:00			4:30	1.5	
EE-024	5:00			4:30	1.5	
EE-112	5:00			4:30	1.5	
EE-100	5:00			4:30	1.5	

MACHINE _____ HAND _____

TRUCK	_____
TRACTOR	_____
MACHINE	_____
BLADE	_____
WATER TRUCK	_____
WATER BUGGY	_____
ADDL EQUIP	_____

CONCRETE YARDS USED 44 yards
COMMENTS _____

ADDITIONAL INFORMATION

22 @ 10:30

EXTRA WORK FIELD REPORT FILED AND SIGNED	YES	NO	UNKNOWN

SUPERINTENDANT APPROVAL _____

DAVIS & ROBERTS CONSTRUCTION, INC.
DAILY TIME SHEET

JOB [REDACTED]

DATE 11/2/18

LOCATION [REDACTED]

JOB # 18-23

WORK PERFORMED Curb only / Trash E / Steps / SW

INSPECTION YES ☒ NO ☐

FILL IN TIME IN TIME OUT FOR EVERYONE

EMPLOYEE	TIME IN	TIME OUT	TIME IN	TIME OUT	TTL HRS	EMPLOYEE APPROVAL SIGNATURE
EE-054	7:00	10:00	10:30	6:00	7 1/2	
EE-072	7:00	10:00	10:30	6:00	7 1/2	
EE-033						
EE-106	7:00	10:00	10:30	5:00	10 1/2	
EE-053	7:00	10:00	10:30	6:00	7 1/2	
EE-116	7:00	10:00	10:30	5:30	10 1/2	
EE-115						
EE-049	7:00	10:00	10:30	5:30	10 1/2	

(EMPLOYEE MUST APPROVE TIME DAILY)

MACHINE ☐ HAND ☒

START TIME 7:00 END TIME 5:30

TRUCK ☒
TRACTOR ☒
MACHINE ☐
BLADE ☐
WATER TRUCK ☐
WATER BUGGY ☐
ADDL EQUIP ☐

ALL OVERTIME MUST BE APPROVED BY SUPERINTENDANT

JOB INFORMATION

CONCRETE YARDS USED POOR Machine & U.G.

COMMENTS Set up Truss and Closed Paving for Inspector

EXTRA WORK YES ☐ NO ☒

IF YES

EXTRA WORK FIELD REPORT FILED AND SIGNED YES ☐ NO ☐ UNKNOWN ☐

SUPERINTENDANT APPROVAL _____

ADDITIONAL INFORMATION

12 @ 10:30

DAVIS & ROBERTS CONSTRUCTION, INC.
DAILY TIME SHEET

JOB [REDACTED]
LOCATION [REDACTED]
WORK PERFORMED MP
INSPECTION YES NO

DATE 11/8/18
JOB # 18-60

FILL IN TIME IN TIME OUT FOR EVERYONE

EMPLOYEE	TIME IN	TIME OUT	TIME IN	TIME OUT	TTL HRS	EMPLOYEE APPROVAL SIGNATURE
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
EE-110	8:00	—	—	4:30	10.5	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
EE-118	8:00	—	—	4:30	10.5	[REDACTED]

(EMPLOYEE MUST APPROVE TIME DAILY)

MACHINE _____ HAND _____

START TIME _____ END TIME _____
ALL OVERTIME MUST BE APPROVED BY SUPERINTENDANT

TRUCK _____
TRACTOR _____
MACHINE _____
BLADE _____
WATER TRUCK _____
WATER BUGGY _____
ADDL EQUIP _____

JOB INFORMATION

CONCRETE YARDS USED _____
COMMENTS _____

EXTRA WORK YES NO
IF YES

EXTRA WORK FIELD REPORT FILED AND SIGNED YES NO UNKNOWN

SUPERINTENDANT APPROVAL _____

ADDITIONAL INFORMATION

23 L @ 7

DAVIS & ROBERTS CONSTRUCTION, INC.
DAILY TIME SHEET

JOB _____
LOCATION _____
WORK PER _____
INSPECTION YES _____ NO Ramp / DA

DATE 12/1/18
JOB # 18-02

FILL IN TIME IN TIME OUT FOR EVERYONE

EMPLOYEE	TIME IN	TIME OUT	TIME IN	TIME OUT	TTL HRS	EMPLOYEE APPROVAL SIGNATURE
EE-022	5:00	9:00	9:30	4:00	11	
EE-050	5:00	9:00	9:30	4:00	11	
EE-021	5:00	9:00	9:30	4:00	11	
EE-077	5:00	9:00	9:30	4:00	11	
EE-107	5:00	9:00	9:30	4:00	11	
EE-071	5:00	9:00	9:30	4:00	11	
EE-097	5:00	9:00	9:30	4:00	11	
EE-089	5:00	9:00	9:30	4:00	11	
EE-061	5:00	9:00	9:30	4:00	11	
EE-090	5:00	9:00	9:30	4:00	11	
EE-121	5:00	9:00	9:30	4:00	11	
EE-116	5:00	9:00	9:30	4:00	11	

(EMPLOYEE MUST APPROVE TIME DAILY)

MACHINE _____ HAND _____

START TIME 5:00 END TIME 4:00

TRUCK _____

ALL OVERTIME MUST BE APPROVED BY SUPERINTENDANT

TRACTOR _____

JOB INFORMATION

MACHINE _____

CONCRETE YARDS USED _____

BLADE _____

WATER TRUCK _____

COMMENTS _____

WATER BUGGY _____

ADDL EQUIP _____

EXTRA WORK YES _____ NO _____

ADDITIONAL INFORMATION

IF YES

EXTRA WORK FIELD REPORT FILED AND SIGNED YES _____ NO _____ UNKNOWN _____

SUPERINTENDANT APPROVAL _____

4L @ 7:30

Employee: **EE-079**Pay Period / / thru / /

Monday <u>12/03/18</u>		CODE	Start	Lunch start	Lunch end	End	Reg/OT	Break	
Customer: <u>yard</u>	Job#		<u>12</u>	<u>2</u>	<u>2:30</u>	<u>10:15</u>	<u>8 11.75</u>	AM	PM
Notes									
Customer:	Job#						<u>1</u>		
<u>Drop trailer for [REDACTED] for Hollister</u>									
Tuesday <u>12/04/18</u>		CODE	Start	Lunch start	Lunch end	End	Reg/OT	Break	
Customer: <u>yard</u>	Job#		<u>10</u>	<u>12</u>	<u>12:30</u>	<u>10:15</u>	<u>8 13.75</u>	AM	PM
Notes									
Customer:	Job#						<u>1</u>		
Wednesday <u>12/05/18</u>		CODE	Start	Lunch start	Lunch end	End	Reg/OT	Break	
Customer: <u>yard</u>	Job#		<u>12</u>	<u>2</u>	<u>2:30</u>	<u>10</u>	<u>8 11.5</u>	AM	PM
Notes									
Customer:	Job#						<u>1</u>		
Thursday <u>12/06/18</u>		CODE	Start	Lunch start	Lunch end	End	Reg/OT	Break	
Customer: <u>yard</u>	Job#		<u>11</u>	<u>1</u>	<u>1:30</u>	<u>6</u>	<u>6.5</u>	AM	PM
Notes									
Customer:	Job#						<u>1</u>		
Friday <u>12/07/18</u>		CODE	Start	Lunch start	Lunch end	End	Reg/OT	Break	
Customer: <u>yard</u>	Job#		<u>12</u>	<u>12</u>	<u>12:30</u>	<u>6</u>	<u>8 1.25</u>	AM	PM
Notes									
Customer:	Job#						<u>1</u>		
Saturday <u>12/08/18</u>		CODE	Start	Lunch start	Lunch end	End	Reg/OT	Break	
Customer: <u>yard</u>	Job#		<u>10</u>	<u>12</u>	<u>12:30</u>	<u>4</u>	<u>1.5 14</u>	AM	PM
Notes									
Customer:	Job#						<u>1</u>		
Sunday <u> </u> / <u> </u> / <u> </u>		CODE	Start	Lunch start	Lunch end	End	Reg/OT	Break	
Customer:	Job#						<u>1</u>	AM	PM
Notes									
Customer:	Job#						<u>1</u>		

DAVIS & ROBERTS CONSTRUCTION, INC.
DAILY TIME SHEET

JOB _____
LOCATION _____
WORK PERFORMED Curbing / V Grutter
INSPECTION YES NO

DATE 12/20/18
JOB # 18-57

FILL IN TIME IN TIME OUT FOR EVERYONE

EMPLOYEE	TIME IN	TIME OUT	TIME IN	TIME OUT	TTL HRS	EMPLOYEE APPROVAL SIGNATURE
EE-047	5:00			5:00	12	
EE-051	5:00			5:00	12	
EE-028	5:00			5:00	12	
EE-024	5:00			5:00	12	
EE-112	5:00			5:00	12	
EE-100	5:00			5:00	12	
EE-025	5:00			5:00	12	

(EMPLOYEE MUST APPROVE TIME DAILY)

MACHINE _____ HAND _____

START TIME 5:00 END TIME 5:00
ALL OVERTIME MUST BE APPROVED BY SUPERINTENDANT

TRUCK _____
TRACTOR _____
MACHINE _____
BLADE _____
WATER TRUCK _____
WATER BUGGY _____
ADDL EQUIP _____

JOB INFORMATION

CONCRETE YARDS USED 2 loads
COMMENTS _____

EXTRA WORK YES NO
IF YES

EXTRA WORK FIELD REPORT FILED AND SIGNED YES NO UNKNOWN

SUPERINTENDANT APPROVAL _____

ADDITIONAL INFORMATION

1L + @ 10

DAVIS & ROBERTS CONSTRUCTION, INC.
DAILY TIME SHEET

JOB _____

LOCATION _____

WORK PERFORMED curb only / V Gutter

INSPECTION YES NO

DATE 12/20/18

JOB # 18-57

FILL IN TIME IN TIME OUT FOR EVERYONE

EMPLOYEE	TIME IN	TIME OUT	TIME IN	TIME OUT	TTL HRS	EMPLOYEE APPROVAL SIGNATURE
EE-040	6	10:00	10:30	5:30	11:00	
EE-074	6	10:00	10:30	5:30	11:00	
EE-104	6	10:00	10:30	5:30	11:00	
EE-096	6	10:00	10:30	5:30	11:00	
EE-068	6	10:00	10:30	5:30	11:00	
EE-035	6	10:00	10:30	5:30	11:00	

(EMPLOYEE MUST APPROVE TIME DAILY)

MACHINE _____ HAND _____

START TIME _____ END TIME _____

ALL OVERTIME MUST BE APPROVED BY SUPERINTENDANT

TRUCK _____
TRACTOR _____
MACHINE _____
BLADE _____
WATER TRUCK _____
WATER BUGGY _____
ADDL EQUIP _____

JOB INFORMATION

CONCRETE YARDS USED _____

COMMENTS _____

EXTRA WORK YES NO
IF YES

EXTRA WORK FIELD REPORT FILED AND SIGNED YES NO UNKNOWN

SUPERINTENDANT APPROVAL _____

ADDITIONAL INFORMATION

12 + @ 10

DAVIS & ROBERTS CONSTRUCTION, INC.
DAILY TIME SHEET

JOB #

LOCATION

WORK PERFORMED

INSPECTION

YES

NO

DATE

JOB #

FILL IN TIME IN TIME OUT FOR EVERYONE

EMPLOYEE	TIME IN	TIME OUT	TIME IN	TIME OUT	TTL HRS	EMPLOYEE APPROVAL SIGNATURE
EE-047	5:00			3:30	10.5	
EE-051	5:00			3:30	10.5	
EE-024	5:00			3:30	10.5	
EE-028	5:00			3:30	10.5	
EE-112	5:00			3:30	10.5	
EE-100	5:00			3:30	10.5	

(EMPLOYEE MUST APPROVE TIME DAILY)

MACHINE _____ HAND ☒

TRUCK ☒

TRACTOR ☒

MACHINE _____

BLADE _____

WATER TRUCK _____

WATER BUGGY _____

ADDL EQUIP _____

START TIME 5:00 END TIME 3:30

ALL OVERTIME MUST BE APPROVED BY SUPERINTENDANT

JOB INFORMATION

CONCRETE YARDS USED

COMMENTS

EXTRA WORK

YES

NO

IF YES

EXTRA WORK FIELD REPORT FILED AND SIGNED

YES

NO

UNKNOWN

SUPERINTENDANT APPROVAL

ADDITIONAL INFORMATION

1LT + @ 10:30

DAVIS & ROBERTS CONSTRUCTION, INC.
DAILY TIME SHEET

JOB [REDACTED]
LOCATION [REDACTED]
WORK PERFORMED Concrete paving
INSPECTION YES 0 NO

DATE 1/8/19
JOB # 18-23

FILL IN TIME IN TIME OUT FOR EVERYONE

EMPLOYEE	TIME IN	TIME OUT	TIME IN	TIME OUT	TTL HRS	EMPLOYEE APPROVAL SIGNATURE
EE-022 #1	5:00	9:00	9:30	11:00	6	[REDACTED]
EE-050	5:00	9:00	9:30	3:30	10 1/2	
EE-021	5:00	9:00	9:30	5:00	12	
EE-077	5:00	9:00	9:30	5:00	12	
EE-107	5:00	9:00	9:30	5:00	12	
EE-071	5:00	9:00	9:30	5:00	12	
EE-097	5:00	9:00	9:30	5:00	12	
EE-089	5:00	9:00	9:30	3:00	10	
EE-061	5:00	9:00	9:30	5:00	12	
EE-121	5:00	9:00	9:30	5:00	12	
EE-116	5:00	9:00	9:30	4:30	11 1/2	
EE-090	5:00	9:00	9:30	4:30	10 1/2	

(EMPLOYEE MUST APPROVE TIME DAILY)

MACHINE _____ HAND ✓ 6:00 START TIME 5:00 END TIME 5:00

TRUCK ✓
TRACTOR ✓
MACHINE _____
BLADE _____
WATER TRUCK _____
WATER BUGGY _____
ADDL EQUIP _____

ALL OVERTIME MUST BE APPROVED BY SUPERINTENDANT
JOB INFORMATION

CONCRETE YARDS USED _____

COMMENTS _____

EXTRA WORK YES NO

IF YES

EXTRA WORK FIELD REPORT FILED AND SIGNED YES NO UNKNOWN

SUPERINTENDANT APPROVAL _____

ADDITIONAL INFORMATION

5L + @ 10:30

DAVIS & ROBERTS CONSTRUCTION, INC.
DAILY TIME SHEET

JOB [REDACTED]
LOCATION [REDACTED]
WORK PERFORMED SW
INSPECTION YES (circled) NO

DATE 1/9/19
JOB # 12-23

FILL IN TIME IN TIME OUT FOR EVERYONE

EMPLOYEE	TIME IN	TIME OUT	TIME IN	TIME OUT	TTL HRS	EMPLOYEE APPROVAL SIGNATURE
EE-021	5:00	9:00	9:30	5:00	12	[REDACTED]
EE-050	5:00	9:00	9:30	5:00	12	[REDACTED]
EE-021	5:00	9:00	9:30	5:00	12	[REDACTED]
EE-077	5:00	9:00	9:30	5:00	12	[REDACTED]
EE-107	5:00	9:00	9:30	5:00	12	[REDACTED]
EE-071	5:00	9:00	9:30	5:00	12	[REDACTED]
EE-097	5:00	9:00	9:30	5:00	12	[REDACTED]
EE-089	5:00	9:00	9:30	5:00	12	[REDACTED]
EE-061	5:00	9:00	9:30	5:00	12	[REDACTED]
EE-121	5:00	9:00	9:30	5:00	12	[REDACTED]
EE-116	5:00		9:30	5:00	12	[REDACTED]

(EMPLOYEE MUST APPROVE TIME DAILY)

MACHINE HAND

START TIME 5:00 END TIME 5:00

TRUCK ✓
TRACTOR ✓
MACHINE
BLADE
WATER TRUCK
WATER BUGGY
ADDL EQUIP

ALL OVERTIME MUST BE APPROVED BY SUPERINTENDANT
JOB INFORMATION

CONCRETE YARDS USED

COMMENTS

EXTRA WORK YES NO

IF YES

EXTRA WORK FIELD REPORT FILED AND SIGNED YES NO UNKNOWN

SUPERINTENDANT APPROVAL

ADDITIONAL INFORMATION

32 @ 10

DAVIS & ROBERTS CONSTRUCTION, INC.

DAILY TIME SHEET

JOB

LOCATION

WORK PERFORMED

INSPECTION

YES

NO

DATE

JOB #

FILL IN TIME IN TIME OUT FOR EVERYONE

EMPLOYEE	TIME IN	TIME OUT	TIME IN	TIME OUT	TTL HRS	EMPLOYEE APPROVAL SIGNATURE
EE-022	5:00	9:00	9:30		8	
EE-050	5:00	9:00	9:30	7:00 PM.	14	
EE-021	5:00	9:00	9:30	7:00 PM.	14	
EE-077	5:00	9:00	9:30	7:00	10	
EE-107	5:00	9:00	9:30	7:00	14	
EE-071	~~5:00~~	~~9:00~~	~~9:30~~	~~7:00~~	~~14~~	
EE-097	5:00	9:00	9:30	7:00	14	
EE-089	5:00	9:00	9:30	2:00	9	
EE-061	5:00	9:00	9:30	3:00	10	
EE-090	5:00	9:00	9:30	3:00	10	
EE-121	5:00	9:00	9:30	7:00	14	
EE-116	5:00	9:00	9:30		14	

MACHINE

HAND

TRUCK

TRACTOR

MACHINE

BLADE

WATER TRUCK

WATER BUGGY

ADDL EQUIP

START TIME

END TIME

ALL OVERTIME MUST BE APPROVED BY SUPERINTENDANT

JOB INFORMATION

CONCRETE YARDS USED

COMMENTS

EXTRA WORK

YES

NO

IF YES

EXTRA WORK FIELD REPORT FILED AND SIGNED

YES

NO

UNKNOWN

SUPERINTENDANT APPROVAL

ADDITIONAL INFORMATION

3L to 10:00

Employee: **EE-109**Pay Period / / thru / /

Monday 10/21/19		CODE	Start	Lunch start	Lunch end	End	Reg/OT	Break	
Customer:	Job#		0800	1100	1200	1710	8/1	AM	PM
								Notes	
Customer:	Job#						/		
Tuesday 10/22/19		CODE	Start	Lunch start	Lunch end	End	Reg/OT	Break	
Customer:	Job#		0800	1100	1200	1700	8/1	AM	PM
								Notes	
Customer:	Job#						/		
Wednesday 10/23/19		CODE	Start	Lunch start	Lunch end	End	Reg/OT	Break	
Customer:	Job#		0800	1100	1200	1700	8/1	AM	PM
								Notes	
Customer:	Job#						/		
Thursday 10/24/19		CODE	Start	Lunch start	Lunch end	End	Reg/OT	Break	
Customer:	Job#		0800	1100	1200	1700	8/1	AM	PM
								Notes	
Customer:	Job#						/		
Friday 10/25/19		CODE	Start	Lunch start	Lunch end	End	Reg/OT	Break	
Customer:	Job#		0800	1100	1200	1700	8/1	AM	PM
								Notes	
Customer:	Job#						/		
Saturday 10/26/19		CODE	Start	Lunch start	Lunch end	End	Reg/OT	Break	
Customer:	Job#						/	AM	PM
								Notes	
Customer:	Job#						/		
Sunday / /		CODE	Start	Lunch start	Lunch end	End	Reg/OT	Break	
Customer:	Job#						/	AM	PM
								Notes	
Customer:	Job#						/		

DAVIS & ROBERTS CONSTRUCTION, INC.
DAILY TIME SHEET

JOB [REDACTED]
LOCATION [REDACTED]
WORK PERFORMED SW/PA/Hc Ramp
INSPECTION YES NO

DATE 11/1/19
JOB # 19-24

FILL IN TIME IN TIME OUT FOR EVERYONE

EMPLOYEE	TIME IN	TIME OUT	TIME IN	TIME OUT	TTL HRS	EMPLOYEE APPROVAL SIGNATURE
EE-047						
EE-051	4:30			5:30	13	
	~~4:30~~					
EE-112	4:30			5:30	13	
EE-049	4:30			12:30	8	
EE-100						
EE-028	4:30			2:30	10	

(EMPLOYEE MUST APPROVE TIME DAILY)

MACHINE _____ HAND ✓

START TIME _____ END TIME _____
ALL OVERTIME MUST BE APPROVED BY SUPERINTENDANT

TRUCK ✓
TRACTOR _____
MACHINE _____
BLADE _____
WATER TRUCK _____
WATER BUGGY _____
ADDL EQUIP _____

JOB INFORMATION

CONCRETE YARDS USED 42 1/2
COMMENTS _____

EXTRA WORK YES NO
IF YES

EXTRA WORK FIELD REPORT FILED AND SIGNED YES NO UNKNOWN

SUPERINTENDANT APPROVAL _____

ADDITIONAL INFORMATION

2LT @ 7

DAVIS & ROBERTS CONSTRUCTION, INC.
DAILY TIME SHEET

JOB [REDACTED]
LOCATION [REDACTED]
WORK PERFORMED MP
INSPECTION (YES) NO

DATE 11/1/19
JOB # 19-13

FILL IN TIME IN TIME OUT FOR EVERYONE

EMPLOYEE	TIME IN	TIME OUT	TIME IN	TIME OUT	TTL HRS	EMPLOYEE APPROVAL SIGNATURE
EE-014	5:30			5:30	12	[REDACTED]
EE-118	5:30			5:30	12	
EE-028						
EE-072						[REDACTED]
EE-045	5:30			5:30	12	
EE-047	5:00				12	

(EMPLOYEE MUST APPROVE TIME DAILY)

MACHINE _____ HAND ✓

START TIME 5:00 END TIME 4:00
ALL OVERTIME MUST BE APPROVED BY SUPERINTENDANT

TRUCK ✓
TRACTOR ✓
MACHINE _____
BLADE _____
WATER TRUCK _____
WATER BUGGY _____
ADDL EQUIP _____

JOB INFORMATION

CONCRETE YARDS USED _____
COMMENTS _____

EXTRA WORK YES NO
IF YES

EXTRA WORK FIELD REPORT FILED AND SIGNED YES NO UNKNOWN

SUPERINTENDANT APPROVAL _____

ADDITIONAL INFORMATION

15L+@7

DAVIS & ROBERTS CONSTRUCTION, INC.
DAILY TIME SHEET

JOB _____
LOCATION _____
WORK PERFORMED _____

DATE 11/26/19
JOB # 19-03

INSPECTION YES NO

FILL IN TIME IN TIME OUT FOR EVERYONE

EMPLOYEE	TIME IN	TIME OUT	TIME IN	TIME OUT	TTL HRS	EMPLOYEE APPROVAL SIGNATURE
EE-014	6:00	10:00	10:30	7:00	12.5	
EE-118	6:00	10:00	10:30	7:00	12.5	
EE-028						
EE-072						
EE-045	6:00	10:00	10:30	7:00	12.5	

(EMPLOYEE MUST APPROVE TIME DAILY)

MACHINE _____ HAND _____

START TIME _____ END TIME _____
ALL OVERTIME MUST BE APPROVED BY SUPERINTENDANT

TRUCK _____
TRACTOR _____
MACHINE _____
BLADE _____
WATER TRUCK _____
WATER BUGGY _____
ADDL EQUIP _____

JOB INFORMATION

CONCRETE YARDS USED _____
COMMENTS _____

EXTRA WORK YES NO
IF YES

EXTRA WORK FIELD REPORT FILED AND SIGNED YES NO UNKNOWN

SUPERINTENDANT APPROVAL _____

ADDITIONAL INFORMATION

JOB _____
LOCATION _____
WORK PERFORMED SW/DA
INSPECTION YES NO

12/9/19
19-15

EMPLOYEE	TIME IN	TIME OUT	TIME IN	TIME OUT	TTL HRS	EMPLOYEE APPROVAL SIGNATURE
EE-022	6:00	9:00	9:30	3:00	21	
EE-050	6:00	9:00	9:30	3:00	21	
EE-021	6:30	9:00	9:30	3:00	20 1/2	
EE-033	6:00	9:00	9:30	3:00	21	
EE-061	6:00	9:00	9:30	3:00	21	
EE-041	6:00	9:00	9:30	3:00	21	
EE-034						
EE-038	6:00	9:00	9:30	3:00	21	
EE-077	6:30	9:00	9:30	3:00	20 1/2	
EE-025	6:00	9:00	9:30	3:00	21	
EE-069	6:00	9:00	9:30	3:00	21	
EE-068	6:00	9:00	9:30	3:00	21	

START TIME 6:00 END TIME 5:00

TRUCK ☒

TRACTOR ☒

MACHINE _____

BLADE _____

WATER TRUCK _____

WATER BUGGY _____

ADDL EQUIP _____

COMMENTS _____

IF YES

SUPERINTENDANT APPROVAL _____

ADDITIONAL INFORMATION

3L@7
2L@11
Buildings concrete

DAVIS & ROBERTS CONSTRUCTION, INC.
DAILY TIME SHEET

JOB [REDACTED]

LOCATION [REDACTED]

WORK PERFORMED cross gutter

INSPECTION YES NO

Contract Work (Only Shown On Plans)

FILL IN TIME IN TIME OUT FOR EVERYONE

EMPLOYEE	TIME IN	TIME OUT	TIME IN	TIME OUT	TTL HRS	EMPLOYEE APPROVAL SIGNATURE
EE-040					12.5	
EE-074					12.5	
EE-104					12.5	
EE-096					10	
EE-096					12.5	
EE-071					11	

(EMPLOYEE MUST APPROVE TIME DAILY)

MACHINE ✓
HAND ✓
TRUCK ✓

TRACTOR ✓
MACHINE _____
BLADE _____
WATER TRUCK _____
TER BUGGY _____
ADDL EQUIP _____

Concrete Order

Extra Work (Work not Not Shown On Plans) Decription of Work:

Employee Name	Total Hours	Equip/Tools Used	Material Used	Concrete Used	Signature

EXTRA WORK NOTES:

SUPERINTINDANT APPROVAL

DAVIS & ROBERTS CONSTRUCTION, INC.
DAILY TIME SHEET

JOB [REDACTED]

LOCATION [REDACTED]

WORK PERFORMED curb & gutter / curb

INSPECTION YES NO

Contract Work (Only Shown On Plans)

FILL IN TIME IN TIME OUT FOR EVERYONE

EMPLOYEE	TIME IN	TIME OUT	TIME IN	TIME OUT	TTL HRS	EMPLOYEE APPROVAL SIGNATURE
EE-047	7:30			2:30	10	[REDACTED]
EE-112	4:30			2:30	10	[REDACTED]
EE-049	4:30			2:30	10	[REDACTED]
EE-051	4:30			2:30	10	[REDACTED]
EE-055	4:30			2:30	10	[REDACTED]

(EMPLOYEE MUST APPROVE TIME DAILY)

MACHINE ☒

HAND ☒

TRUCK ☒

TRACTOR ☒

MACHINE ☐

BLADE ☐

WATER TRUCK ☐

TER BUGGY ☐

ADDL EQUIP ☐

Concrete Order

2LT @ 7

Extra Work (Work not Not Shown On Plans) Description of Work:

Employee Name	Total Hours	Equip/Tools Used	Material Used	Concrete Used	Signature

EXTRA WORK NOTES:

SUPERINTENDANT APPROVAL

Employee:

EE-067

Pay Period 10/26/20 thru 10/31/20

Monday 10/26/20		CODE	Start	Lunch start	Lunch end	End	Reg/OT	Break		
Customer:	Job#		930	100	~~130~~ 400	715	7.75	AM	PM	
									Notes	
Customer:	Job#						/			
		3.5 3.25								
Tuesday 10/27/20		CODE	Start	Lunch start	Lunch end	End	Reg/OT	Break		
Customer:	Job#		930	100	130	550	/	AM	PM	
									Notes	
Customer:	Job#						8.25			
		3.5 4.75								
Wednesday 10/28/20		CODE	Start	Lunch start	Lunch end	End	Reg/OT	Break		
Customer:	Job#		930	100	130	500	71	AM	PM	
									Notes	
Customer:	Job#						/			
		3.5 3.5								
Thursday 10/29/20		CODE	Start	Lunch start	Lunch end	End	Reg/OT	Break		
Customer:	Job#		935	100	130	400	101	AM	PM	
									Notes	
Customer:	Job#						/			
		3.5 2.5								
Friday 10/30/20		CODE	Start	Lunch start	Lunch end	End	Reg/OT	Break		
Customer:	Job#						/	AM	PM	
									Notes	
Customer:	Job#						/			
		OFF								
Saturday 10/31/20		CODE	Start	Lunch start	Lunch end	End	Reg/OT	Break		
Customer:	Job#		900	~~100~~	~~130~~	310	10.75	AM	PM	
									Notes	
Customer:	Job#						/			
		10.25								
Sunday / /		CODE	Start	Lunch start	Lunch end	End	Reg/OT	Break		
Customer:	Job#						/	AM	PM	
									Notes	
Customer:	Job#						/			

WEEKLY TIME CARD
TARJETA DE TIEMPO SEMANAL



EE-112

Employee Name

Nombre De Empleado

Week Ending Date

Fecha De Fin De Semana

Work Codes/Codigos

Day/Dia	Date Fecha	Job # Trabajo #	Work Code Codigo	Start Time El Tiempo Empezó	1st Break Time Out	1st Descanso Time In	Lunch Break Time Out	Hora de Comer Time In	2nd Break Time Out	2nd Descanso Time In	Time Out Acabo	Total Hours Horas Totales	1000 Curb & Gutter
Monday/Lunes	11-9-2013	1003	1003	5:00							2:00	10	1001 Side Walk
													1002 Handicap Ramp
													1003 Curb Only
													1004 V Gutter
Tuesday/Martes	11-10-2013	1003	1003	5:00							1:00	8	1005 Cross Gutter
													1008 Slabs
													1010 Channel Drains
Wednesday/ Miercoles	11-11-2013	1003	1003	5:00							1:00	8	1013 Patio/Walkway
													1014 Demolition
													1015 Mow Strip
Thursday/ Jueves	11-12-2013	1003	1003	5:00							2:00	10	1018 Drive Approach
													1019 Repairs
													1023 Footings
Friday/Viernes	11-13-2013	1003	1003	5:00							1:00	8	1027 Miscellaneous
													1031 Trash Enclosure
													1045 Extra's
Saturday/Sabado													
Sunday/Domingo													

Rest and Meal Period and Time Acknowledgement

Período de descanso y tiempo de comida, reconocimiento de tiempo

I understand that I am entitled to be provided: (1) a duty free rest break of at least 10 minutes for every four hours worked or major fraction thereof; (2) a duty free and uninterrupted meal break of at least 30 minutes within the first 5 hours if I work at least five hours in a workday

Entiendo que tengo derecho: (1) un descanso de 10 minutos libre de impuestos; (2) un descanso de 30 minutos libre de impuestos para comer, dentro de las primeras 5 horas de trabajo

I hereby certify and declare that, for each workday that occurred within the pay period covered by this time card, (1) I was provided all my rest and meal periods in accordance with Davis & Roberts meal and rest break for all hourly employees or have notified management as to each date(s) for which a meal or rest break was not provided pursuant to those policies; (2) this time card fully and accurately reports all time that I have worked; and (3) that I have not worked off the clock.

Por la presente certifico y declaro por cada día laboral en este período de pago, (1) Me proporcionaron todas mis comidas y períodos de descanso de acuerdo con las políticas de Davis & Roberts Construction Inc. (2) Esta tarjeta de tiempo informa con precisión todo el tiempo que he trabajado; (3) y que no he trabajado fuera del reloj

Employee Signature
Firma del empleado

Date
Fecha

Supervisor/Foreman Signature
Firma Del Supervisor /Capataz

Date
Fecha

DAVIS & ROBERTS CONSTRUCTION, INC.
DAILY TIME SHEET

JOB [REDACTED]
LOCATION [REDACTED]
WORK PERFORMED curb & gutter

DATE 12/11/20
JOB # 19-11

1000

INSPECTION YES NO

Contract Work (Only Shown On Plans)

FILL IN TIME IN TIME OUT FOR EVERYONE

EMPLOYEE	TIME IN	TIME OUT	TIME IN	TIME OUT	TTL HRS	EMPLOYEE APPROVAL SIGNATURE
EE-047	3:00				12	[REDACTED]
EE-112	3:00				12	[REDACTED]
EE-049	3:00				12	[REDACTED]
EE-051	3:00				12	[REDACTED]
EE-055						
EE-081					8	
EE-058	3:00				0	

(EMPLOYEE MUST APPROVE TIME DAILY)

MACHINE _____
HAND _____
TRUCK _____

TRACTOR _____
MACHINE _____
BLADE _____
WATER TRUCK _____
WATER BUGGY _____
ADDL EQUIP _____

Concrete Order

18L @ 4/9

Extra Work (Work not Not Shown On Plans) Description of Work:

Employee Name	Total Hours	Equip/Tools Used	Material Used	Concrete Used	Signature

EXTRA WORK NOTES:

SUPERINTENDANT APPROVAL

WEEKLY TIME CARD
TARJETA DE TIEMPO SEMANAL



EE-112

Employee Name

Nombre De Empleado

Week Ending Date

Fecha De Fin De Semana

Work Codes/Codigos

Day/Día	Date Fecha	Job # Trabajo #	Work Code Codigo	Start Time El Tiempo Empezó	1st Break Descanso	Lunch Break	Hora de Comer	2nd Break Descanso	Time Out Acabo	Total Hours Horas Totales	
					1st Break Time Out	Time In	Time Out	Time In	2nd Break Time Out	Time In	1000 Curb & Gutter
Monday/Lunes	12/6/12	2037	1019	5:00			12:00	12:30			1001 Side Walk
		2032	1001								1002 Handicap Ramp
		1001									1003 Curb Only
		1001									1004 V Gutter
Tuesday/Martes	12/6/12										1005 Cross Gutter
											1008 Slabs
											1010 Channel Drains
Wednesday/ Miercoles	12/10/12	2037	1001	5:00			12:00	12:30	4:20	11	1013 Patio/Walkway
	12/10/12	1911	1018	5:00			12:00	12:30	3:00	9 1/2	1014 Demolition
											1015 Mow Strip
Thursday/ Jueves	12/10/12	1911	1018	3:00			12:00	12:30	3:30	12	1018 Drive Approach
											1019 Repairs
											1023 Footings
Friday/Viernes	12/15/12	1915	1018	3:00			12:00	12:30	3:30	12	1027 Miscellaneous
											1031 Trash Enclosure
											1045 Extra's
Saturday/Sabado											
Sunday/Domingo											

Rest and Meal Period and Time Acknowledgement

Período de descanso y tiempo de comida, reconocimiento de tiempo

I understand that I am entitled to be provided: (1) a duty free rest break of at least 10 minutes for every four hours worked or major fraction thereof; (2) a duty free and uninterrupted meal break of at least 30 minutes within the first 5 hours if I work at least five hours in a workday

Entiendo que tengo derecho: (1) un descanso de 10 minutos libre de impuestos; (2) un descanso de 30 minutos libre de impuestos para comer, dentro de las primeras 5 horas de trabajo

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Por la presente certifico y declaro por cada día laboral en este período de pago, (1) Me proporcionaron todas mis comidas y periodos de descanso de acuerdo con las políticas de Davis & Roberts Construction Inc. (2) Esta tarjeta de tiempo informa con precisión todo el tiempo que he trabajado; (3) y que no he trabajado fuera del reloj

Employee Signature

Date

Supervisor/Foreman Signature

Firma Del Supervisor /Capataz

Date

Fecha

WEEKLY TIME CARD
TARJETA DE TIEMPO SEMANAL

EE-051



Employee Name

Week Ending Date

Nombre De Empleado

Fecha De Fin De Semana

Work Codes/Codigos

Day/Dia	Date Fecha	Job # Trabajo #	Work Code Codigo	Start Time El Tiempo Empezó	1st Break Time Out	1st Descanso Time In	Lunch Break Time Out	Hora de Comer Time In	2nd Break Time Out	2nd Descanso Time In	Time Out Acabo	Total Hours Horas Totales	1000 Curb & Gutter
													1001 Side Walk
Monday/Lunes	12-7	1921	1001	5:00							9:30	4 1/2	1002 Handicap Ramp
	12-7	2008	1019	9:30							2:00	4 1/2	1003 Curb Only
													1004 V Gutter
Tuesday/Martes	12-8	2035	1001	4:30							4:30	12	1005 Cross Gutter
													1008 Slabs
													1010 Channel Drains
Wednesday/ Miercoles	12-9	1921	1019	5:30							12:00	7 1/2	1013 Patio/Walkway
	12-9	1911	1004	12:00							2:00	2	1014 Demolition
													1015 Mow Strip
Thursday/ Jueves	12-10	1911	1004	3:00							3:00	12	1018 Drive Approach
													1019 Repairs
													1023 Footings
Friday/Viernes	12-11	1911	1004	3:00							3:00	12	1027 Miscellaneous
													1031 Trash Enclosure
													1045 Extra's
Saturday/Sabado													
Sunday/Domingo													

Rest and Meal Period and Time Acknowledgement

Período de descanso y tiempo de comida, reconocimiento de tiempo

I understand that I am entitled to be provided: (1) a duty free rest break of at least 10 minutes for every four hours worked or major fraction thereof; (2) a duty free and uninterrupted meal break of at least 30 minutes within the first 5 hours if I work at least five hours in a workday

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Employee Signature
Firma del empleado

Date
Fecha

Supervisor/Foreman Signature
Firma Del Supervisor /Capataz

Date
Fecha

EE-040

10/25/2021 to 10/31/2021

Regular	PTO	OT	DT	Total Hours
24.00	0.00	3.33	0.00	27.33

Time in	Time out	Duration	Customer
October 27, 2021			8.67
5:50am	2:30pm	8.67	[REDACTED] INC. > #20-29 [REDACTED]
October 28, 2021			9.42
4:20am	1:45pm	9.42	[REDACTED] INC. > #20-62 [REDACTED]
October 29, 2021			9.25
4:50am	2:05pm	9.25	[REDACTED] INC. > #20-62 [REDACTED]

DAVIS & ROBERTS CONSTRUCTION, INC.
DAILY TIME SHEET

JOB [REDACTED]
LOCATION [REDACTED]
WORK PERFORMED String Line

DATE 10/26/2021
JOB # 21-02

INSPECTION YES NO

Time of inspection : _____

NOTES:

MACHINE _____
HAND _____
TRUCK _____
TRACTOR _____
MACHINE _____
BLADE _____ BUGGY _____
WATER TRUCK _____ ADDLEQUIP _____

Concrete Order

None

Contract Work (Only Shown On Plans)

FILL IN TIME IN TIME OUT FOR EVERYONE

EMPLOYEE	TIME IN	TIME OUT	TIME IN	TIME OUT	TTL HRS
EE-047	4:00			3:00	10
EE-112	4:00			3:00	10
EE-051	4:30			3:00	10
EE-118	4:30			3:00	10
EE-014					
EE-110					

[REDACTED]
Signature

WEEKLY TIME CARD
TARJETA DE TIEMPO SEMANAL



EE-047

Employee Name

Nombre De Empleado

10-29-21
Week Ending Date

Fecha De Fin De Semana

Work Codes/Codigos

Day/Dia	Date Fecha	Job # Trabajo #	Work Code Codigo	Start Time El Tiempo Empezó	1st Break Descanso	Lunch Break Hora de Comer	2nd Break Descanso	Time Out Acabo	Total Hours Horas Totales	1000 Curb & Gutter
Monday/Lunes										1001 Side Walk
										1002 Handicap Ramp
										1003 Curb Only
										1004 V Gutter
Tuesday/Martes	10-26	21-02	1003	7:30				8:00	40	1005 Cross Gutter
										1008 Slabs
										1010 Channel Drains
Wednesday/ Miercoles	10-27	21-25	1003	4:00				12:00	8	1013 Patio/Walkway
										1014 Demolition
										1015 Mow Strip
Thursday/ Jueves	10-28	21-25	1003	3:30				12:00	8.5	1018 Drive Approach
										1019 Repairs
										1023 Footings
Friday/Viernes	10-29	21-10	1000	4:00				2:00	16	1027 Miscellaneous
										1031 Trash Enclosure
										1045 Extra's
Saturday/Sabado										
Sunday/Domingo										

Rest and Meal Period and Time Acknowledgement

Período de descanso y tiempo de comida, reconocimiento de tiempo

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Employee Signature
Firma del empleado

Date
Fecha

Supervisor/Foreman Signature
Firma Del Supervisor /Capataz

Date
Fecha

DAVIS & ROBERTS CONSTRUCTION, INC.
DAILY TIME SHEET

JOB [REDACTED]
LOCATION [REDACTED]
WORK PERFORMED **Machine Pour - C Only**

DATE **11/2/2021**
JOB # **21-02**

INSPECTION YES NO

Time of inspection : _____

NOTES:

MACHINE _____
HAND _____
TRUCK _____
TRACTOR _____
MACHINE _____
BLADE _____ BUGGY _____
TER TRUCK _____ ADDL EQUIP _____

Concrete Order

3L @ 8AM

Contract Work (Only Shown On Plans)

FILL IN TIME IN TIME OUT FOR EVERYONE

EMPLOYEE	TIME IN	TIME OUT	TIME IN	TIME OUT	TTL HRS
EE-047	4:30			2:30	10
EE-112	4:30			2:30	10
EE-051	4:30			2:30	10
EE-118	4:30			2:30	10
EE-014	4:30			2:30	10
EE-110	4:30			2:30	10

Signature

DAVIS & ROBERTS CONSTRUCTION, INC.
DAILY TIME SHEET

JOB [REDACTED]
LOCATION [REDACTED]
WORK PERFORMED **Machine Pour - C Only**

DATE **11/5/2021**
JOB # **21-02**

INSPECTION YES NO

Time of inspection : _____

NOTES:

MACHINE _____
HAND _____
TRUCK _____
TRACTOR _____
MACHINE _____
BLADE _____ BUGGY _____
TER TRUCK _____ ADDL EQUIP _____

Concrete Order

7Y+ @ 10AM

Contract Work (Only Shown On Plans)

FILL IN TIME IN TIME OUT FOR EVERYONE

EMPLOYEE	TIME IN	TIME OUT	TIME IN	TIME OUT	TTL HRS
EE-047	4:50			4:00	11.5
EE-112	4:50			4:00	11.5
EE-051	4:50			4:00	11.5
EE-118	4:30			4:00	11.5
EE-014	4:30			4:00	11.5
EE-110	4:30			4:00	11.5

[REDACTED]
Signature

EE-025

11/01/2021 to 11/07/2021

Regular	PTO	OT	DT	Total Hours
40.00	0.00	13.50	0.00	53.50

Time in	Time out	Duration	Customer
November 1, 2021			10.92
5:40am	10:40am	5.00	[REDACTED] INC. > #21-16 [REDACTED]
10:40am	4:35pm	5.92	[REDACTED] #21-13 [REDACTED]
November 2, 2021			10.67
5:20am	10:30am	5.17	[REDACTED] INC. > #21-02 [REDACTED]
11:00am	4:30pm	5.50	[REDACTED] > #21-13 [REDACTED]
November 3, 2021			9.25
5:00am	2:15pm	9.25	[REDACTED] INC. > #21-02 [REDACTED]
November 4, 2021			10.67
5:15am	9:00am	3.75	[REDACTED] > #21-02 [REDACTED]
9:00am	3:55pm	6.92	[REDACTED] inc. > #21-27 [REDACTED]
NOTES: Went to different job and didnt clock in - [REDACTED] 21-27			
November 5, 2021			12.00
5:15am	5:15pm	12.00	[REDACTED] > #21-02 [REDACTED]

EE-097

11/01/2021 to 11/07/2021

Regular	PTO	OT	DT	Total Hours
32.00	0.00	5.50	0.00	37.50

Time in	Time out	Duration	Customer
November 2, 2021			9.67
5:20am	3:00pm	9.67	[REDACTED] > #21-02 [REDACTED]
<i>took lunch</i>			
November 3, 2021			9.25
5:00am	2:15pm	9.25	[REDACTED] > #21-02 [REDACTED]
November 4, 2021			10.58
5:15am	9:00am	3.75	[REDACTED] > #21-02 [REDACTED]
9:00am	3:50pm	6.83	Shift Total
NOTES: Went to different job and didn't clock in - [REDACTED] 11-27			
November 5, 2021			8.00
5:15am	1:15pm	8.00	[REDACTED] > #21-02 [REDACTED]
NOTES: Only 8 hrs today forgot to clock out			

EE-024

11/22/2021 to 11/28/2021

Regular	PTO	OT	DT	Total Hours
23.50	0.00	4.50	0.25	28.25

Time in	Time out	Duration	Customer	Class	Service Item
November 22, 2021					7.50
5:45am	1:15pm	7.50	[REDACTED] INC. > #21-02 [REDACTED] [REDACTED]	1036 FLATWORK	1001
NOTES: No lunch today for everybody					
November 23, 2021					12.25
5:05am	5:20pm	12.25	[REDACTED] INC. > #21-02 [REDACTED] [REDACTED]		
NOTES: Had to work late to					
5:20pm	5:20pm	0.00	[REDACTED] INC. > #21-02 [REDACTED] [REDACTED]		
NOTES: Had to work late sawcutting slab we pour					
November 24, 2021					8.50
5:45am	2:15pm	8.50	[REDACTED] INC. > #21-02 [REDACTED] [REDACTED]		

Stayed 1 night

DAVIS & ROBERTS CONSTRUCTION, INC.
DAILY TIME SHEET

JOB _____
LOCATION _____
WORK PERFORMED **Machine Pour - C&G**

DATE **12/3/2021**
JOB # **21-15**

INSPECTION YES NO

Time of inspection : _____

NOTES:

MACHINE _____
HAND _____
TRUCK _____
TRACTOR _____
MACHINE _____
BLADE _____ BUGGY _____
WATER TRUCK _____ ADDL EQUIP _____

Concrete Order

24L+ @ 730AM

Contract Work (Only Shown On Plans)

FILL IN TIME IN TIME OUT FOR EVERYONE

EMPLOYEE	TIME IN	TIME OUT	TIME IN	TIME OUT	TTL HRS
EE-047	5:00			3:00	11
EE-112	6:00			2:00	11
EE-051	5:00			3:00	11
EE-118	5:00			3:00	11
EE-014	5:00			3:00	11
EE-110	5:00			3:00	11

Signature

WEEKLY TIME CARD
TARJETA DE TIEMPO SEMANAL



EE-047

12/5/2021

Employee Name

Week Ending Date

Nombre De Empleado

Fecha De Fin De Semana

Work Codes/Codigos

Day/Dia	Date Fecha	Job # Trabajo #	Work Code Codigo	Start Time El Tiempo Empezó	1st Break Time Out	1st Descanso Time In	Lunch Break Time Out	Hora de Comer Time In	2nd Break Time Out	2nd Descanso Time In	Time Out Acabo	Total Hours Horas Totales	1000 Curb & Gutter
Monday/Lunes	11-29	21-25	1004	3:30							8:00	10.5	1001 Side Walk
													1002 Handicap Ramp
													1003 Curb Only
													1004 V Gutter
Tuesday/Martes	11-30	21-25	1004	3:30							12:30	9	1005 Cross Gutter
													1008 Slabs
													1010 Channel Drains
Wednesday/ Miercoles	12-1	21-26	1004	4:00							7:00	8	1013 Patio/Walkway
													1014 Demolition
													1015 Mow Strip
Thursday/ Jueves	12-2	21-16	1000	5:00							12:00	8	1018 Drive Approach
													1019 Repairs
													1023 Footings
Friday/Viernes	12-3	21-15	1000	5:00							8:00	11	1027 Miscellaneous
													1031 Trash Enclosure
													1045 Extra's
Saturday/Sabado													
Sunday/Domingo													

Rest and Meal Period and Time Acknowledgement

Periodo de descanso y tiempo de comida, reconocimiento de tiempo

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Employee Signature
Firma del empleado

Date
Fecha

Supervisor/Foreman Signature
Firma Del Supervisor /Capataz

Date
Fecha

EE-104
12/06/2021 to 12/12/2021

Regular	PTO	OT	DT	Total Hours
32.00	0.00	5.75	0.00	37.75

Time in	Time out	Duration	Customer
December 6, 2021			8.00
6:50am	2:50pm	8.00	#21-07
December 7, 2021			10.33
5:50am	4:10pm	10.33	#21-07
December 8, 2021			11.25
5:45am	5:00pm	11.25	#21-07
December 10, 2021			8.17
5:50am	2:00pm	8.17	#21-07

WEEKLY TIME CARD
TARJETA DE TIEMPO SEMANAL



EE-022

Employee Name

Nombre De Empleado

1-7-22
Week Ending Date

Fecha De Fin De Semana

Work Codes/Codigos

Day/Dia	Date Fecha	Job # Trabajo #	Work Code Codigo	Start Time El Tiempo Empezó	1st Break Time Out	1st Descanso Time In	Lunch Break Time Out	Hora de Comer Time In	2nd Break Time Out	2nd Descanso Time In	Time Out Acabo	Total Hours Horas Totales	1000 Curb & Gutter
													1001 Side Walk
Monday/Lunes	1-3-22	20-33	1003	6:00	10:00	10:10					2:30	8 1/2	1002 Handicap Ramp
													1003 Curb Only
													1004 V Gutter
Tuesday/Martes	1-4-22	20-29	1015	6:00	10:00	10:10					3:00	9	1005 Cross Gutter
													1008 Slabs
													1010 Channel Drains
Wednesday/ Miercoles	1-5-22	20-29	1001	6:00							5:00	11	1013 Patio/Walkway
													1014 Demolition
													1015 Mow Strip
Thursday/ Jueves	1-6-22	20-29	1001	6:00							2:00	8	1018 Drive Approach
													1019 Repairs
													1023 Footings
Friday/Viernes	1-7-22	20-29	1001	6:00							2:00	8	1027 Miscellaneous
													1031 Trash Enclosure
													1045 Extra's
Saturday/Sabado													
Sunday/Domingo													

Rest and Meal Period and Time Acknowledgement

Periodo de descanso y tiempo de comida, reconocimiento de tiempo

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Employee Signature
Firma del empleado

Date
Fecha

Supervisor/Foreman Signature
Firma Del Supervisor /Capataz

Date
Fecha

WEEKLY TIME CARD
TARJETA DE TIEMPO SEMANAL



EE-050

Employee Name

Nombre De Empleado

Week Ending Date

Fecha De Fin De Semana

Work Codes/Codigos

Day/Dia	Date Fecha	Job # Trabajo #	Work Code Codigo	Start Time El Tiempo Empezó	1st Break Time Out	1st Descanso Time In	Lunch Break Time Out	Hora de Comer Time In	2nd Break Time Out	2nd Descanso Time In	Time Out Acabo	Total Hours Horas Totales	1000 Curb & Gutter
Monday/Lunes	1-3-22	20-33	1003	6.00	10.00	10.10					2.30	8 1/2	1001 Side Walk
													1002 Handicap Ramp
													1003 Curb Only
													1004 V Gutter
Tuesday/Martes	1-4-22	20-29	1001	6.00							2.30	8 1/2	1005 Cross Gutter
													1008 Slabs
													1010 Channel Drains
Wednesday/ Miercoles	1-5-22	20-29	1001	6.00							5.00	11.00	1013 Patio/Walkway
													1014 Demolition
													1015 Mow Strip
Thursday/ Jueves	1-6-22	20-29	1001	6.00							2.00	8	1018 Drive Approach
													1019 Repairs
													1023 Footings
Friday/Viernes	1-7-22	20-29	1001	6.00							2.00	8	1027 Miscellaneous
													1031 Trash Enclosure
													1045 Extra's
Saturday/Sabado													
Sunday/Domingo													

Rest and Meal Period and Time Acknowledgement

Periodo de descanso y tiempo de comida, reconocimiento de tiempo

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Employee Signature
Firma del empleado

Date
Fecha

Supervisor/Foreman Signature
Firma Del Supervisor /Capataz

Date
Fecha

EE-009

01/10/2022 to 01/16/2022

Regular	PTO	OT	DT	Total Hours
39.58	0.00	5.08	0.00	44.67

Time in	Time out	Duration	Customer
January 10, 2022			8.67
6:50am	3:30pm	8.67	[REDACTED] #21-07 [REDACTED] [REDACTED]
January 11, 2022			7.67
6:35am	2:15pm	7.67	[REDACTED] > #21-07 [REDACTED] [REDACTED]
January 12, 2022			9.67
5:55am	3:35pm	9.67	[REDACTED] #21-07 [REDACTED] [REDACTED]
January 13, 2022			7.92
6:05am	2:00pm	7.92	[REDACTED] #21-07 [REDACTED] [REDACTED]
January 14, 2022			10.75
6:15am	8:00am	1.75	[REDACTED] #21-07 [REDACTED] [REDACTED]
8:00am	11:15am	3.25	[REDACTED] #21-07 [REDACTED] [REDACTED]
11:15am	5:00pm	5.75	[REDACTED] #21-20 [REDACTED] [REDACTED]

EE-024
01/10/2022 to 01/16/2022

Regular	PTO	OT	DT	Total Hours
23.92	0.00	4.83	0.00	28.75

Time in	Time out	Duration	Customer
January 12, 2022			7.92
6:05am	2:00pm	7.92	[REDACTED] #18-04 [REDACTED]
NOTES: [REDACTED] forgot to clock out			
January 13, 2022			10.00
7:00am	5:00pm	10.00	[REDACTED] #18-04 [REDACTED]
January 14, 2022			10.83
6:10am	5:00pm	10.83	[REDACTED] #18-04 [REDACTED]
NOTES: [MERGE] Started working at 6am at 18-12 till 11am 1/2 lunch then started at machine pour 11:30 - 5:00			

with [REDACTED]

1/10

1/11

[REDACTED] with [REDACTED]

1/10

1/11

WEEKLY TIME CARD
TARJETA DE TIEMPO SEMANAL

EE-047



1-21-22

Employee Name

Week Ending Date

Nombre De Empleado

Fecha De Fin De Semana

Work Codes/Codigos

Day/Dia	Date Fecha	Job # Trabajo #	Work Code Codigo	Start Time El Tiempo Empezó	1st Break Time Out	1st Descanso Time In	Lunch Break Time Out	Hora de Comer Time In	2nd Break Time Out	2nd Descanso Time In	Time Out Acabo	Total Hours Horas Totales	1000 Curb & Gutter
Monday/Lunes	1-17	2120	1000	5:00							16:00	5	1001 Side Walk
	1-17-27	1003									2:00	4	1002 Handicap Ramp
													1003 Curb Only
													1004 V Gutter
Tuesday/Martes	1-18	21-27	1003	5:00							1:00	8	1005 Cross Gutter
													1008 Slabs
													1010 Channel Drains
Wednesday/ Miércoles	1-19	21-27	1003	6:00							3:00	9	1013 Patio/Walkway
													1014 Demolition
													1015 Mow Strip
Thursday/ Jueves	1-20	21-10	1000	4:30							12:30	8	1018 Drive Approach
													1019 Repairs
													1023 Footings
Friday/Viernes	1-21	21-10	1000	5:00							4:00	11	1027 Miscellaneous
													1031 Trash Enclosure
													1045 Extra's
Saturday/Sabado													
Sunday/Domingo													

Rest and Meal Period and Time Acknowledgement

Período de descanso y tiempo de comida, reconocimiento de tiempo

I understand that I am entitled to be provided: (1) a duty free rest break of at least 10 minutes for every four hours worked or major fraction thereof; (2) a duty free and uninterrupted meal break of at least 30 minutes within the first 5 hours if I work at least five hours in a workday

Entiendo que tengo derecho: (1) un descanso de 10 minutos libre de impuestos; (2) un descanso de 30 minutos libre de impuestos para comer, dentro de las primeras 5 horas de trabajo

I hereby certify and declare that, for each workday that occurred within the pay period covered by this time card, (1) I was provided all my rest and meal periods in accordance with Davis & Roberts meal and rest break for all hourly employees or have notified management as to each date(s) for which a meal or rest break was not provided pursuant to those policies; (2) this time card fully and accurately reports all time that I have worked; and (3) that I have not worked off the clock.

Por la presente certifico y declaro por cada día laboral en este período de pago, (1) Me proporcionaron todas mis comidas y períodos de descanso de acuerdo con las políticas de Davis & Roberts Construction Inc. (2) Esta tarjeta de tiempo informa con precisión todo el tiempo que he trabajado; (3) y que no he trabajado fuera del reloj

Employee Signature
Firma del empleado

Date
Fecha

Supervisor/Foreman Signature
Firma Del Supervisor /Capataz

Date
Fecha

EXHIBIT 23

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Welcome New Employee

On behalf of your colleagues, I welcome you to Davis & Roberts Construction and wish you every success here.

We believe that each employee contributes directly to Davis & Roberts Construction growth and success, and we hope you will take pride in being a member of our team.

This handbook was developed to describe some of the expectations of our employees and to provide an explanation of the policies, programs, and benefits available to eligible employees. Employees should familiarize themselves with the contents of the employee handbook as soon as possible, for it will answer many questions about employment with Davis & Roberts Construction.

We hope that your experience here will be challenging, enjoyable, and rewarding. Again, welcome!

Sincerely,

Management
Davis & Roberts Construction

Introductory Statement

This handbook is designed to acquaint you with Davis & Roberts Construction and provide you with information about working conditions, employee benefits, and some of the policies affecting your employment. You should read, understand, and comply with all provisions of the handbook. It describes many of your responsibilities as an employee and outlines the programs developed by Davis & Roberts Construction to benefit employees. One of our objectives is to provide a work environment that is conducive to both personal and professional growth.

No employee handbook can anticipate every circumstance or question about policy. As Davis & Roberts Construction continues to grow, the need may arise and Davis & Roberts Construction reserves the right to revise, supplement, or rescind any policies or portion of the handbook from time to time as it deems appropriate, in its sole and absolute discretion. Employees will, of course, be notified of such changes to the handbook as they occur.

At Will Employment

All employment and compensation with Davis & Roberts Construction is "at will" which means that your employment can be terminated with or without cause, and with or without notice, at any time, at the option of either Davis & Roberts Construction or yourself, except as otherwise provided by law. The policy applies to all areas of employment, including recruitment, hiring, training and development, promotion, demotion, transfer, termination, layoff, compensation benefits, social and recreational programs, and all other conditions and privileges of employment in accordance with applicable federal, state, and local laws.

Americans with Disabilities Act (ADA) Compliance

It is the policy of Davis & Roberts Construction to comply with all the relevant and applicable provisions of the Americans with Disabilities Act (ADA). Davis & Roberts Construction will not discriminate against any qualified employee or job applicant with respect to any terms, privileges, or conditions of employment because of a person's physical or mental disability. Davis & Roberts Construction also will make reasonable accommodation wherever necessary for all employees with disabilities, provided that the individual is otherwise qualified to safely perform the duties and assignments connected with the job and provided that any accommodations made do not require significant difficulty or expense.

New Employee Orientation

Each new employee shall be scheduled for an orientation session. This orientation session shall be conducted so that the new employee can receive an introduction to Davis & Roberts Construction, its history, its operations, its personnel policies and employee handbook, and a review of employee benefits. During this period, employees are also asked to complete new-hire paper work. In addition, employees will receive orientation to their specific departmental procedures by the appropriate department manager.

After receiving this employee handbook, you will be asked to sign the Receipt and Acknowledgement page and return it to your supervisor.

New Employee Reporting

As required by State Law, it is the policy of Davis & Roberts Construction to report the name, address, and social security number of all new employees to the Employment Development Department within 20 days of starting work.

Open Door Policy

Davis & Roberts Construction believes that the work conditions, wages, and benefits it offers to its employees are competitive with those offered by other employers in this area and in this industry. If employees have concerns about work conditions or compensation, they are strongly encouraged to voice these concerns openly and directly to their supervisors.

Our experience has shown that when employees deal openly and directly with supervisors, the work environment can be excellent, communications can be clear, and attitudes can be positive. We believe that Davis & Roberts Construction amply demonstrates its commitment to employees by responding effectively to employee concerns.

Sexual and Other Unlawful Harassment

Davis & Roberts Construction is committed to providing a work environment that is free of discrimination and conduct that can be considered harassing, coercive, or disruptive, including sexual harassment. Actions, words, jokes, or comments based on an individual's sex, race, color, national origin, age, religion, disability, sexual orientation, or any other legally protected characteristic will not be tolerated. Davis & Roberts Construction provides ongoing sexual harassment training to ensure you the opportunity to work in an environment free of sexual and other unlawful harassment.

What Is Harassment?

Harassment can take many forms. Harassment can be defined as unwanted sexual advances, or visual, verbal, or physical conduct of a sexual nature.

This definition includes many forms of offensive behavior and includes gender-based harassment of a person of the same sex as the harasser. The following is a partial list of sexual harassment examples:

- Unwanted sexual advances
- Offering employment benefits in exchange for sexual favors
- Making or threatening reprisals after a negative response to sexual advances
- Visual conduct that includes leering, making sexual gestures, or displaying of sexually suggestive objects or pictures, cartoons, or posters.
- Verbal conduct that includes making or using derogatory comments, epithets, slurs, or jokes.
- Verbal sexual advances or propositions
- Verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading word used to describe an individual, or suggestive or obscene letters, notes, or invitations.

- Physical conducts that includes touching, assaulting, or impeding or blocking movements.
- Unwelcome sexual advances (either verbal or physical), requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:
 1. Submission to such conduct is made either explicitly or implicitly a term or condition of employment;
 2. Submission or rejection of the conduct is used as a basis for making employment decisions; or,
 3. The conduct has the purpose or effect of interfering with work performance or creating an intimidating, hostile, or offensive work environment.

Responsibility

All Davis & Roberts Construction employees, including supervisors and managers, have a responsibility for keeping our work environment free of harassment. Any employee, who becomes aware of possible sexual or other unlawful harassment, must immediately advise the Owner, Manager, or any member of management so it can be investigated in a timely and confidential manner. Anyone engaging in sexual or other unlawful harassment will be subject to disciplinary actions.

Reporting

If you experience or witness sexual or other unlawful harassment in the workplace, report it immediately to your supervisor. If the supervisor is unavailable or you believe it would be inappropriate to contact that person, you should immediately contact the Owner or other member of Management. You can raise concerns and make reports without fear of reprisal or retaliation.

All allegations of sexual harassment will be quickly and discreetly investigated. To the extent possible, your confidentiality and that of any witnesses and the alleged harasser will be protected against unnecessary disclosure. When the investigation is completed, you will be informed of the outcome of the investigation.

Additional Information

The Department of Fair Employment and Housing (DFEH) is the state agency that resolves complaints of unlawful discrimination, including sexual harassment. After a complaint is filed, the DFEH has one year to investigate the complaint.

The Fair Employment and Housing Commission (FEHC), headquartered in San Francisco, decides cases prosecuted by the DFEH at the state level.

To contact the DFEH, consult the local telephone directory under State Government Offices or ask directory assistance for the number of Department of Fair Employment and Housing headquarters in Sacramento.

The Equal Employment Opportunity Commission (EEOC) is the federal agency that resolves sexual harassment claims. To contact the commission, consult directory assistance for Washington, D.C.

If they find a complaint is justified, state and federal agencies have the power to order, among other actions, the wronged party be hired, given back pay, promoted, reinstated or granted damages for emotional distress. The agencies also may issue a "cease and desist" order to prevent further unlawful activity and order the violator to pay large fines.

Equal Employment Opportunity

In order to provide equal employment and advancement opportunities to all individuals, employment decisions at Davis & Roberts Construction will be based on merit, qualifications, and abilities. Davis & Roberts Construction does not discriminate in employment opportunities or practices on the basis of race, color, religion, sex, national origin, ancestry, age, physical or mental disability, medical condition, pregnancy, marital status, sexual orientation, or any other characteristic protected by law.

Davis & Roberts Construction will make reasonable accommodations for qualified individuals with known disabilities unless doing so would result in an undue hardship. This policy governs all aspects of employment, including selection, job assignment, compensation, discipline, termination, and access to benefits and training.

Any employees with questions or concerns about any type of discrimination in the workplace are encouraged to bring these issues to the attention of their immediate supervisor or the Owner. Employees can raise concerns and make reports without fear of reprisal. Anyone found to be engaging in any type of unlawful discrimination will be subject to disciplinary action.

Business Ethics and Conduct

The successful business operation and reputation of Davis & Roberts Construction is built upon the principles of fair dealing and ethical conduct of our employees. Our reputation for integrity and excellence requires careful observance of the spirit and letter of all applicable laws and regulations, as well as a scrupulous regard for the highest standards of conduct and personal integrity.

The continued success of Davis & Roberts Construction is dependent upon our customers' trust and we are dedicated to preserving that trust. Employees owe a duty to Davis & Roberts Construction, its customers, and shareholders to act in a way that will merit the continued trust and confidence of the public.

Davis & Roberts Construction will comply with all applicable laws and regulations and expects its directors, officers, and employees to conduct business in accordance with the letter, spirit, and intent of all relevant laws and to refrain from any illegal, dishonest, or unethical conduct.

In general, the use of good judgment, based on high ethical principles, will guide you with respect to lines of acceptable conduct.

If a situation arises where it is difficult to determine the proper course of action, the matter should be discussed openly with your immediate supervisor and, if necessary, with the Owner for advice and consultation.

Compliance with this policy of business ethics and conduct is the responsibility of every Davis & Roberts Construction employee. Disregarding or failing to comply with this standard of business ethics and conduct could lead to disciplinary action.

Conflicts of Interest

Employees have an obligation to conduct business within guidelines that prohibit actual or potential conflicts of interest. This policy establishes only the framework within which Davis & Roberts Construction wishes the business to operate. The purpose of these guidelines is to provide general direction so that employees can seek further clarification on issues related to the subject of acceptable standards of operation. Contact the Management for more information or questions about conflicts of interest.

An actual or potential conflict of interest occurs when an employee is in a position to influence a decision that may result in a personal gain for that employee or for a relative as a result of Davis & Roberts Construction business dealings. For the purposes of this policy, a relative is any person who is related by blood or marriage, or whose relationship with the employee is similar to that of persons who are related by blood or marriage.

No "presumption of guilt" is created by the mere existence of a relationship with outside firms. However, if employees have any influence on transactions involving purchases, contracts, or leases, it is imperative that they disclose to an officer of Davis & Roberts Construction as soon as possible the existence of any actual or potential conflict of interest so that safeguards can be established to protect all parties.

Personal gain may result not only in cases where an employee or relative has a significant ownership in a firm with which Davis & Roberts Construction does business, but also when an employee or relative receives any kickback, bribe, substantial gift, or special consideration as a result of any transaction or business dealings involving Davis & Roberts Construction.

Outside Employment

An employee may hold a job with another organization as long as he or she satisfactorily performs his or her job responsibilities with Davis & Roberts Construction.

If an employee is unable to maintain acceptable performance standards following acceptance of outside employment, the employee may be subject to disciplinary action.

If Davis & Roberts Construction determines that an employee's outside work interferes with performance or the ability to meet the requirements of Davis & Roberts Construction as they are modified from time to time, the employee may be asked to terminate the outside employment if he or she wishes to remain with Davis & Roberts Construction.

Outside employment will present a conflict of interest if it has an adverse impact on Davis & Roberts Construction.

Non-Disclosure

The protection of confidential business information and trade secrets is vital to the interests and the success of Davis & Roberts Construction. Such confidential information includes, but is not limited to, the following examples:

- compensation data
- computer processes, programs and codes
- customer lists
- customer preferences
- financial information
- pending projects and proposals

All employees may be required to sign a non-disclosure agreement as a condition of employment. Employees who improperly use or disclose trade secrets or confidential business information will be subject to disciplinary action.

Employment Categories

It is the intent of Davis & Roberts Construction to clarify the definitions of employment classifications so that employees understand their employment status and benefit eligibility. These classifications do not guarantee employment for any specified period of time. Accordingly, the right to terminate the employment relationship at will at any time is retained by both the employee and Davis & Roberts Construction.

Each employee is designated as either NONEXEMPT or EXEMPT from federal and state wage and hour laws. NONEXEMPT employees are entitled to overtime pay under the specific provisions of federal and state laws. EXEMPT employees are excluded from specific provisions of federal and state wage and hour laws. An employee's EXEMPT or NONEXEMPT classification may be changed only upon written notification by Davis & Roberts Construction management.

In addition to the above categories, each employee will belong to one other employment category:

REGULAR FULL-TIME: employees are those who are not in a temporary or introductory status and who are regularly scheduled to work Davis & Roberts Construction full-time schedule. Regular full-time employees may be eligible for Davis & Roberts Construction benefit package, subject to the terms, conditions, and limitations of each benefit program.

REGULAR PART-TIME: employees are those who are not assigned to a temporary or introductory status and who are regularly scheduled to work less than 40 hours per week. While regular part-time employees receive all legally mandated benefits (such as workers' compensation insurance and Social Security), they are ineligible for all of Davis & Roberts Construction other benefit programs.

INTRODUCTORY: employees are those whose performance is being evaluated to determine whether further employment in a specific position or with Davis & Roberts Construction is appropriate. Employees who satisfactorily complete the introductory period will be notified of their new employment classification.

TEMPORARY: employees are those who are hired as interim replacements, to temporarily supplement the work force, or to assist in the completion of a specific project. Employment assignments in this category are of a limited duration. Employment beyond any initially stated period does not in any way imply a change in employment status.

Temporary employees retain that status unless and until notified of a change. While temporary employees receive all legally mandated benefits (such as workers' compensation insurance and Social Security), they are ineligible for all of Davis & Roberts Construction other benefit programs.

Access to Personnel Files

Davis & Roberts Construction maintains a personnel file on each employee. The personnel file includes such information as the employee's job application, resume, records of training, documentation of performance appraisals and salary increases, and other employment records.

Personnel files are the property of Davis & Roberts Construction, and access to the information they contain is restricted. Generally, only supervisors and management personnel of Davis & Roberts Construction who have a legitimate reason to review information in a file are allowed to do so.

With reasonable advance notice, employees may review their own personnel files in Davis & Roberts Construction offices and in the presence of an individual appointed by Davis & Roberts Construction to maintain the files.

Personnel Data Changes

It is the responsibility of each employee to promptly notify Davis & Roberts Construction of any changes in personnel data. Personal mailing addresses, telephone numbers, number and names of dependents, individuals to be contacted in the event of an emergency, educational accomplishments, and other such status reports should be accurate and current at all times. If any personnel data has changed, notify the Management.

Introductory Period

The introductory period is intended to give new employees the opportunity to demonstrate their ability to achieve a satisfactory level of performance and to determine whether the new position meets their expectations. Davis & Roberts Construction uses this period to evaluate employee capabilities, work habits, and overall performance. Either the employee or Davis & Roberts Construction may end the employment relationship at will at any time during or after the introductory period, with or without cause or advance notice.

All new and rehired employees work on an introductory basis for the first 14 calendar days after their date of hire. Employees who are promoted or transferred within Davis & Roberts Construction do have to complete a secondary introductory period of the same length with each reassignment to a new position. Any significant absence will automatically extend an introductory period by the length of the absence. If Davis & Roberts Construction determines that the designated introductory period does not allow sufficient time to thoroughly evaluate the employee's performance, the introductory period may be extended for a specified period.

Upon satisfactory completion of the initial introductory period, employees enter the "regular" employment classification.

During the initial introductory period, new employees are eligible for those benefits that are required by law, such as workers' compensation insurance and Social Security. After becoming regular employees, they may also be eligible for other Davis & Roberts Construction-provided benefits, subject to the terms and conditions of each benefits program. Employees should read the information for each specific benefits program for the details on eligibility requirements.

Workers' Compensation Insurance

Davis & Roberts Construction provides a comprehensive workers' compensation insurance program at no cost to employees. This program covers any injury or illness sustained in the course of employment that requires medical, surgical, or hospital treatment. Subject to applicable legal requirements, workers' compensation insurance provides benefits after a short waiting period or, if the employee is hospitalized, immediately.

Employees who sustain work-related injuries or illnesses should inform their supervisor immediately. No matter how minor an on-the-job injury may appear, it is important that it be reported immediately. This will enable an eligible employee to qualify for coverage as quickly as possible.

Neither Davis & Roberts Construction nor the insurance carrier will be liable for the payment of workers' compensation benefits for injuries that occur during an employee's voluntary participation in any off-duty recreational, social, or athletic activity sponsored by Davis & Roberts Construction.

All employees of Davis & Roberts Construction have the right to choose their own health care provider. To be eligible each employee must have completed and turned in the Physician Pre-Designation Form.

Worker's Compensation

The company carries worker's compensation insurance coverage as required by law to protect employees who are injured on the job. The insurance provides medical, surgical and hospital treatment in addition to payment of loss of earnings that result from work-related injuries. Compensation payments begin the first day of an employee's hospitalization or after the third day following the injury if an employee is not hospitalized. The cost of this coverage is paid completely by Davis & Roberts Construction.

We are writing to advise you of some serious changes in the Worker's Compensation laws, which took effect on January 1, 1992 from that day forward:

"Any person who makes or causes to be made any knowingly false or fraudulent material statement or material representation for the purpose of obtaining or denying Worker's Compensation benefits or payments is guilty of a felony," (SB1218)

Further:

"Every person who violates any provision of this section shall be punished by imprisonment in the county jail for one year, or in the state prison, for two, three, or five years, or by fine not exceeding fifty thousand dollars (\$50,000) or double the value of the fraud, whichever ever is greater or by imprisonment and fine."

In other words, if you tell a lie, or misrepresent something, in order to obtain Worker's Compensation benefits, you can be sent to jail for up to five years and be fined up to \$50,000.

Moreover, a new provision has been added to the criminal laws which states that if you refer someone to an attorney for the purpose of filing a Worker's Compensation claim either knowing or recklessly disregarding that the person intends to file a fraudulent claim, you can be sent to jail for a period of one to three years and fined up to \$10,000.

State Disability

Employees who suffer a non-work related illness or injury might be entitled to State Disability Insurance (SDI). SDI benefits are paid by the state and are financed from mandatory payroll tax deductions from all employees' wages.

Unemployment Insurance

If your employment terminates, you may be eligible to receive unemployment insurance. In most cases, you must file a claim in order to collect this benefit. Should such a situation arise, you should inquire about unemployment insurance at the time of separation from service. We will be happy to explain your rights under the law and provide a pamphlet from The Employment Develop Department (EDD) outlining employee's rights and obligations.

Social Security

As an employee of Davis & Roberts Construction, you are covered under the provisions of the Federal Social Security law (FICA). Social security benefits are a step to provide you and your family a retirement income. The amount of deduction from employee's wages from social security taxes is matched by Davis & Roberts Construction.

The total contribution by you and the company is credited toward your social security benefits, which may be available at the time you are eligible to retire. In addition, disability and survivors benefits are financed through social security.

Performance Evaluation

Supervisors and employees are strongly encouraged to discuss job performance and goals on an informal, day-to-day basis. Formal performance evaluations are conducted to provide both supervisors and employees the opportunity to discuss job tasks, identify and correct weaknesses, encourage and recognize strengths, and discuss positive, purposeful approaches for meeting goals.

Performance evaluations are scheduled approximately every 3 months.

Employee Benefits

Eligible employees at Davis & Roberts Construction are provided a wide range of benefits. A number of the programs (such as Social Security, workers' compensation, state disability, and unemployment insurance) cover all employees in the manner prescribed by law.

Benefits eligibility is dependent upon a variety of factors, including employee classification. Your supervisor can identify the programs for which you are eligible. Details of many of these programs can be found elsewhere in the employee handbook.

The following benefit programs may be available to eligible employees:

- Medical Insurance
- Pay Advances
- Pension Plan- 401K

Some benefit programs require contributions from the employee and some may be paid by Davis & Roberts Construction.

Sick Time Off

Employees who are unable to report to work due to illness or injury should notify their direct supervisor prior to scheduled start of their workday if possible. The direct supervisor must also be contacted on each additional day of absence. If an employee is absent for three or more consecutive days due to illness or injury, a physician's statement must be provided verifying the disability and its beginning and expected ending dates.

Time Off to Vote

Davis & Roberts Construction encourages employees to fulfill their civic responsibilities by participating in elections. Generally, employees are able to find time to vote either before or after their regular work schedule. If employee does not have sufficient time outside of working hours to vote, the voter may, without loss of pay, take off enough working time which when added to the voting time available outside of working hours will enable the voter to vote.

No more than two hours of the time taken off for voting shall be without loss of pay. The time off for voting shall be only at the beginning or the end of the regular working shift, whichever allows the most free time for voting and the least time off from the regular working shift, unless otherwise mutually agreed.

Employees should request time off to vote from their supervisor at least two working days prior to the Election Day. Advance notice is required so that the necessary time off can be scheduled at the beginning or end of the work shift, whichever provides the least disruption to the normal work schedule.

Employees must submit a voter's receipt on the first working day following the election to qualify for paid time off.

Jury Duty

Davis & Roberts Construction encourages employees to fulfill their civic responsibilities by serving jury duty when required. Employees may request unpaid jury duty leave for the length of absence. If desired, employees may use any available paid time off (for example, vacation benefits).

Employees must show the jury duty summons to their supervisor as soon as possible so that the supervisor may make arrangements to accommodate their absence. Of course, employees are expected to report for work whenever the court schedule permits.

Either Davis & Roberts Construction or the employee may request an excuse from jury duty if, in Davis & Roberts Construction judgment, the employee's absence would create serious operational difficulties.

Davis & Roberts Construction will continue to provide health insurance benefits for the full term of the jury duty absence.

Benefits Continuation (COBRA)

The federal Consolidated Omnibus Budget Reconciliation Act (COBRA) gives employees and their qualified beneficiaries the opportunity to continue health insurance coverage under Davis & Roberts Construction health plan when a "qualifying event" would normally result in the loss of eligibility. Some common qualifying events are resignation, termination of employment, or death of an employee; a reduction in an employee's hours or a leave of absence; an employee's divorce or legal separation; and a dependent child no longer meeting eligibility requirements.

Under COBRA, the employee or beneficiary pays the full cost of coverage at Davis & Roberts Construction group rates plus an administration fee. Davis & Roberts Construction provides each eligible employee with a written notice describing rights granted under COBRA when the employee becomes eligible for coverage under Davis & Roberts Construction health insurance plan. The notice contains important information about the employee's rights and obligations.

Health Insurance

Davis & Roberts Construction health insurance plan provides employees and their dependents access to medical insurance benefits. Employees in the following employment classifications are eligible to participate in the health insurance plan:

- * Regular full-time employees (After completing 365 days of service)

Eligible employees may participate in the health insurance plan subject to all terms and conditions of the agreement between Davis & Roberts Construction and the insurance carrier.

A change in employment classification that would result in loss of eligibility to participate in the health insurance plan may qualify an employee for benefits continuation under the Consolidated Omnibus Budget Reconciliation Act (COBRA). Refer to the Benefits Continuation (COBRA) policy for more information.

Details of the health insurance plan are described in the Summary Plan Description (SPD). An SPD and information on cost of coverage will be provided in advance of enrollment to eligible employees. Contact the Office Manager for more information about health insurance benefits.

Timekeeping

Accurately recording time worked is the responsibility of every nonexempt employee. Federal and state laws require Davis & Roberts Construction to keep an accurate record of time worked in order to calculate employee pay and benefits. Time worked is all the time actually spent on the job performing assigned duties.

Nonexempt employees should accurately record the time they begin and end their work, as well as the beginning and ending time of each meal period. They should also record the beginning and ending time of any split shift or departure from work for personal reasons. Overtime work must always be approved before it is performed.

Altering, falsifying, tampering with time records, or recording time on another employee's time record may result in disciplinary action.

Paydays

All employees are paid weekly on Friday. Each paycheck will include earnings for all work performed through the end of the previous payroll period.

In the event that a regularly scheduled payday falls on a day off such as a weekend or holiday, employees will receive pay on the last day of work before the regularly scheduled payday.

If a regular payday falls during an employee's vacation, the employee receives his or her wages upon return from vacation.

Administrative Pay Corrections

Davis & Roberts Construction takes all reasonable steps to ensure that employees receive the correct amount of pay in each paycheck and that employees are paid promptly on the scheduled payday.

In the unlikely event that there is an error in the amount of pay, the employee should promptly bring the discrepancy to the attention of the Office Manager so that corrections can be made as quickly as possible.

Pay Deductions

The law requires that Davis & Roberts Construction make certain deductions from every employee's compensation. Among these are applicable federal, state, and local income taxes. Davis & Roberts Construction also must deduct Social Security taxes on each employee's earnings up to a specified limit that is called the Social Security "wage base." Davis & Roberts Construction matches the amount of Social Security taxes paid by each employee.

Davis & Roberts Construction offers programs and benefits beyond those required by law. Eligible employees may voluntarily authorize deductions from their paychecks to cover the costs of participation in these programs.

If you have questions concerning why deductions were made from your paycheck or how they were calculated, your supervisor can assist in having your questions answered.

Safety

To assist in providing a safe and healthful work environment for employees, customers, and visitors, Davis & Roberts Construction has established a workplace safety program. This program is a top priority for Davis & Roberts Construction. The Owner has responsibility for implementing, administering, monitoring, and evaluating the safety program. Its success depends on the alertness and personal commitment of all.

Davis & Roberts Construction provides information to employees about workplace safety and health issues through regular internal communication channels such as supervisor-employee meetings, bulletin board postings, memos, or other written communications.

Employees and supervisors receive periodic workplace safety training. The training covers potential safety and health hazards and safe work practices and procedures to eliminate or minimize hazards.

Some of the best safety improvement ideas come from employees. Those with ideas, concerns, or suggestions for improved safety in the workplace are encouraged to raise them with their supervisor, or with another supervisor or manager, or bring them to the attention of the Owner. Reports and concerns about workplace safety issues may be made anonymously if the employee wishes. All reports can be made without fear of reprisal.

Each employee is expected to obey safety rules and to exercise caution in all work activities. Employees must immediately report any unsafe condition to the appropriate supervisor. Employees who violate safety standards, who cause hazardous or dangerous situations, or who fail to report or, where appropriate, remedy such situations, may be subject to disciplinary action.

In the case of accidents that result in injury, regardless of how insignificant the injury may appear, employees should immediately notify the Owner or the appropriate supervisor. Such reports are necessary to comply with laws and initiate insurance and workers' compensation benefits procedures.

Work Schedules

Work schedules for employees vary throughout our organization. Supervisors will advise employees of their individual work schedules. Staffing needs and operational demands may necessitate variations in starting and ending times, as well as variations in the total hours that may be scheduled each day and week.

Use of Telephones and Pagers

All personal telephone calls from the office should be kept to a minimum. They must not interfere with your work. You are permitted to make limited local area calls on company telephones for essential personal business during lunch or "break" periods only. Please do not abuse this privilege. Emergency calls regarding illness or injury to family members, changed family plans, or calls for similar reasons may be made at any time. Incoming urgent calls will be directed to you.

Employees will be financially responsible for personal use/abuse of cellular phones. In addition, employees may be required to reimburse Davis & Roberts Construction for any charges resulting from their personal use of the telephone.

Pagers are assigned to on call production employees and are the property of Davis & Roberts Construction and shall be returned immediately upon request or dismissal. Employees who are assigned a pager will be responsible for loss/theft. Pagers assigned to production employees are for the purpose of Davis & Roberts Construction communication and shall not be abused.

To ensure effective telephone communications, employees should always use the approved greeting and speak in a courteous and professional manner. Always confirm information received from the caller, and hang up only after the caller has done so.

Smoking and Tobacco Use

In keeping with Davis & Roberts Construction intent to provide a safe and healthful work environment, smoking in the workplace is prohibited except in those locations that have been specifically designated as smoking areas. In situations where the preferences of smokers and nonsmokers are in direct conflict, the preferences of nonsmokers will prevail. This policy applies equally to all employees, customers, and visitors.

Rest and Meal Periods

Each workday, full-time nonexempt employees are provided with 2 rest periods of 10 minutes in length. To the extent possible, rest periods will be provided in the middle of work periods. Since this time is counted and paid as time worked, employees must not be absent from their workstations beyond the allotted rest period time.

All full-time employees are provided with one 30 minute unpaid meal period each workday. Supervisors will schedule meal periods to accommodate operating requirements. Employees will be relieved of all active responsibilities and restrictions during meal periods and will not be compensated for that time. Meal periods and rest periods may not be taken together.

Overtime

When operating requirements or other needs cannot be met during regular working hours, employees are asked to volunteer or they may be scheduled to work overtime hours. When possible, advance notification of these mandatory assignments will be provided. All overtime work must receive the supervisor's prior authorization. Overtime assignments will be distributed as equitably as practical to all employees qualified to perform the required work.

Overtime compensation is paid to all nonexempt employees in accordance with federal and state wage and hour restrictions. Overtime pay is based on actual hours worked. Time off on sick leave, vacation leave, or any leave of absence will not be considered hours worked for purposes of performing overtime calculations.

Use of Equipment and Vehicles

Equipment and vehicles essential in accomplishing job duties are expensive and may be difficult to replace. When using property, employees are expected to exercise care, perform required maintenance, and follow all operating instructions, safety standards, and guidelines. All property of Davis & Roberts Construction, including equipment and vehicles are for business purposes only. Personal use of equipment and vehicles is prohibited without prior approval from management.

Please notify the supervisor if any equipment, machines, tools, or vehicles appear to be damaged, defective, or in need of repair.

Prompt reporting of damages, defects, and the need for repairs could prevent deterioration of equipment and possible injury to employees or others. The supervisor can answer any questions about an employee's responsibility for maintenance and care of equipment or vehicles used on the job.

Employees may be required to provide a copy of their current DMV printout at least once per year.

Safety belts are to be worn at all times. Employees are required to comply with all traffic rules and regulations.

Failure to follow established operator rules may result in discipline. Employees are required to have a valid driver's license at all times. Uninsurable drivers may be immediately discharged.

Any citations or moving violations will be the driver's responsibility, unless the citation exclusively involved Davis & Roberts Construction vehicle itself.

Only Davis & Roberts Construction employees are permitted in Davis & Roberts Construction vehicles.

Employees driving company vehicles or personal vehicles for company business are required to immediately inform their supervisor or manager if their driver's license is suspended, revoked or it expires; or if they receive a driving-under-the-influence (DUI) citation. In addition, employees that drive personal vehicles for company business must immediately report to the supervisor or manager if their automobile insurance expires or is cancelled.

The improper, careless, negligent, destructive, or unsafe use or operation of equipment or vehicles, as well as excessive or avoidable traffic and parking violations, can result in disciplinary action.

Company Property, Security, Privacy and Searches

Desks, storage areas, work areas, lockers, file cabinets, credenzas, computer systems, office telephones, modems, facsimile machines, duplicating machines and Company vehicles are Company property and must be maintained according to this policy. All such areas and items must be kept clean and are to be used only for work purposes, except as provided in this policy. Davis & Roberts Construction reserves the right, at all times, and without prior notice, to open, inspect, and search any and all Company property, as well as the contents, effects, or articles that are on Company property, for the purpose of determining whether this policy or any other Company policy has been violated, or whether such inspection and investigation is necessary for purposes of promoting safety in the workplace or compliance with state and federal laws. Such inspections may be conducted during or after business hours and in the presence or absence of the employee.

The Company's computer systems and other technical resources, including any voice mail or E-mail systems are provided for use in the pursuit of Company business and are to be reviewed, monitored and used only in that pursuit, except as provided in this policy. As a result, computer data, voicemail, and E-mail are readily available to numerous persons.

If, during the course of an individual's employment, an employee performs or transmits work on Davis & Roberts Construction's computer systems or other technical resources, their work may be subject to the investigation, search, and review of others in accordance with this policy. In addition, any electronically stored information and communications that an employee either sends to or receives from others may be retrieved and reviewed where such investigation serves the legitimate business interests and obligations of Davis & Roberts Construction.

Employees have no right of privacy as to any information or file maintained in or on Company property or transmitted or stored through Davis & Roberts Construction's computer systems, voice mail, E-mail, or other technical resources.

For purposes of inspecting, investigating, or searching employee's computerized files or transmissions, voice mail or E-mail, Davis & Roberts Construction may override any applicable passwords or codes in accordance with the best interests of Davis & Roberts Construction, its employees, or its clients, customers, or visitors. All bills and other documentation related to the use of Company equipment or property are the property of Davis & Roberts Construction and may be reviewed and used for purposes that Davis & Roberts Construction considers appropriate. Employees may access only files or programs, whether computerized or not, that they have permission to enter. Unauthorized review, duplication, dissemination, removal, damage, or alteration of files, passwords, computer systems or programs, or other property of Davis & Roberts Construction or improper use of information obtained by unauthorized means may be grounds for disciplinary action.

Visitors in the Workplace

To provide for the safety and security of employees and the facilities at Davis & Roberts Construction, only authorized visitors are allowed in the workplace.

Restricting unauthorized visitors helps maintain safety standards, protects against theft, ensures security of equipment, protects confidential information, safeguards employee welfare, and avoids potential distractions and disturbances.

All visitors should enter Davis & Roberts Construction at the main entrance. Authorized visitors will receive directions or be escorted to their destination. Employees are responsible for the conduct and safety of their visitors.

If an unauthorized individual is observed on Davis & Roberts Construction premises, employees should immediately notify their supervisor or, if necessary, direct the individual to the main entrance.

Computer and E-mail Usage

Computers, computer files, the e-mail system, and software furnished to employees are Davis & Roberts Construction property intended for business use. Employees should not use a password, access a file, or retrieve any stored communication without authorization. To ensure compliance with this policy, computer and e-mail usage may be monitored.

Davis & Roberts Construction strives to maintain a workplace free of harassment and sensitive to the diversity of its employees. Therefore, Davis & Roberts Construction prohibits the use of computers and the e-mail system in ways that are disruptive, offensive to others, or harmful to morale.

For example, the display or transmission of sexually explicit images, messages, and cartoons is not allowed. Other such misuse includes, but is not limited to, ethnic slurs, racial comments, off-color jokes, or anything that may be construed as harassment or showing disrespect for others.

E-mail may not be used to solicit others for commercial ventures, religious or political causes, outside organizations, or other non-business matters.

Davis & Roberts Construction purchases and licenses the use of various computer software for business purposes and does not own the copyright to this software or its related documentation. Unless authorized by the software developer, Davis & Roberts Construction does not have the right to reproduce such software for use on more than one computer.

Employees may only use software on local area networks or on multiple machines according to the software license agreement. Davis & Roberts Construction prohibits the illegal duplication of software and its related documentation.

Employees should notify their immediate supervisor or any member of management upon learning of violations of this policy. Employees who violate this policy will be subject to disciplinary action.

Internet Usage

Internet access to global electronic information resources on the World Wide Web is provided by Davis & Roberts Construction to assist employees in obtaining work-related data and technology. The following guidelines have been established to help ensure responsible and productive Internet usage. While Internet usage is intended for job-related activities, personal use may be permitted with prior authorization.

All Internet data that is composed, transmitted, or received via our computer communications systems is considered to be part of the official records of Davis & Roberts Construction and, as such, is subject to disclosure to law enforcement or other third parties. Consequently, employees should always ensure that the business information contained in Internet e-mail messages and other transmissions is accurate, appropriate, ethical, and lawful.

The equipment, services, and technology provided to access the Internet remain at all times the property of Davis & Roberts Construction. As such, Davis & Roberts Construction reserves the right to monitor Internet traffic, and retrieve and read any data composed, sent, or received through our online connections and stored in our computer systems.

Data that is composed, transmitted, accessed, or received via the Internet must not contain content that could be considered discriminatory, offensive, obscene, threatening, harassing, intimidating, or disruptive to any employee or other person. Examples of unacceptable content may include, but are not limited to, sexual comments or images, racial slurs, gender-specific comments, or any other comments or images that could reasonably offend someone on the basis of race, age, sex, religious or political beliefs, national origin, disability, sexual orientation, or any other characteristic protected by law.

The unauthorized use, installation, copying, or distribution of copyrighted, trademarked, or patented material on the Internet is expressly prohibited. As a general rule, if an employee did not create material, does not own the rights to it, or has not gotten authorization for its use, it should not be put on the Internet. Employees are also responsible for ensuring that the person sending any material over the Internet has the appropriate distribution rights.

To ensure a virus-free environment, no files may be downloaded from the Internet without prior authorization.

Abuse of the Internet access provided by Davis & Roberts Construction in violation of law or Davis & Roberts Construction policies will result in disciplinary action. Employees may also be held personally liable for any violations of this policy. The following behaviors are examples of previously stated or additional actions and activities that are prohibited and can result in disciplinary action:

- Sending or posting discriminatory, harassing, or threatening messages or images
- Using the organization's time and resources for personal gain
- Stealing, using, or disclosing someone else's code or password without authorization
- Copying, pirating, or downloading software and electronic files without permission
- Sending or posting confidential material, trade secrets, or proprietary information outside of the organization
- Failing to observe licensing agreements
- Engaging in unauthorized transactions that may incur a cost to the organization or initiate unwanted Internet services and transmissions
- Sending or posting messages or material that could damage the organization's image or reputation
- Participating in the viewing or exchange of pornography or obscene materials
- Sending or posting messages that defame or slander other individuals
- Attempting to break into the computer system of another organization or person
- Refusing to cooperate with a security investigation
- Sending or posting chain letters, solicitations, or advertisements not related to business purposes or activities
- Jeopardizing the security of the organization's electronic communications systems
- Sending or posting messages that disparage another organization's products or services
- Passing off personal views as representing those of the organization
- Sending anonymous e-mail messages
- Engaging in any other illegal activities

Workplace Monitoring

Workplace monitoring may be conducted by Davis & Roberts Construction to ensure quality control, employee safety, security, and customer satisfaction.

Because Davis & Roberts Construction is sensitive to the legitimate privacy rights of employees, every effort will be made to guarantee that workplace monitoring is done in an ethical and respectful manner.

Workplace Violence Prevention

Davis & Roberts Construction is committed to preventing workplace violence and to maintaining a safe work environment. Given the increasing violence in society in general, Davis & Roberts Construction has adopted the following guidelines to deal with intimidation, harassment, or other threats of (or actual) violence that may occur during business hours or on its premises.

All employees, including supervisors and temporary employees, should be treated with courtesy and respect at all times. Employees are expected to refrain from fighting, "horseplay," or other conduct that may be dangerous to others.

Conduct that threatens, intimidates, or coerces another employee, a customer, or a member of the public at any time, including off-duty periods, will not be tolerated. This prohibition includes all acts of harassment, including harassment that is based on an individual's sex, race, age, or any characteristic protected by federal, state, or local law.

All threats of (or actual) violence, both direct and indirect, should be reported as soon as possible to your immediate supervisor or any other member of management. This includes threats by employees, as well as threats by customers, vendors, solicitors, or other members of the public. When reporting a threat of violence, you should be as specific and detailed as possible.

All suspicious individuals or activities should also be reported as soon as possible to a supervisor. Do not place yourself in peril. If you see or hear a commotion or disturbance near your workstation, do not try to intercede or see what is happening.

Davis & Roberts Construction will promptly and thoroughly investigate all reports of threats of (or actual) violence and of suspicious individuals or activities. The identity of the individual making a report will be protected as much as is practical.

Anyone determined to be responsible for threats of (or actual) violence or other conduct that is in violation of these guidelines will be subject to prompt disciplinary action.

Davis & Roberts Construction encourages employees to bring their disputes or differences with other employees to the attention of their supervisors or the Owner before the situation escalates into potential violence. Davis & Roberts Construction is eager to assist in the resolution of employee disputes, and will not discipline employees for raising such concerns.

Military Leave

A military leave of absence will be granted to employees who are absent from work because of service in the U.S. uniformed services in accordance with the Uniformed Services Employment and Reemployment Rights Act (USERRA).

Advance notice of military service is required, unless military necessity prevents such notice or it is otherwise impossible or unreasonable.

The leave will be unpaid. However, employees may use any available paid time off for the absence.

Continuation of health insurance benefits is available as required by USERRA based on the length of the leave and subject to the terms, conditions, and limitations of the applicable plans for which the employee is otherwise eligible.

Employees on military leave for up to 30 days are required to return to work for the first regularly scheduled shift after the end of service, allowing reasonable travel time. Employees on longer military leave must apply for reinstatement in accordance with USERRA and all applicable state laws.

Employees returning from military leave will be placed in the position they would have attained had they remained continuously employed or a comparable one depending on the length of military service in accordance with USERRA. Employees will be treated as though they were continuously employed for purposes of determining benefits based on length of service.

Contact the Management for more information or questions about military leave.

Pregnancy Disability Leave

Davis & Roberts Construction provides pregnancy disability leaves of absence without pay to eligible employees who are temporarily unable to work due to a disability related to pregnancy, childbirth, or related medical conditions.

Employees in the following employment classifications are eligible to request pregnancy disability leave as described in this policy:

- * Regular full-time employees

Employees should make requests for pregnancy disability leave to their supervisors at least 30 days in advance of foreseeable events and as soon as possible for unforeseeable events.

A health care provider's statement must be submitted verifying the need for pregnancy disability leave and its beginning and expected ending dates. Any changes in this information should be promptly reported to Davis & Roberts Construction. Employees returning from pregnancy disability leave must submit a health care provider's verification of their fitness to return to work.

Employees are normally granted unpaid leave for the period of the disability, up to a maximum of 16 weeks within any 12-month period. Employees may substitute any accrued paid leave time for unpaid leave as part of the pregnancy disability leave period.

Subject to the terms, conditions, and limitations of the applicable plans, Davis & Roberts Construction will continue to provide health insurance benefits for the full period of the approved pregnancy disability leave.

Benefit accruals, such as vacation, sick leave, or holiday benefits, will be suspended during the leave and will resume upon return to active employment.

So that an employee's return to work can be properly scheduled, an employee on pregnancy disability leave is requested to provide Davis & Roberts Construction with at least two weeks advance notice of the date she intends to return to work.

When a pregnancy disability leave ends, the employee will be reinstated to the same position, unless either the job ceased to exist because of legitimate business reasons or the means of preserving the job would substantially undermine the ability to operate Davis & Roberts Construction safely and efficiently. If the same position is not available, the employee will be offered a comparable position in terms of such issues as pay, location, job content, and promotional opportunities.

If an employee fails to report to work promptly at the end of the pregnancy disability leave, Davis & Roberts Construction will assume that the employee has resigned.

Paid Family Leave Law

The law states that any employee who is required to take time off of work due to the illness of a seriously ill child, spouse, parent or domestic partner, or to bond with a new child, is entitled to defray the otherwise unpaid nature of that time off by being paid through the State Disability Insurance (SDI) system.

- Paid Family Leave Insurance does not provide Job Protection or return rights.
- You must notify your employer of your reason for taking leave in a manner consistent with your company's leave policy.

You are entitled to:

- Know the reason and basis for any decision that affects your benefits.
- Appeal any decision about your eligibility for benefits and appear before a California Unemployment Insurance Appeal Board Administration law judge.
- Privacy- Information about your claim will be kept confidential except for the purposes allowed by law.

To qualify for Paid family Leave compensation, you must meet the following requirements:

- Be covered by State Disability Insurance (SDI) and have earned at least \$300.00 from which deductions were withheld.
- Any employee covered by SDI is covered by this new law. As is the case with SDI, there is a seven calendar day non-payable waiting period before the employee can receive any benefits.
- The employee is eligible to have a maximum of six weeks of qualifying leave paid within a twelve-month period of time.
- The Paid Family Leave law in no way expands employee rights under the FMLA or CFRA. It does not extend the length of time an employee can take to incorporate the six weeks of paid leave.
- It does not make employees that are not eligible for time off under the FMLA or CFRA suddenly eligible.
- All employees who are eligible under the FMLA and CFRA will be eligible for payment under this new law.

- Not all employees who are eligible for payment under the new law are automatically eligible for the other protections or length of time off provided under the FMLA or CFRA.
- All that the law does is defray the unpaid nature of the leave taken by the employee, regardless of FMLA/CFRA eligibility.
- Complete your claim forms accurately, completely, truthful, and timely.
- Supply medical information that supports your claim that the care recipient is in need of your care.
- Provide documentation to support a claim for bonding of a new child.
- Use up to two weeks of any earned but unused vacation leave if required by your employer.

You may not be eligible for benefits if:

- You receive State Disability Insurance, Unemployment Compensation Insurance, or Worker's Compensation.
- You are not working or looking for work at the time you begin your family leave
- You are not suffering a loss of wages.
- The need of care is not supported by the certificate of a treating physician or practitioner.
- You are in custody due to a conviction of a crime.

Employee Conduct and Work Rules

The Company expects all employees to observe certain standards of behavior while at work. These standards are not intended to restrict an employee's legitimate rights, but are for the safety and well-being of all Davis & Roberts Construction employees. These standards apply equally to all employees.

It must be remembered that Davis & Roberts Construction employees its employees at-will which permits Davis & Roberts Construction to change the terms and conditions of employment with or without notice, with or without cause, including, but not limited to, termination, demotion, promotion, transfer, compensation, benefits, duties, and locations of work. Accordingly, either the employee or Davis & Roberts Construction can terminate the employment relationship at any time with or without cause at either party's option with or without notice.

The following action on the part of an employee, while not all inclusive, may be cause for disciplinary action or termination without warning. This list includes but is not limited to:

1. Entering Company property while under the influence of, or having in their possession, any intoxication beverage or illegal drug. This includes consumption, sale, or transfer of such substances during break times, meal periods, or during work time in personal vehicles on Company business.
2. Stealing or attempting to steal Davis & Roberts Construction property or the property of other employees or clients.

3. Bringing onto Davis & Roberts Construction property firearms, ammunition, or concealed weapons of any kind.
4. Fighting, scuffling, or indulging in horseplay.
5. Removing Davis & Roberts Construction property without written approval.
6. Intentionally destroying or damaging Davis & Roberts Construction property or the property of other employees.
7. Falsifying time records.
8. Refusing instruction from your supervisor.
9. Falsifying employment application or other documents required by Davis & Roberts Construction.
10. Being the subject of excessive garnishments or other actions against the payroll which involve Davis & Roberts Construction in the possibility of legal action.
11. Failing to observe dress or safety rules.
12. Excessive tardiness or absenteeism.
13. Leaving work without permission.
14. Threatening, intimidating, coercing, harassing, or interfering with fellow employees or indulging in harmful gossip.
15. Engaging in sexual harassment of any kind.
16. Performing activities other than Company work during working hours.
17. Abusing Company telephone privileges.
18. Violating any criminal law which has some bearing on work performed for Davis & Roberts Construction.
19. Failing to immediately report to the supervisor any injury, no matter how slight.
20. Carrying unauthorized passengers during working time.
21. Engaging in relationships with other employees which may be considered a conflict of interest or create a problem of supervision, safety, security, or morale.

Drug and Alcohol Use

While on Davis & Roberts Construction premises and while conducting business-related activities off Davis & Roberts Construction premises, no employee may use, possess, distribute, sell, or be under the influence of alcohol or illegal drugs.

The legal use of prescribed drugs is permitted on the job only if it does not impair an employee's ability to perform the essential functions of the job effectively and in a safe manner that does not endanger other individuals in the workplace.

Violations of this policy may lead to disciplinary action and/or required participation in a substance abuse rehabilitation or treatment program. Such violations may also have legal consequences.

Employees with questions on this policy or issues related to drug or alcohol use in the workplace should raise their concerns with their supervisor or the Management without fear of reprisal.

Attendance and Punctuality

To maintain a safe and productive work environment, Davis & Roberts Construction expects employees to be reliable and to be punctual in reporting for scheduled work. Absenteeism and tardiness place a burden on other employees and on Davis & Roberts Construction. In the rare instances when employees cannot avoid being late to work or are unable to work as scheduled, they should notify their supervisor at least two (2) hour prior to their shift starting. Failure to notify Davis & Roberts Construction of any absences may be considered as resignation.

Poor attendance and excessive tardiness are disruptive. Either may lead to disciplinary action.

Dress Code and Personal Appearance

Dress, grooming, and personal cleanliness standards contribute to the morale of all employees and affect the business image Davis & Roberts Construction presents to customers and visitors.

During business hours, employees are expected to present a clean and neat appearance and to dress according to the requirements of their positions.

Employees are asked to use their common sense with regard to their dress and appearance, and are expected to present a professional image. Employees must dress in a manner that is consistent with their responsibilities. Attention should be paid to safety, company image, and customer interaction. Your supervisor will explain the proper dress requirement for your position.

Employees inappropriately dressed will be sent home and required to return to work in appropriate attire. This time away from work will be without pay.

Return of Property

Employees are responsible for items issued to them by Davis & Roberts Construction or in their possession or control, such as, but not limited to, the following:

- client lists
- equipment
- keys
- manuals
- protective equipment
- tools
- uniforms
- vehicles
- written materials

Employees must return all Davis & Roberts Construction property immediately upon request or upon termination of employment.

Resignation

Resignation is a voluntary act initiated by the employee to terminate employment with Davis & Roberts Construction. Although advance notice is not required, Davis & Roberts Construction requests at least 2 weeks' written resignation notice from all employees.

Suggestion Program

As employees of Davis & Roberts Construction, you have the opportunity to contribute to our future success and growth by submitting suggestions for practical work-improvement or cost-savings ideas.

All regular employees are eligible to participate in the suggestion program.

A suggestion is an idea that will benefit Davis & Roberts Construction by solving a problem, reducing costs, improving operations or procedures, enhancing customer service, eliminating waste or spoilage, or making Davis & Roberts Construction a better or safer place to work. Statements of problems without accompanying solutions or recommendations concerning co-workers and management are not appropriate suggestions.

All suggestions should contain a description of the problem or condition to be improved, a detailed explanation of the solution or improvement, and the reasons why it should be implemented. If you have questions or need advice about your idea, contact your supervisor for help.

Submit suggestions to the Management for review. As soon as possible, you will be notified of the adoption or rejection of your suggestion.

EXHIBIT 24



SPIVAK LAW

**ATTORNEY CONSULTATION AND FEE CONTRACT
FOR CONTINGENCY CASES**

THIS FEE CONTRACT FOR CONTINGENCY CASES ("Contract") is made on March 30, 2021, in Encino, between **Jorge Leon** hereinafter referred to as "Client," and The Spivak Law Firm of Los Angeles County, CA and United Employees Law Group, PC of Orange County, CA hereinafter referred to as "Attorney."

In consideration of the mutual promises herein contained, the parties hereto agree as follows:

I. PURPOSE OF REPRESENTATION

1.01 Client hereby retains and employs Attorney to sue for and recover all damages and compensation to which Client may be entitled as well as to compromise and settle all claims described below:

class action and private attorneys general act claims against Davis and Roberts and related entities for unprovided water, meal and rest breaks, and unpaid wages

1.02 This agreement will not become binding on either party, and Attorney will not begin providing legal services, until Client has paid the initial deposit, if any, as described in Paragraph 2.03, and has signed this Agreement. This written agreement supersedes any and all previous agreements between the parties, if any.

1.03 Attorney will provide reasonably necessary legal services and will take steps to keep Client informed of the progress of the case. Attorney will respond within a reasonable time and manner to Client's inquiries. If court action becomes necessary, Attorney will represent Client through trial and post-trial motions. Separate arrangements must be made for any appeal or execution proceedings that client wishes to pursue after judgment, or any other matters for which Client wishes to employ Attorney other than the matter described above.

II. ATTORNEY'S FEE AND EXPENSES

2.01 In consideration of services rendered and to be rendered by Attorney, Client hereby agrees to pay to Attorney in the event of an individual settlement or judgment the following amounts on any settlements, monies, judgments or other consideration which have or may be paid on this legal matter:

- a. Before the filing of a lawsuit or arbitration demand: 33 and 1/3 percent of any recovery.

- b. After the filing of a lawsuit or arbitration demand: 40 percent of any recovery. In the event Client prevails at trial (or arbitration) of this matter, any fee awarded by the court, pursuant to statute or contract, in connection with the subject matter of this representation, shall be paid to Attorney and shall be applied against Client's fee obligation under this Agreement, but shall not limit or discharge Client's fee obligation. In the event there is a fee award by the court upon Client prevailing at trial, the Attorney shall receive either the fee award or 40% of the total award, whichever is greater.

If the total legal fees received in this case are \$250,000.00 or greater, it is agreed that the United Employees Law Group, PC will shall receive 33 and 1/3% of the total legal fees received and the Spivak Law Firm shall receive the remaining 66 and 2/3% of the total legal fees received. If the total legal fees received in this case are less than \$250,000.00, it is agreed that the United Employees Law Group, PC will shall receive 25% of the total legal fees received and the Spivak Law Firm shall receive the remaining 75% of the total legal fees received.

It is agreed and understood that if the amount of attorney's fees on this claim or cause of action are regulated or governed by law, and that law precludes any other fee arrangement other than the amount set by the law or regulation, then the amount payable hereunder to said Attorney shall be limited to the maximum so allowed by law. In the event of a class action settlement or judgment, Private Attorneys General Action settlement or judgment, or other representative settlement or judgment, a court's approval of an award of attorney fees is necessary. Normally with such settlements and judgments, a request for attorney fees will be for no more than one third (33 and 1/3%) of the total value of the settlement or judgment amount. Attorney will apply for an award of attorney fees from the court that may be more or less than the percentages stated above. Under such circumstances. Attorney will also ask the court to separately award Attorney the costs Attorney has advanced for this matter. In advance of such requests to a Court for attorney fees and costs, Attorney will seek Client's written consent to the attorney fees and costs sought.

2.01.1 This section concerns the possibility of settlement of individual claims, attorney fees, and costs in the event representative claims are no longer viable.

Under this Agreement, Attorney agrees to represent Client in Client's pursuit of the claims described in Section 1.01 of this Agreement, stated above. These claims are representative claims because Client agrees that Client will pursue the Claims for Client and all comparable employees and individuals. In this regard, Attorney advises Client of the following material information:

1. Attorney has chosen to represent Client primarily because the Client has claims that Client may be able to bring on behalf of numerous other comparable employees. As a result, Client's claims have the potential to support a class action lawsuit and/or a Private Attorneys General Act lawsuit.
2. Client's individual claims - and those of each of the other comparable employees that Attorney will file the lawsuit on behalf of - are generally worth very small amounts in

unpaid wages, unreimbursed work expenses, interest, and/or statutory monetary penalties. Attorney would not have agreed to represent Client if it were not for the strong likelihood that a Court will permit Client's lawsuit to proceed to trial on behalf of numerous other employees with comparable claims to Client's claims.

3. Only by combining the claims of numerous individuals can Attorney reasonably hope to recover the attorney fees and costs Attorney incurs as part of Attorney's contingency representation of Client.
4. For reasons that are unknown at the time of this Agreement and for reasons that are well outside of the control of the Attorney and the Client, Attorney may discover after Client executes this Agreement that numerous comparable employees with comparable claims to Client's claims do not exist. In this instance, the Attorney and the Client may not be able to pursue the class action or Private Attorneys General Act claims any longer.
5. Based on Attorney's prior experience, Defendants (the party or parties Client sues or intends to sue) in class actions and Private Attorneys General Actions often attempt to settle with the Plaintiff (the party suing or intending to sue) for the maximum value of the Plaintiff's individual claims. Such settlements prevent the Plaintiff from continuing to represent comparable individuals (sometimes known as "class members," "putative class members," "proposed class members," and/or "aggrieved employees") who Client brought the lawsuit on behalf of.
6. Based on Attorney's prior experience, the Defendant may offer to settle Client's individual claims for an amount of money that equals or exceeds the maximum value of Client's claims. In this event, the Attorney's fees and costs will likely exceed the maximum value of Client's individual claims. Often in Attorney's experience, the Attorney's fees and costs will far exceed the value of Client's individual claims.
7. Attorney may advise Client to accept an individual settlement of Client's claims if numerous individuals with claims that are comparable to Client's do not exist and an individual settlement is in Client's best interest. Alternatively, Client may choose to enter into a settlement for an amount that equals or exceeds the maximum value of Client's individual claims even if there are numerous individuals with claims that are comparable to Client's claims.
8. Based on evidence Attorney may obtain after entering into this Agreement with client, Attorney's estimate of maximum value of Client's claims may change over the course of the Attorney-Client relationship under this Agreement.

In the event the Defendant offers to settle with Client for an amount of money that equals or exceeds the maximum value of Client's individual claims, Client agrees that, if the Attorney's fees and costs exceed the maximum value of Client's claims, Attorney may elect, solely at Attorney's option, that Client

receive only the maximum value of Client's individual claims from the settlement funds and that the Attorney receives the remaining settlement funds to cover all or part of the Attorney's fees and costs and the risks that arise from Attorney's contingency representation of Client. In other words, Client agrees to accept as settlement the amount equal to the estimated maximum value of Client's claims. Attorney discloses that attorney's fees and costs incurred may substantially exceed the client's net recovery.

Within seven days of Client's written request to Attorney, Attorney will provide Client with Attorney's estimate of the maximum value of Client's claims. This estimate of maximum value may change over the course of litigation.

Attorney strongly recommends that Client consult with an independent lawyer about this provision, including whether this provision is in Client's best interests. By initialing below, Client agrees that Attorney has provided Client with a reasonable opportunity to consult with an independent lawyer about this provision and Client consents to this provision.

CL (Client initials here)

2.02 The rates set forth above are not set by law, but are negotiable between an attorney and client.

2.03 Client agrees to grant law firm a lien on any and all claims or causes of action that are the subject of this Agreement. The lien, to ensure payment of any sums owing to law firm at the conclusion of services performed, will attach to any recovery you may obtain. Law firm may compel payment of fees and costs from any such funds recovered on behalf of you, even if law firm has been discharged before the end of the case. You may seek the opinion of an independent lawyer of your choice before agreeing to this lien. By initialing below, Client agrees that Client has had reasonable opportunity to consult an independent law firm, regardless of whether you have actually consulted such law firm, and Client agrees that law firm will have a lien as specified above.

CL (Client initials here) DS (Attorney initials here)

III. APPROVAL NECESSARY FOR SETTLEMENT

3.01 Attorney is hereby authorized to enter into any and all settlement negotiations on behalf of those whom Attorney represents as Attorney deems appropriate. This includes, but is not limited to, Attorney's prerogative to pursue cash or structured payment settlement negotiations.

3.02 Client hereby grants unto Attorney a power of attorney to handle negotiations and settlement discussions regarding the obtaining of possession of any and all monies or other things of value subject of the matter due to Client under this claim as fully as Client could do so in person.

a. This expressly includes the right to sign Client's name on and to any insurance company drafts, money orders, cashier's checks, checks or other negotiable instruments made

payable to Attorney and Client, Attorney, or to Client without the joinder of Attorney, submitted to Attorney on behalf of Client in full or partial settlement of this case.

b. This limited power of attorney further authorizes Attorney to place these monies, referred to above, in Attorney's trust account and from that trust account, make distributions and payments to Attorney for the agreed to fee stated above, reimbursement to Attorney for any and all expenses incurred by Attorney in handling this case, payments to Client of Client's interest in the monies recovered as stated above, and payments to parties other than Client and Attorney for their services performed, fees charged or bills rendered in connection with representing Client, including but not limited to medical bills, court reporter fees, deposition fees, investigative services, costs of exhibits or other special expenses incurred by Attorney on behalf of Client.

3.03 No settlement of any nature shall be made for any of the aforesaid claims or profits of Client without the complete approval of Client, nor shall Client obtain any settlement on the aforesaid claims without the complete approval of attorney.

3.04 Attorney is granted a limited power of attorney so that Attorney may have full authority to prepare, sign and file all legal instruments, pleadings, drafts, authorizations and papers as shall be reasonably necessary to conclude this representation, including settlement and/or reduce to possession any and all monies or other things of value due to Client under this claim as fully as Client could do so in person.

IV. REPRESENTATIONS

4.01 It is expressly agreed and understood that no promises or guarantees as to the outcome of the case have been made to Client by Attorney. Attorney has not represented to Client that Client will recover all or any of the funds so desired. Client also acknowledges that obtaining a judgment does not guarantee that the opposing party will be able to satisfy the judgment. It is further expressly understood and agreed that no other representations have been made to Client, except for those set out in this Contract.

V. DEDUCTION OF EXPENSES

5.01 All reasonable expenses incurred by Attorney in the handling of this legal matter shall be deducted from the gross settlement proceeds at the time the case is settled or resolved, and before the contingent fee is calculated.

5.02 The expenses contemplated above, include but are not limited to any and all out-of-pocket expenses incurred in connection with this case, including but not limited to the following expenses: filing fees, court costs, certified copies of documents, pleadings, orders etc., transcripts, depositions, duplication costs, postage, office supplies, photographs, trial exhibits, long distance phone and fax calls, appraisal fees, consultants, expert witnesses and other fees associated with preparation and trial

testimony, investigation fees, delivery charges, overnight mail/parcel services, parking, toll road and mileage expenses, out of town expenses including travel expense, air fare, hotels, meals, and any other expense incurred in connection with the matter.

5.03 Except for the following, all expenses and costs will be charged to Client at Attorney's cost: mileage at \$0.50/mile and photocopying at \$0.25/page.

VI. COOPERATION OF CLIENT

6.01 Client shall keep Attorney advised of Client's whereabouts at all times, and provide Attorney with any changes of address, phone number or business affiliation during the time period which Attorney's services are required, and shall comply with all reasonable requests of Attorney in connection with the preparation and presentation of aforesaid representation.

6.02 Attorney may, at Attorney's option, withdraw from the case and cease to represent Client for any reason, including without limitation Client's failure to timely pay fees and expenses or deposits for same in accordance with this Contract, subject to the professional responsibility requirements to which attorneys are subject.

It is further understood and agreed between the parties that upon such termination of any services of Attorney, any of Client's deposits remaining in Attorney's Trust Account shall be applied to any balance remaining owing to Attorney for fees and/or expenses and any surplus then remaining shall be refunded to Client.

6.03 Duties As A Class Representative In A Class Action or Private Attorney General Action. Client has retained Attorney to prosecute a class action and/or private attorney general action on behalf of Client and comparable employees and other individuals. This section applies only to Client's responsibilities as a class representative or as a private attorney general. Client will have certain duties and responsibilities to the comparable individuals the lawsuit is on behalf of. Certain of these duties are explained in greater detail below.

6.03.01 Attorney may apply to the Court for a special award to compensate the Client as the class representative or private attorney general for Client's contribution to the action and/or Client's release of all individual claims Client may have. Client understands however that unless such an award is approved by the Court, Client will only be entitled to Client's pro rata share of funds available for distribution to all class members, aggrieved employees, and comparable individuals.

6.03.02 A class representative represents the interests of all members of his class in litigation to recover money unpaid wages, penalties, reimbursement, restitution and/or obtain injunctive relief for the class. Likewise, a private attorney general represents the interests of all comparable aggrieved employees in litigation to recover money civil penalties (monetary penalties that traditionally only the State can sue for) on behalf of the Client, aggrieved employees, and the State of California.

6.03.03 The class or group of aggrieved employees usually consists of all persons who are similarly situated with respect to a common course of conduct or practice. In other words, all those persons who are affected by the challenged behavior.

6.03.04 A class representative or private attorney general has claims that are typical of those of the class or group of aggrieved employees, and thus involve common issues of law or fact. For example, as a class representative, Client's claims against the defendant are typical of the class and private attorney general claims against the defendant, simply because Client was injured by the same unlawful employment practices as the other class members and aggrieved employees.

6.03.05 A class representative and private attorney general always considers the interests of the class and/or aggrieved employees just as Client would consider Client's own interests and in some cases must put the interests of the class and other aggrieved employees before Client's own interests. This means that Client is a champion of the other individuals or a fiduciary litigant.

6.03.06 A class representative or private attorney general always actively participates in the lawsuit, as necessary, by among other things, answering interrogatories, producing documents to the defendants and giving deposition and trial testimony if requested. Client may be required to travel to give such testimony.

6.03.07 A class representative or private attorney general recognizes and accepts that any resolution of the lawsuit by dismissal or settlement, is subject to court approval, and must be designed in the best interest of the class as a whole.

6.03.08 A class representative or private attorney general is not required to be particularly sophisticated or knowledgeable about the subject of the lawsuit. However, a class representative private attorney general should follow the progress of the lawsuit and should provide all relevant facts to the lawyers for the class or aggrieved employees.

6.03.09 A class representative or private attorney general volunteers to represent or champion many other people with similar claims and injuries because of the importance of the case and that necessity that all class members or aggrieved employees benefit from the lawsuit equally; the savings of time, money and effort should benefit all parties and the court. Class actions and private attorney general actions are an important tool to assure compliance with the law even where an individual's losses may be relatively small.

By initially below, Client has reviewed and acknowledges Client's duties as a class representative and/or private attorney general.

 (Client initials here)

VII. CALIFORNIA LAW TO APPLY

7.01 This Agreement shall be construed under the laws of California, and all obligations of the parties created hereunder are performable in Los Angeles County, CA.

VIII. PARTIES BOUND

8.01 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.

IX. LEGAL CONSTRUCTION

9.01 In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

X. PRIOR AGREEMENTS SUPERSEDED

10.01 This Agreement constitutes the sole and only agreement by and between the parties. It supersedes any prior understandings or written or oral agreements between the parties concerning the subject matter discussed herein.

XI. RESOLUTION OF DISPUTES BY ARBITRATION

11.01 You have the right to elect arbitration pursuant to the fee arbitration procedures of the State Bar of California, in any dispute subject to the jurisdiction of the State of California over attorneys' fees, charges, costs or expenses, as set forth in California Business and Professions Code Section 6200, et seq. If, after receiving a notice of this right to arbitrate, you do not elect to proceed under the State Bar fee arbitration procedures, and do not file a request for fee arbitration within 30 days, any dispute over fees, charges, costs or expenses, will be resolved by binding arbitration as described below.

11.02 Any controversy between the parties regarding the construction, application or performance of any services under this Agreement, and any claim arising out of or relating to this Agreement or its breach, shall be submitted to binding arbitration upon the written request of one party after the service of that request on the other party. The sole and exclusive venue for the arbitration and or any legal dispute shall be Los Angeles County, California.

11.03 By initialing below, Client and law firm confirm that they have read and understand the paragraphs above, and voluntarily agree to binding arbitration. In doing so, Client and law firm voluntarily give up important constitutional rights to trial by judge or jury, as well as rights to appeal.

You are advised that you have the right to have an independent law firm of your choice review these arbitration provisions, and this entire agreement, prior to initialing this provision or signing this Agreement.

 JL (Client initials here) DS (Attorney initials here)

TAX DISCLOSURE AND ACKNOWLEDGMENT:

CLIENT IS ADVISED TO OBTAIN INDEPENDENT AND COMPETENT TAX ADVICE REGARDING THESE LEGAL MATTERS SINCE LEGAL TRANSACTIONS CAN GIVE RISE TO TAX CONSEQUENCES.

THE UNDERSIGNED LAW FIRM AND ATTORNEY HAVE NOT AGREED TO RENDER ANY TAX ADVICE AND ARE NOT RESPONSIBLE FOR ANY ADVICE REGARDING TAX MATTERS OR PREPARATION OF TAX RETURNS, OR OTHER FILINGS, INCLUDING, BUT NOT LIMITED TO, STATE AND FEDERAL INCOME AND INHERITANCE TAX RETURNS.

FURTHERMORE, CLIENT SHOULD OBTAIN PROFESSIONAL HELP REGARDING THE VALUATION AND LOCATION OF ALL ASSETS WHICH MAY BE THE SUBJECT OF A LEGAL MATTER INCLUDING BUT NOT LIMITED TO PENSIONS, EMPLOYMENT BENEFIT AND PROFIT SHARING RIGHTS THAT MAY BE CONTROLLED BY ANY OTHER PARTY TO THE LEGAL MATTER.

XII. DISCLAIMER OF GUARANTEE

12.01 Nothing in this Agreement and nothing in Attorney's statements to Client will be construed as a promise or guarantee about the outcome of the matter. Attorney makes no such promises or guarantees. There can be no assurance that Client will recover any sum or sums in this matter. Attorney's comments about the outcome of this matter are expressions of opinion only. Client acknowledges that Attorney has made no promises or guarantees about the outcome.

XIII. DISCHARGE AND WITHDRAWAL

13.01 Client may discharge Attorney at any time, with written notice. Attorney may withdraw with Client's consent, or for good cause, which includes Client's breach of this Agreement, refusal to cooperate or communicate with Attorney on this matter, or any fact or circumstance that would render Attorney's representation unlawful or unethical. Attorney will, upon Client's request, deliver Client's file and property in Attorney's possession, unless subject to lien as provided above, whether or not Client has completed payment for all services rendered.

XIV. EFFECTIVE DATE

14.01 This Agreement will govern all legal services beginning on the date that Attorney began performing work for Client. That date of this document is to be used for reference only. Client will be required to pay Attorney the reasonable value of services performed by Attorney, even if this agreement never takes effect.

I further certify and acknowledge that I have read this Contract, and that I have voluntarily entered into this Contract fully aware of its terms and conditions as of the date Attorney first provided services. All clients signing below agree to be liable, jointly and severally, for all obligations under this agreement.

SIGNED on Apr 06, 2021



Jorge Leon

SIGNED on 05 / 14 / 2021

The Spivak Law Firm

BY: 

David G. Spivak
16530 Ventura Blvd., Suite 203
Encino, CA 91436
(818) 582-3086
(818) 582-2561 (telefax)
California Bar No. 179684

United Employees Law Group, PC

BY: _____
Walter L. Haines
5500 Bolsa Ave., Suite 201
Huntington Beach, CA 92649
(562) 256-1047
(562) 256-1006 (telefax)
California Bar No. 71075

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STATEMENT OF CLIENT'S RIGHTS FOR CONTINGENCY FEES

Before you, the prospective client, arrange a contingent fee agreement with a lawyer, you should understand this statement of your rights as a client. This statement is not a part of the actual contract between you and your lawyer, but, as a prospective client, you should be aware of these rights.

1. There is no legal requirement that a lawyer charge a client a set fee or a percentage of money recovered in a case. You, the client, have the right to talk with your lawyer about the proposed fee and to bargain about the rate or percentage as in any other contract. If you do not reach an agreement with one (1) lawyer you may talk with other lawyers.

2. Any contingent fee contract must be in writing and you have three (3) business days to reconsider the contract. You may cancel the contract without any reason if you notify your lawyer in writing within 3 business days of signing the contract. If you withdraw from the contract within the first three (3) business days, you do not owe the lawyer a fee although you may be responsible for the lawyer's actual costs during that time. If your lawyer begins to represent you, your lawyer may not withdraw from the case without giving you notice, delivering necessary papers to you, and allowing you time to employ another lawyer. Often, your lawyer must obtain court approval before withdrawing from a case. If you discharge your lawyer without good cause after the 3-day period, you have to pay a fee for work the lawyer has done.

3. Before hiring a lawyer, you, the client, have the right to know about the lawyer's education, training, and experience. If you ask, the lawyer should tell you specifically about the lawyer's actual experience dealing with cases similar to yours. If you ask, the lawyer should provide information about special training or knowledge and give you this information in writing if you request it.

4. Before signing a contingent fee contract with you, a lawyer must advise you whether the lawyer intends to handle your case alone or whether other lawyers will be helping with the case. If you lawyer intends to refer the case to other lawyers, the lawyer should tell you what kind of fee sharing arrangement will be made with the other lawyers. If lawyers from different law firms will represent you, at least one (1) lawyer from each law firm must sign the contingent fee contract.

5. If your lawyer intends to refer your case to another lawyer or counsel with other lawyers, your lawyer should tell you about that at the beginning. If your lawyer takes the case and later decides to refer it to another lawyer or to associate with other lawyers, you should sign a new contract that includes the new lawyers. You, the client, also have the right to consult with each lawyer working on your case and each lawyer is legally responsible to represent your interest and is legally responsible for the acts of the other lawyers involved in the case.

6. You, the client, have the right to know in advance how you will need to pay the expenses and the legal fees at the end of the case. If you pay a deposit in advance for costs, you may ask reasonable questions about how the money has or will be spent and how much of it remains unspent. Your lawyer should give a reasonable estimate about future necessary costs. If your lawyer agrees to

8. You, the client, have the right to receive and approve a closing statement at the end of the case before you pay any money. The statement must list all of the financial details of the entire case, including the amount recovered, all expenses, and a precise statement of your lawyer's fee. Until you approve the closing statement your lawyer cannot pay any money to anyone, including you, without an appropriate order of the court. You also have the right to have every lawyer or law firm on your case sign this closing statement.

10. You, the client, have the right to make the final decision regarding settlement of a case. Your lawyer must notify you of all offers of settlement before and after the trial. Offers during the trial must be immediately communicated and you should consult with your lawyer regarding whether to accept a settlement. However, you must make the final decision to accept or reject a settlement.

[illegible]

11. If at any time you, the client, believe that your lawyer has charged an excessive or illegal fee, you have the right to report the matter to The California Bar, the agency that oversees the practice and behavior of all lawyers in California. For information on how to reach The California Bar, contact the local bar association. Any disagreement between you and your lawyer about a fee can be taken to court and you may wish to hire another lawyer to help you resolve this disagreement. Usually fee disputes must be handled in a separate lawsuit, unless your fee contract provides for arbitration.

SIGNED on Apr 06, 2021



Jorge Leon

SIGNED on 05 / 14 / 2021

The Spivak Law Firm

BY: 

David G. Spivak
16530 Ventura Blvd., Suite 203
Encino, CA 91436
(818) 582-3086
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California Bar No. 179684

EXHIBIT 25

G. Arthur Meneses (SBN 105260)
Raul Perez (SBN 174687)
Gene Williams (SBN 211390)
Melissa Grant (SBN 205633)
Initiative Legal Group APC
1800 Century Park East, 2nd Floor
Los Angeles, California 90067
Telephone: (310) 556-5637
Facsimile: (310) 861-9051

Attorneys for Plaintiff Robert Acheson
and the Settlement Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

ROBERT ACHESON, individually, and on
behalf of other members of the general
public similarly situated,

Plaintiff,

v.

EXPRESS, LLC, a Delaware limited
liability company; and DOES 1 through 10,
inclusive,

Defendant.

Case No.: 109CV135335

Assigned for all purposes to
the Hon. James P. Kleinberg

CLASS ACTION

**DECLARATION OF G. ARTHUR
MENESES IN SUPPORT OF MOTION
FOR A CLASS REPRESENTATIVE
ENHANCEMENT PAYMENT AND AN
AWARD OF ATTORNEYS' FEES AND
COSTS**

Date: September 9, 2011

Time: 9:00 a.m.

Place: Department 1

Complaint Filed: February 19, 2009

Trial Date: Trial Date Not Set

DECLARATION OF G. ARTHUR MENESES

I, G. Arthur Meneses, hereby declare as follows:

1. I am an attorney licensed to practice before all courts of the State of California. I state the following upon information and belief and if called as a witness, I could and would competently testify. I am a Partner at Initiative Legal Group APC (“Initiative” or “Class Counsel”), Class Counsel in this action and counsel for Plaintiff and Class Representative Robert Acheson. I make this declaration in support of the Motion for a Class Representative Enhancement Payment and an Award of Attorneys’ Fees and Costs.

Initiative’s Founding and Background

2. Founded in 2002, Initiative prosecutes class actions and other complex litigation on behalf of consumers, employees, and others who have had their rights violated. Drawing on the expertise and experience of over 40 attorneys, Initiative operates one of the largest wage and hour class action practices in California devoted exclusively to representing plaintiffs unable to afford attorneys’ fees and costs.

Initiative’s Certification of Class Actions and Appointments as Interim Lead Counsel

3. Since 2005, Initiative has successfully certified 20 class actions by way of *contested* motions and has been appointed Interim Lead Counsel in a number of other cases. In *Nevins v. UHS of Delaware* (L.A. Super. Ct. No. BC322077), Initiative certified a class of more than 1500 nurses and other healthcare employees alleging unpaid overtime and waiting-time penalties. In *Smith v. The Children’s Place* (L.A. Super. Ct. No. BC328780), Initiative’s motion for class certification as to the class members’ claims for unpaid overtime, waiting-time penalties, and uncompensated meal breaks and rest periods was granted. In *Padovani v. Citicorp Investment Services, Inc.* (C.D. Cal. No. 07-00113), Initiative was appointed lead counsel of the actions brought against Citicorp for the company’s alleged failure to properly classify employees as non-exempt and to pay them overtime. In *Palos v. Int’l Protective Servs., Inc.* (L.A. Super. Ct. No. BC323209), Initiative certified a class of thousands of security guards for claims arising under California Labor Code section 223 (covertly paying lower-than-required wages) and California Business and Professions Code section 17200. In

1 *Taylor v. Ross Stores, Inc.* (San Bernardino Super. Ct. No. RCV 065453, JCCP 4331), a case
2 initially pending and certified in Orange County before being consolidated with two related
3 cases in San Bernardino County, Initiative successfully certified a class of assistant managers
4 misclassified as exempt from overtime pay, who consequently did not receive overtime pay,
5 meal or rest periods, and also had unlawful deductions taken from their earned bonuses. As
6 lead counsel, Initiative negotiated the court-approved settlement of the consolidated cases. In
7 *Deleon v. Verizon Wireless LLC* (L.A. Super. Ct. No. 389065), Initiative was appointed co-
8 lead counsel of the coordinated cases brought against Defendant for its alleged failure to
9 provide employees with Labor Code compliant meal and rest periods and to pay the requisite
10 premiums as a consequence of that failure. In *Mansfield v. Brackenhoff Mgmt. Group, Inc.*
11 (L.A. Super. Ct. No. BC356188), Initiative's certification motion was granted on behalf of
12 property managers alleging overtime, meal and rest period violations, and the failure to timely
13 pay wages upon termination. In *Clymer v. Candle Acquisition Co.* (L.A. Super. Ct.
14 BC328765), after a successful appeal, Initiative's certification motion was granted as to wage
15 statement violations under California Labor Code section 226 and California Business and
16 Professions Code section 17200. In *Lopez v. Discount Tire Centers* (L.A. Super. Ct. No.
17 BC399137), Initiative was appointed lead counsel of the coordinated cases against Discount
18 Tire Centers which alleged that the company failed to provide employees with Labor Code
19 compliant meal and rest periods and to pay the requisite premiums as a consequence of that
20 failure. In *Moreno, et al. v. AutoZone, Inc.* (N.D. Cal. No. 05-04432), Initiative certified a
21 class of over 24,600 employees based on a claim that former employees failed to receive their
22 final paychecks within the time governed by California Labor Code sections 201 and 202. In
23 *Morgan v. United Retail Group, Inc.* (L.A. Super. Ct. No. BC362191), Initiative certified a
24 class of more than 2700 current and former retail employees who received non-compliant
25 wage statements. In *In re Taco Bell Wage and Hour Actions* (E.D. Ca. No. 07-01314),
26 Initiative was appointed interim lead counsel of the actions brought against Taco Bell on
27 behalf of a putative class of 17,000 current and former non-exempt employees on the grounds
28 that Taco Bell failed to comply with the California Labor Code. In *Parks v. Walt Disney*

1 *Internet Group* (C.D. Cal. No. 08-1380), the district court granted Initiative's motion for
2 conditional class certification of a collective action under the Fair Labor Standards Act on
3 behalf of misclassified financial analysts. In *Hill v. Sullivan Auto Group* (L.A. Super. Ct. No.
4 BC378222), Initiative certified a class of current and former automobile salespersons alleging
5 wage statement violations under California Labor Code section 226 and California Business
6 and Professions Code section 17200. In *In Re Fidelity Overtime Litig.* (C.D. Cal. 06-07765),
7 Initiative was appointed interim lead counsel of the consolidated actions against Fidelity
8 which alleged that the company had improperly classified employees as exempt from certain
9 provisions of the California Labor Code and the Fair Labor Standards Act. In *Myart v.*
10 *AutoZone, Inc.* (Orange County Super. Ct. No. 05CC03219), Initiative certified a class of
11 approximately 30,000 retail store employees alleging unpaid off-the-clock work. In *Mazza v.*
12 *Am. Honda Motor Co., Inc.* (C.D. Cal. No. 07-07857), Initiative certified a nationwide class of
13 Acura owners alleging violations of California's Unfair Competition Law and the Consumer
14 Legal Remedies Act in connection with allegations that Honda failed to disclose pre-purchase,
15 material information about a new braking system to the class members. In *Mares v. BFS*
16 *Retail & Commercial Operations, LLC* (L.A. Super. Ct. No. BC375967), Initiative certified a
17 class of approximately 3200 current and former technicians and front-shop employees, for the
18 miscalculation of the regular rate for purposes of paying class members premiums for missed
19 meal and rest breaks. In *In re AutoZone, Inc., Wage and Hour Employment Practices*
20 *Litigation* (N.D. Cal 3:10-md-02159-CRB), the District Court ordered coordinated discovery
21 and appointed Initiative as lead counsel for purposes of discovery. In *Augustus v. American*
22 *Commercial Sec. Servs., et al.* (L.A. Super. Ct. No. BC336416), Initiative, with co-counsel,
23 certified two subclasses of security guards for alleged meal and rest period violations. In
24 *Blair v. Jo-Ann Stores, Inc., et al.* (L.A. Super. Ct. No. BC394795), Initiative, with co-
25 counsel, certified a class for claims including misclassification, uncompensated meal breaks
26 and rest periods, and off-the-clock work on behalf of over 10,000 class members. In
27 *Iskanian v. CLS Transp. Los Angeles, LLC* (L.A. Super. Ct. No. BC356521), Initiative
28 certified a class for claims including unpaid overtime, as well as uncompensated meal and rest

periods. In *Delgado v. New Albertson's Inc., et al.* (C.D. Cal. No. 07-07857), Initiative certified a class of more than 42,000 current and former retail employees who received non-compliant wage statements under the California Labor Code Private Attorneys General Act ("PAGA"), codified at California Labor Code sections 2698, et seq. In *Zamora v. Balboa Life & Casualty LLC, et al.* (L.A. Super Ct. No. BC360026), Initiative certified a class of approximately 10,000 hourly-paid Countrywide employees across six subclasses. In *Muhammad v. Bare Escentuals, Inc.* (L.A. Super. Ct. No. BC405569), Initiative certified a class of 1700 current and former retail employees who received non-compliant wage statements. In *Yousefian v. 21st Century Insurance Company, et al.* (C.D. Cal. No. 10-01077), Initiative conditionally certified a collective action on behalf of current and former sales representatives for claims arising under the Fair Labor Standards Act.

Initiative's Appellate Practice

4. Initiative maintains an active appellate practice. Initiative successfully sought a writ of mandamus in *Dunlap v. Super. Ct. (Bank of Am.)*, 142 Cal. App. 4th 330 (2006), which took up whether a plaintiff must adhere to the administrative exhaustion requirement under PAGA. *Dunlap* is one of a handful of published cases in this relatively new body of law. Accordingly, *Dunlap* is frequently cited authority and will likely continue to be instrumental as PAGA assumes its common law definition. In *The Children's Place v. Super. Ct. (Smith)* (Cal. 2d. Dist. Ct. No. B193391), Initiative persuaded the Court of Appeal to grant a peremptory writ of mandate if the trial court did not restore an earlier ruling granting class certification. The *Smith* writ petition assured the certification of a class alleging overtime and wage statement violations and, soon thereafter, the case settled on terms favorable to the class. In *Clymer v. Candle Acquisition Co.* (L.A. Super. Ct. No. BC328765), Initiative successfully reversed on appeal a trial court order denying certification of a class alleging that non-compliant wage statements give rise to a legal question intrinsically appropriate for class certification. In *Iskanian v. CLS Transp. Los Angeles LLC* (L.A. Super. Ct. No. BC356521), Initiative successfully sought a writ of mandate directing the trial court to reconsider its decision compelling arbitration and dismissing the plaintiff's class allegations on the basis of

an arbitration agreement that expressly disallowed the plaintiff's enforcement of the California Labor Code by way of class action. In *Coleman v. Estes Express Lines, Inc.*, 2011 U.S. App. LEXIS 1538 (9th Cir. January 25, 2011), Initiative successfully defended an appeal of the District Court Order remanding the action to state court. The Ninth Circuit Court of Appeals adopted Initiative's reasoning that a District Court should limit its analysis to the allegations contained in the complaint when determining whether it lacks subject matter jurisdiction pursuant to the Local Controversy under the Class Action Fairness Act. Initiative enjoyed another significant appellate success in *Aberdeen v. Toyota Motor Sales, U.S.A., Inc.*, 2011 U.S. App. LEXIS 5706 (9th Cir. March 18, 2011), where the Ninth Circuit held that the District Court had erred in dismissing the case, and should retain jurisdiction over the matter and allow individual claims to proceed. The Ninth Circuit also held that the District Court erred in holding that Aberdeen lacked standing to sue under California's Unfair Competition Laws as an individual, and specifically left open the possibility that the case could proceed on a class basis with a different class representative. And, in *Brown v. Ralphs Grocery Co.*, 197 Cal. App. 4th 489 (2011), Initiative succeeded in shielding its client's Private Attorney General Act ("PAGA") claims from arbitration, obtaining a ruling that PAGA claims cannot be waived by private agreement. Ralphs had argued that under *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011), the Federal Arbitration Act (FAA) preempted state law invalidating such arrangements. The Court of Appeal disagreed, finding that *Concepcion* "does not provide that a public right, such as that created under the [PAGA], can be waived if such a waiver is contrary to state law."

Initiative's Record of Settlements on Behalf of Employees and Consumers

5. Either on its own, or with co-counsel, Initiative has received final approval of settlements totalling tens of millions of dollars on behalf of hundreds of thousands of class members, including in the following cases: *In re Michelin North Am., Inc. Pax Sys. Marketing & Sales Prac. Litig.* (No. 8:08-md-01911-RWT) (nationwide settlement on behalf of approximately 94,000 class members who owned Honda vehicles with Michelin tires that were, among other deficiencies, predisposed to premature tread wear); *Holliman v. Kaiser*

Found. Health Plan, et al. (Alameda Super. Ct. No. C06-0755 SC) (settlement on behalf of healthcare workers for unpaid overtime and wage statement violations); *Dunlap v. Bank of Am.* (L.A. Super. Ct. No. BC328934) (settlement on behalf of tellers, account representatives, and other non-exempt employees for unpaid overtime and meal and rest break claims); *Brannon v. Midland Credit Mgmt., Inc.* (San Diego Super. Ct. No. GIC 864722) (settlement on behalf of class of misclassified account managers); *Taylor v. Ross Stores, Inc.* (San Bernardino Super. Ct. No. RCV 065453, JCCP 4331) (settlement on behalf of certified class of misclassified assistant store managers); *Case, et al. v. Toyohara America Inc.* (L.A. Super. Ct. No. BC328111) (settlement of various wage and hours claims, including the failure to pay overtime); *Guzman v. GAP* (L.A. Super. Ct. No. BC310168) (settlement on behalf of misclassified store managers); *Sunio v. Marsh* (L.A. Super. Ct. No. BC328782) (settlement on behalf of misclassified account representatives); *Kenemixay v. Nordstrom, Inc.* (L.A. Super. Ct. No. BC318850) (settlement of claims for unpaid overtime and missed meal and rest breaks); *Mavrogiorgos v. Rite Aid Corp.* (S.D. Cal. No. 05-0923) (settlement of wage statement violations on behalf of non-exempt employees); *Meints v. Kohl's* (San Diego Super. Ct. No. GIC 842807) (settlement of non-exempt employees' claims for missed/uncompensated meal breaks and rest periods); *Jordan v. Enter. Car Rental* (L.A. Super. Ct. No. BC327390) (settlement of unpaid overtime claims); *Gunter v. Fidelity Nat. Fin. Inc.* (C.D. Cal. No. 07-4284) (settlement of second-generation misclassification-based overtime, meal break, and rest period claims, as well as wage statement violations); *Smith v. The Children's Place* (L.A. Super. Ct. No. BC328780) (settlement of unpaid regular rate for overtime, waiting time penalties, and meal and rest break claims on behalf of retail store managers); *Mansfield v. Brackenhoff Mgmt. Group, Inc.* (L.A. Super. Ct. No. BC356188) (settlement of misclassification-based overtime, meal and rest break claims, and wage statement violations); *Barrett v. The St. John Companies, Inc.* (L.A. Super. Ct. No. BC354278) (settlement of claims for miscalculated regular rate for overtime, meal and rest break claims, and wage statement violations on behalf of salespersons and warehouse workers); *Webster v. Sprint PCS, Inc.* (C.D. Cal. No. 06-04623) (settlement of several wage and hour claims, including the failure to

provide accurate wage statements); *Simpson v. e*Trade* (C.D. Cal. No. 06-00156) (settlement of wage and hour claims, including the failure to provide meal and rest periods); *Winzelberg v. Liberty Mutual* (C.D. Cal. No. 07-0460) (settlement of misclassification-based overtime, meal and rest break claims, as well as unreimbursed business expenses and wage statement violations on behalf of a class of sales representatives); *In re The Pep Boys Overtime Action* (C.D. Cal. No. 07-01755) (settlement of overtime, meal and rest break claims, and wage statement violations on behalf of retail and “backshop” employees); *Blackner v. AmeriPark, Inc.* (L.A. Super. Ct. No. BC363075) (settlement of overtime, meal and rest break claims, and wage statement violations on behalf of valets and other similar non-exempt hourly employees); *Perry v. SunAmerica* (C.D. Cal. No. 07-1193) (settlement of claims for unpaid overtime, missed meal and rest periods, and unreimbursed expenses); *Flores v. CVS Pharmacy, Inc., et al.* (C.D. Cal. No. 07-5326-FMC) (settlement on behalf of non-exempt retail drugstore employees for unpaid overtime, meal and rest break claims, and wage statement violations); *Padovani v. Citicorp Inv. Servs., Inc.* (C.D. Cal. No. 07-00113) (settlement of misclassification-based unpaid overtime and missed meal and rest periods, unlawful deductions, and unreimbursed business expenses on behalf of securities brokers); *Clymer v. Candle Acquisition Co.* (L.A. Super. Ct. No. BC328765) (settlement for unpaid overtime, meal and rest break claims, wage statement violations, and waiting time penalties); *Mobley v. GlobeGround North Am. LLC, et al.* (L.A. Super. Ct. No. BC356051) (settlement of wage statement claims for all non-exempt class members and subclass of bus drivers, settling their meal and rest break claims); *Hill v. Eddie Bauer* (C.D. Cal. No. 06-05224) (settlement of over 1000 non-exempt employees for several wage and hour violations); *Jost v. Sizzler USA Rests., Inc.* (L.A. Super. Ct. No. BC326914) (settlement for unpaid overtime, meal and rest break claims, waiting time penalties, forfeited vacation time, and wage statement violations on behalf of general managers and restaurant managers); *Anderson v. Drive Time Car Sales, Inc., et al.* (L.A. Super. Ct. No. BC398475) (settlement of claims for unpaid overtime, meal and rest break claims, waiting time penalties, wage statement violations, and unpaid off-the-clock work for account representatives and loan managers); *Bank of the West Fin. Consultants Wage*

1 *and Hour Cases* (L.A. Super. Ct. JCCP No. 4508) (settlement of misclassification-based
2 overtime, wage statement violations, improper deductions, meal or rest break claims, claims
3 relating to keeping records of time worked, unreimbursed business expenses, waiting time
4 penalties for financial consultants and financial consultant trainees); *In Re AXA Wage and*
5 *Hour Litig.* (N.D. Cal. No. 06-4291) (settlement for unreimbursed business expenses,
6 improper deductions, meal and rest break claims, and claims relating to keeping records of
7 time worked); *In Re ML Stern Overtime Litig.* (S.D. Cal. No. 07-00118) (settlement on behalf
8 of class of misclassified account executives for unpaid overtime, missed meal and rest periods,
9 improper costs and deductions, and unreimbursed business expenses); *Acheson v. G.A.L.A.,*
10 *Inc., et al.* (Santa Clara Super. Ct. No. 107-099461) (settlement for overtime wages, split-shift
11 premiums, meal and rest break claims, waiting time penalties, and wage statement violations);
12 *Galtie v. ARS Nat'l Servs. Inc.* (San Diego Super. Ct. No. 37-2007-0056871) (settlement of
13 wage statement claims for all non-exempt class members); *Home Depot Employment Cases*
14 (L.A. Super. Ct. JCCP No. 4383) (settlement of wage and hour claims, including claims for
15 unpaid meal and rest period premiums); *Nevarez v. Trader Joe's Co.* (L.A. Super. Ct. No.
16 BC373910) (settlement on behalf of non-exempt employees for several wage and hour claims,
17 including meal and rest breaks); *Martinez v. Torrance Mem. Med. Ctr., et al.* (L.A. Super. Ct.
18 No. BC386630) (settlement on behalf of non-exempt employees for several wage and hour
19 claims, including the failure to pay meal and rest period premiums); *Wu v. California State*
20 *Auto. Ass'n, et al.* (Alameda Super. Ct. No. RG08-402621) (settlement on behalf of hourly
21 sales representatives and life insurance specialists for unreimbursed business expense claims);
22 *Ordaz v. Rose Hills Mortuary L.P., et al.* (L.A. Super. Ct. BC386500) (settlement on behalf of
23 sales representatives, sales associates, sales counselors, and persons with similar job duties of
24 business expense and wage statement claims); *Rivers v. Connect Television, Inc., et al.* (L.A.
25 Super. Ct. BC374605) (settlement on behalf of non-exempt warehouse and office workers of
26 several wage and hour claims, including meal and rest breaks claims); *Ward v. Doyon Sec.*
27 *Servs., LLC* (San Bernardino Super. Ct. BS 9000517) (settlement on behalf of non-exempt
28 employees for several wage and hour claims, including meal and rest breaks claims); *Perez*

1 *and Comeaux v. Standard Concrete Products, Inc.* (Orange County Super. Ct. No. 30-2008-
2 00211820) (settlement of several wage and hour claims, including claims for unpaid meal and
3 rest period premiums and overtime); *Taylor v. Mobile Mini, Inc.* (San Bernardino Super. Ct.
4 No. CIVSS705070) (settlement on behalf of current or former non-exempt truck drivers of
5 several wage and hour claims, including meal and rest break claims); *Weisbarth and List v.*
6 *H R Block Fin. Advisors, Inc.* (C.D. Cal. No. 07-00236) (settlement on behalf of financial
7 advisors of wage and hour claims); *Blair et al. v. Jo-Ann Stores, Inc.* (L.A. Super. Ct. No.
8 BC394795) (settlement on behalf of over ten thousand former and current employees of Jo-
9 Ann Stores of several wage and hour claims); *Bejarano v. Amerisave Mortgage Corp.* (E.D.
10 Cal. No. 08-00599) (settlement of several wage and hour claims); *Mares v. BFS Retail &*
11 *Commercial Operations, LLC* (L.A. Super. Ct. No. BC375967) (settlement of wage and hour
12 claims, including claims for unpaid meal and rest period premiums); *Berrymon v. St. Vincent*
13 *Med. Ctr.* (L.A. Super. Ct. No. BC391114) (settlement on behalf of over one thousand
14 employees for violation of Labor Code section 226); *Ronn v. Anthem Blue Cross* (Ventura
15 Super. Ct. No. 2008-00328601-CU-OE-VTA) (settlement on behalf of telemarketing
16 representatives for numerous wage and hour claims); *Contreras v. Bank of America, N.A.* (San
17 Francisco Super. Ct. No. CGC-07-467749) (settlement on behalf of mortgage loan officers for
18 multiple wage and hour claims, including the failure to reimburse for all business-related
19 expenses); and *Munoz v. J.C. Penney Corp., Inc.* (C.D. Cal. No. 09-00833) (settlement on
20 behalf of over 70,000 non-exempt former and current retail store employees for several wage
21 and hour claims, including the failure to pay premiums for missed meal and rest breaks);
22 *Chin v. Wachovia Financial Services Inc., et al.* (N.D. Cal. No. 08-00684) (settlement of wage
23 and hour claims, including the failure to provide meal and rest period premiums); *Burrows v.*
24 *Combined Ins. Co. of Am.* (E.D. Cal. No. 08-01752) (settlement on behalf of nearly 1000
25 current and former employees for various wage and hour claims including the failure to
26 reimburse for business expenses); *Cascarejo v. Pac. Cheese Co., Inc.* (Alameda Super. Ct. No
27 RG09457940) (settlement of wage and hour claims, including the failure to provide meal and
28 rest periods); *Kisliuk v. ADT Security Servs., Inc.* (C.D. Cal. No. 08-03241) (settlement of

wage and hour claims, including the failure to reimburse for business expenses, on behalf of a class of over 3000 employees); *Silva v. Catholic Mortuary Servs., Inc.* (L.A. Super. Ct. No. BC408054) (settlement of wage and hour claims including the failure to reimburse for business related expenses); *Aguiar v. Cingular Wireless LLC et al.* (C.D. Cal. No. 05-02907) (settlement of wage and hour claims, including the failure to provide meal and rest period premiums, on behalf of a class of 11,800 persons); *Blue v. Coldwell Banker Residential Brokerage Co.* (L.A. Super. Ct. No. BC417335) (settlement of wage and hour claims, including the failure to provide meal and rest period premiums); *LaGaisse v. 20 20 Powervision* (Riverside Super. Ct. No. RIC 528973) (settlement of wage-and-hour claims, including the failure to reimburse for business-related expenses); *Ethridge v. Universal Health Servs.* (L.A. Super. Ct. No. BC391958) (settlement of several wage and hour claims, including the failure to timely pay wages upon termination of employment); *Magee v. Am. Residential Servs. LLC*, (L.A. Super. Ct. No. BC423798) (settlement of wage and hour claims, including the failure to provide meal and rest period premiums); *Chin v. Countrywide Home Loans, Inc.* (San Joaquin Super. Ct. No.: 39-2010-00252741-CU-OE-STK) (settlement of wage and hour claims, including the failure to provide meal and rest period premiums); *Romani v. Mercury Insurance, Inc.*, (Orange County Super. Ct. No. 06CC00134) (settlement of wage and hour claims, including the failure to provide properly formatted wage statements); *Weyl v. Big 5 Corp.* (San Diego Super. Ct. No. 37-2009-00093109-CU-OE-CTL) (settlement of wage and hour claims, including the failure to timely pay wages upon termination of employment); and *Gutierrez v. Lowe's HIW, Inc.* (Stanislaus County Super. Ct. No. 657474) (settlement of wage and hour claims, including the failure to provide adequate seating).

Initiative Frequently Receives Class Counsel Awards

Equalling One-Third of the Common Fund

6. Initiative frequently receives class counsel awards equalling approximately one-third of the common fund: *Chin v. Countrywide Home Loans, Inc.* (San Joaquin Super. Ct. No.: 39-2010-00252741-CU-OE-STK) (30% award); *Ethridge v. Universal Health Servs.*, (L.A. Super. Ct. No. BC391958) (33% award); *Magee v. Am. Residential Servs. LLC*, (L.A.

Super. Ct. No. BC423798) (33% award); *Blue v. Coldwell Banker Residential Brokerage Co., et al.* (L.A. Super. Ct. No. BC417335) (33% award); *Aguiar v. Cingular Wireless LLC et al.* (C.D. Cal. No. 05-02907) (30% award); *Silva v. Catholic Mortuary Servs., Inc.*, No. BC408054 (L.A. Super. Ct.) (33% award); *Chin v. Wachovia Financial Services Inc. et al.*, No. 08-00684 (N.D. Cal.) (33% award); *Burrows v. Combined Ins. Co. of Am.*, No. 08-01752 (E.D. Cal.) (33% award); *Mares v. BFS Retail & Comm. Operations LLC et al.*, No. BC375967 (L.A. Super. Ct.) (33% award); *Bejarano v. Amerisave Mortgage Corp.*, No. CV 08-00599 (E.D. Cal.) (33% award); *Blair et al. v. Jo-Ann Stores, Inc.*, BC394795 (L.A. Super. Ct.) (33% award); *Weisbarth and List v. H R Block Financial Advisors, Inc.*, No. 07-00236 (C.D. Cal.) (33% award); *Perez and Comeaux v. Standard Concrete*, No. 30-2008-00211820 (Orange County Super. Ct.) (33% award); *Ward v. Doyon Sec. Servs., LLC*, BS 9000517 (San Bernardino Super. Ct.) (33% award); *Winzelberg v. Liberty Mutual Ins. Co.*, No. CV 07-460 (C.D. Cal.) (33% award); *Perry v. SunAmerica*, No. CV 07-1193 (C. D. Cal.) (33% award); *Barrett v. The St. John Companies*, No. BC354278 (L.A. Super. Ct.) (33% award); *Simpson v. e*Trade*, No. CV 06-156 (C. D. Cal.) (33% award); *Clymer and Benton v. Candle Acquisition Co.*, No. BC328765 (L.A. Super. Ct.) (33% award); *Dunlap v. Bank of America, N.A.*, No. BC328934 (L.A. Super Ct.) (33% award); *Taylor v. Ross Stores, Inc.*, No. RCV 065453, JCCP 4331 (San Bernardino Super. Ct.) (33% award); *Case et al. v. Toyohara America Inc.*, No. BC328111 (L.A. Super. Ct.) (33% award); *Sunio v. Marsh USA, Inc.*, No. BC328782 (L.A. Super Ct.) (33% award); and *Kenemixay v. Nordstroms, Inc.*, No. BC318850 (L.A. Super. Ct.) (50% award).

7. Further, California courts regularly approve attorneys' fees equalling one-third of the common fund or higher: *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008) (numerous studies have shown that "fee awards in class actions average around one-third of the recovery"); *Weber v. Einstein Noah Restaurant Group, Inc.*, No. 37-2008-00077680 (San Diego Super. Ct.) (40% award); *Chalmers v. Elecs. Boutique*, No. BC306571 (L.A. Super. Ct.) (33% award); *Boncore v. Four Points Hotel ITT Sheraton*, No. GIC807456 (San Diego Super. Ct.) (33% award); *Vivens, et al. v. Wackenhut Corp.*, No. BC290071 (L.A. Super. Ct.)

(31% award); *Crandall v. U-Haul Intl., Inc.*, No. BC178775 (L.A. Super. Ct.) (40% award); *Albrecht v. Rite Aid Corp.*, No. 729219 (San Diego Super. Ct.) (35% award); *Marroquin v. Bed Bath & Beyond*, No. RG04145918 (Alameda Super. Ct.) (33% award); *In re Milk Antitrust Litig.*, No. BC070061 (L.A. Super. Ct.) (33% award); *Sandoval v. Nissho of California, Inc.*, No. 37-2009-00097861 (San Diego Super. Ct.) (33% award); *In re Liquid Carbon Dioxide Cases*, No. J.C.C.P. 3012 (San Diego Super. Ct.) (33% award); *In re California Indirect-Purchaser Plasticware Antitrust Litigation*, Nos. 961814, 963201, and 963590 (San Francisco Super. Ct.) (33% award); *Bright v. Kanzaki Specialty Papers*, No. CGC-94-963598 (San Francisco Super. Ct.) (33% award); *Parker v. City of L.A.*, 44 Cal. App. 3d 556, 567-68 (1974) (33% award); *Kritz v. Fluid Components, Inc.*, No. GIN057142 (San Diego Super. Ct.) (35% award); *Benitez, et al. v. Wilbur*, No. 08-01122 (E.D. Cal.) (33% award); and *Chavez, et al. v. Petrissans, et al.*, No. 08-00122 (E.D. Cal.) (33% award); *Vasquez v. Aartman*, No. 02-05624 (E.D. Cal.) (30% award); and *Leal v. Wyndham Worldwide Corp.*, No. 37-2009-00084708 (San Diego Super. Ct.) (38% award).

Preclusion From Taking Other Cases

8. To properly handle and prosecute this case, Initiative was precluded from taking other cases and, in fact, had to turn away other meritorious fee-generating cases. Initiative typically receives 10 to 12 substantial telephone inquiries per week from individuals seeking to pursue what they perceive to be employment-related claims. These calls are received by the firm's client-intake department. This department is staffed by attorneys who have extensive experience as litigators and devote a substantial amount of their time to managing new matters and guiding them from the initial inquiry stages to investigation and through the drafting of complaints and filing. These inquiries frequently involve high-profile employers as prospective defendants. The firm is forced to decline numerous worthy cases because attorney and staff-to-case ratios will not allow for any additional matters. Taking on this case meant that Initiative had to turn away other fee-generating work because this case required substantial firm resources on multiple fronts: pre-litigation investigation; formal and informal discovery; research into Defendant's policies and practices; researching the causes of

action, particularly those in flux at the time of settlement; and legal and factual analyses in preparation for settlement.

Schedules of Fees and Costs

9. I have reviewed a summary of the firm's billing records and time entries, which are maintained during the regular course of business. The following chart sets forth the regular billable hourly rate (the rates are commensurate with the prevailing rates among firms that regularly litigate wage and hour class actions) for each attorney who worked on this matter, the hours worked by each attorney, and the fees that would have been charged if this matter had been litigated at an hourly rate. Over the past year, Initiative's billing rates have been approved in the following cases: *Aguiar v. Cingular Wireless LLC et al.* (C.D. Cal. No. 05-02907); *Blue v. Coldwell Banker Residential Brokerage Co.* (L.A. Super. Ct. No. BC417335); *Magee v. Am. Residential Servs. LLC*, (L.A. Super. Ct. No. BC423798); *Ethridge v. Universal Health Servs.*, (L.A. Super. Ct. No. BC391958); *Romani v. Mercury Insurance, Inc.*, (Orange County Super. Ct. No. 06CC00134); *Chin v. Countrywide Home Loans, Inc.* (San Joaquin Super. Ct. No.: 39-2010-00252741-CU-OE-STK); *Gutierrez v. Lowe's HIW, Inc.* (Stanislaus County Super. Ct. No. 657474); and *LaGaisse v. 20 20 Powervision* (Riverside Super. Ct. No. RIC 528973) ("[C]lass Counsel have justified the appropriateness of such an award by way of their lodestar cross-check analysis, demonstrating to the Court's satisfaction that the attorney rates and hours billed to the litigation were reasonable.")

Schedule of Fees				
Attorney	Title	Rate	Total Hours	Total Hmount
Art Meneses	Partner	\$685	43.7	\$29,934.50
Monica Balderrama	Partner	\$635	22.3	\$14,160.50
Marc Primo	Partner	\$590	198.5	\$117,115.00
Matthew Theriault	Partner	\$590	27	\$15,930.00
Gene Williams	Senior Counsel	\$565	237.1	\$133,961.50
Neda Roshanian	Former Associate	\$490	58.7	\$28,763.00
Mark Pifko	Former Associate	\$490	16.1	\$7,889.00
Orlando Arellano	Associate	\$470	152.9	\$71,863.00
Nathan Lowery	Associate	\$445	181	\$80,545.00
Dina Livhits	Associate	\$420	100.7	\$42,294.00
Jamie Greene	Associate	\$420	150.6	\$63,252.00

Schedule of Fees				
Attorney	Title	Rate	Total Hours	Total Hmount
Eduardo Santos	Associate	\$420	197.3	\$82,866.00
Megan Momeni	Former Associate	\$395	32.9	\$12,995.50
Enoch Kim	Associate	\$395	35.6	\$14,062.00
Justin Wilson-de Herrera	Associate	\$365	82.1	\$29,966.50
Kai Hsiao	Associate	\$365	47.3	\$17,264.50
Teddy O'Reilly	Former Associate	\$365	88	\$32,120.00
TOTAL			1671.8	\$794,982.00

10. Initiative's hourly rates are comparable to those charged by Sheppard Mullin Richter & Hampton, a leading firm in the defense of wage and hour class actions that has frequently opposed Initiative: Partners: \$495-\$820 and Associates: \$270-\$620. Among Associates, the following hourly billing rates were used by Sheppard Mullin: 1st Year = \$270-\$335; 2nd Year = \$330-\$430, 3rd Year = \$365-\$475, 4th Year = \$395-\$510, 5th Year = \$420-\$540, 6th Year = \$445-\$565, 7th Year = \$470-\$595, 8th Year = \$490-\$620. See National Law Journal, *The 2010 NLJ Billing Survey: Associates*, December 6, 2010 (<http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202475565454>).

11. Further, Initiative's rates are comparable to those of other judicially approved rates for plaintiff's firms. See, e.g., *Faigman v. AT&T Mobility LLC*, 2011 U.S. Dist. LEXIS 15825, * 2 (N.D. Cal. Feb. 15, 2011) (approving hourly rates of \$650/hour for partner services and \$500/hour for associate attorney services); *Browne, et al. v. American Honda Motor Co., Inc.* (C.D. Cal. No. 09-06750, December 5, 2010) (approving the following hourly rates: 7th Year = \$445; 10th Year = \$545; 15th Year = \$675); *Rosa, et al. v. Morrison Homes, Inc.* (Stanislaus Super. Ct, Oct. 27, 2010, No. 373059) (Order on Final Approval finding \$650 per hour rate for partner reasonable and consistent with rates charged by attorneys with similar qualifications and experience in the prevailing community); *Richard v. Ameri-Force Mgmt. Servs., Inc.* (San Diego Super. Ct., August 27, 2010, No. 37-2008-00096019) (partner rates: \$695-\$750/hour; associate rate: \$495/hour); *Barrera v. Gamestop Corp.* (C.D. Cal. Nov. 29, 2010, No. CV 09-1399) (partner rate: \$700/hour; associate rate: \$475/hour); *Anderson v.*

Nextel Retail Stores, LLC (C.D. Cal. June 20, 2010, No. CV 07-4480) (partner rates: \$655-\$750/hour; associate rates: \$300-\$515).

12. Over the course of this litigation, Initiative has incurred a total of \$102,597.06 in expenses, consisting of the following:

Schedule of Costs	
Expense Categories	Amount
Copying, Printing & Scanning and Facsimiles	\$1,071.95
Court Fees, Filings & Service of Process	\$8,666.19
Court Reporters, Transcripts & Depositions	\$1,917.92
Delivery & Messenger (UPS, FedEx, messenger, etc.)	\$165.39
Document Management and Production Services	\$5,108.77
Expert & Consulting Services	\$12,575.00
Information Technology Services	\$35.03
Investigation Services	\$33,623.68
Research Services (PACER, Lexis, etc.)	\$1,689.16
Mediation Fees	\$11,612.45
Postage & Mailings	\$18,732.86
Word-Processing & Staff Overtime	\$1,000.65
Telephone (Long distance, conference calls, etc.)	\$1,707.16
Travel & Lodging (Airfare, Mileage, Parking, Hotel, etc.)	\$4,690.85
TOTAL EXPENSES	\$102,597.06

13. These incurred expenses, which were recorded during the regular course of business, were reasonable and necessary to properly prosecute this matter as a potential class action and obtain a class-wide settlement.

14. Based on my firm's investigation and evaluation of the evidence and law, the settlement of this case is fair, reasonable, adequate and in the best interest of prospective class members.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 16th day of August, 2011 at Los Angeles, California.

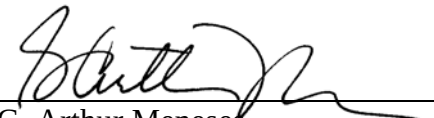

 G. Arthur Meneses

EXHIBIT 26

TSLF TIME LEON

Attorney/Paralegal	Total Hours	Rate	Pre-Multiplier Lodestar
David Spivak (28+ Year Attorney)	23.14	\$ 900.00	\$ 20,826.00
Caroline Tahmassian (10+ Year Attorney)	70.17	\$ 600.00	\$ 42,102.00
Breck Oyama (15+ Year Paralegal)	2.96	\$ 300.00	\$ 888.00
Maya Cheaitani (Formerly Employed 2nd Year Attorney)	8.00	\$ 250.00	\$ 2,000.00
Nora Greer (15+ Year Paralegal)	1.98	\$ 200.00	\$ 396.00
Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	0.08	\$ 200.00	\$ 16.00
Daniela Linares (2nd Year Intake Assistant)	18.46	\$ 150.00	\$ 2,769.00
Emily Ly (3rd Year Paralegal)	101.25	\$ 150.00	\$ 15,187.50
Henry Michael (1st Year Intern)	0.16	\$ 150.00	\$ 24.00
Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	0.17	\$ 150.00	\$ 25.50
Laura Solorzano (1st Year Intake Assistant)	1.40	\$ 150.00	\$ 210.00
Lauren Davis (10+ Year Attorney)	0.08	\$ 150.00	\$ 12.00
Grand Total	227.85		\$ 84,456.00

Firm	Total Hours	Pre-Multiplier Lodestar
The Spivak Law Firm	227.85	\$ 84,456.00
United Employees Law	34.25	\$ 24,831.25
Grand Total	262.10	\$ 109,287.25

Fees Requested	\$ 55,571.00
Multiplier	0.508

TSLF TIME LEON

Date	Attorney/Paralegal	Description	Hours (Decimal)	Hourly Rate	Pre-Multiplier Lodestar Amount
5/11/2021	Emily Ly (3rd Year Paralegal)	Spoke to client to schedule phone intake. Sent email confirmation.	0.08	\$ 150.00	\$ 12.00
5/11/2021	David Spivak (28+ Year Attorney)	call with client; email EHL re intake	0.25	\$ 900.00	\$ 225.00
5/11/2021	Jessica Bencomo (Formerly Employed 1st Year Legal Secretary)	mtg w/EL re prelim tasks	0.17	\$ 150.00	\$ 25.50
5/12/2021	Emily Ly (3rd Year Paralegal)	phone intake with client	1.00	\$ 150.00	\$ 150.00
5/17/2021	Emily Ly (3rd Year Paralegal)	Prep FAQ. Emailed fully executed copy of retainer and FAQ to client.	0.14	\$ 150.00	\$ 21.00
6/1/2021	Nora Greer (15+ Year Paralegal)	Discuss Preliminary Tasks with EL	0.25	\$ 200.00	\$ 50.00
8/26/2021	Emily Ly (3rd Year Paralegal)	Reviewed file. F/U with Jeff re Client's personnel file.	0.17	\$ 150.00	\$ 25.50
8/26/2021	David Spivak (28+ Year Attorney)	prepare LWDA notice	0.83	\$ 900.00	\$ 747.00
8/27/2021	David Spivak (28+ Year Attorney)	prepare LWDA notice	0.92	\$ 900.00	\$ 828.00
8/27/2021	David Spivak (28+ Year Attorney)	review personnel records	0.75	\$ 900.00	\$ 675.00
8/27/2021	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Saved documents. Reviewed text from Client.	0.17	\$ 150.00	\$ 25.50
8/30/2021	Emily Ly (3rd Year Paralegal)	Reviewed emails. Left vm and emailed Client.	0.08	\$ 150.00	\$ 12.00
9/2/2021	Emily Ly (3rd Year Paralegal)	Call to Client. Emailed Client.	0.17	\$ 150.00	\$ 25.50
9/7/2021	Emily Ly (3rd Year Paralegal)	Call to Client. Left vm for Client. Sent email to Client.	0.17	\$ 150.00	\$ 25.50
9/9/2021	Emily Ly (3rd Year Paralegal)	Call to Client. Calendared and texted Client.	0.17	\$ 150.00	\$ 25.50
9/13/2021	Emily Ly (3rd Year Paralegal)	Left vm and texted Client.	0.08	\$ 150.00	\$ 12.00
9/20/2021	Emily Ly (3rd Year Paralegal)	Left vm, texted, and emailed Client. Reviewed and replied to emails.	0.25	\$ 150.00	\$ 37.50
9/21/2021	David Spivak (28+ Year Attorney)	f/u with client re LWDA notice	0.08	\$ 900.00	\$ 72.00
9/22/2021	Emily Ly (3rd Year Paralegal)	Reviewed emails. Left vm and emailed Client. Texted Client.	0.17	\$ 150.00	\$ 25.50
9/22/2021	Emily Ly (3rd Year Paralegal)	Call with Client.	0.25	\$ 150.00	\$ 37.50
9/23/2021	David Spivak (28+ Year Attorney)	Email to Emily about client response to statement of fact	0.08	\$ 900.00	\$ 72.00
9/23/2021	Emily Ly (3rd Year Paralegal)	Left vm and texted Client.	0.08	\$ 150.00	\$ 12.00
9/23/2021	Emily Ly (3rd Year Paralegal)	Call from Client. Reviewed emails.	0.33	\$ 150.00	\$ 49.50
9/28/2021	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
10/7/2021	Emily Ly (3rd Year Paralegal)	Left vm and texted Client.	0.08	\$ 150.00	\$ 12.00
10/10/2021	David Spivak (28+ Year Attorney)	Review and revise LWDA notice with client and LC revisions	0.33	\$ 900.00	\$ 297.00
11/2/2021	Emily Ly (3rd Year Paralegal)	Called, texted, and emailed Client.	0.17	\$ 150.00	\$ 25.50
11/5/2021	Emily Ly (3rd Year Paralegal)	Left vm and texted Client. Called emergency contact.	0.08	\$ 150.00	\$ 12.00
11/8/2021	Emily Ly (3rd Year Paralegal)	Reviewed and replied to Client's texts.	0.08	\$ 150.00	\$ 12.00
11/15/2021	Emily Ly (3rd Year Paralegal)	Called and emailed Client.	0.25	\$ 150.00	\$ 37.50
12/3/2021	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails.	0.17	\$ 150.00	\$ 25.50
12/7/2021	Emily Ly (3rd Year Paralegal)	Reviewed emails, left vm, and texted Client.	0.17	\$ 150.00	\$ 25.50
12/14/2021	Emily Ly (3rd Year Paralegal)	Called, texted, and emailed Client. Left vm for emergency contact.	0.08	\$ 150.00	\$ 12.00
12/20/2021	Emily Ly (3rd Year Paralegal)	Left vm and texted Client. Called emergency contact and emailed team.	0.25	\$ 150.00	\$ 37.50
12/22/2021	Emily Ly (3rd Year Paralegal)	Left vm and texted Client. Called emergency contact.	0.17	\$ 150.00	\$ 25.50
12/23/2021	Nora Greer (15+ Year Paralegal)	Review LWDA submission with EL	0.17	\$ 200.00	\$ 34.00
12/23/2021	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Finalized LWDA, filed, served, and circulated. Met with NG.	1.33	\$ 150.00	\$ 199.50
1/3/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Updated Proof of Service.	0.25	\$ 150.00	\$ 37.50
1/20/2022	Caroline Tahmassian (10+ Year Attorney)	check case status/email MC re status of complaint	0.33	\$ 600.00	\$ 198.00
1/20/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails.	0.17	\$ 150.00	\$ 25.50
1/20/2022	Maya Cheaitani (Formerly Employed 2nd Year Attorney)	draft class complaint	3.00	\$ 250.00	\$ 750.00
1/25/2022	Caroline Tahmassian (10+ Year Attorney)	review case file and docs; review facts; review/revise complaint	2.50	\$ 600.00	\$ 1,500.00
1/27/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
1/31/2022	Maya Cheaitani (Formerly Employed 2nd Year Attorney)	revise complaint/email dgs questions/msg CT	2.00	\$ 250.00	\$ 500.00
1/31/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
2/7/2022	Breck Oyama (15+ Year Paralegal)	review emails, update deadline chain	0.08	\$ 300.00	\$ 24.00
2/7/2022	Maya Cheaitani (Formerly Employed 2nd Year Attorney)	finalize complaint/email team	2.00	\$ 250.00	\$ 500.00
2/7/2022	Breck Oyama (15+ Year Paralegal)	review S&C forms, email EL	0.17	\$ 300.00	\$ 51.00
2/7/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Finalized Complaint. Prepped Summons and Civil Case Cover Sheet. Edited Civil Case Cover Sheet and filled Summons and Complaint.	1.17	\$ 150.00	\$ 175.50
2/8/2022	Emily Ly (3rd Year Paralegal)	Calendared deadlines. Replied summons and Complaint. Reviewed and replied to emails. Saved documents and checked docket.	0.75	\$ 150.00	\$ 112.50
2/10/2022	Breck Oyama (15+ Year Paralegal)	update litigation chain re cmc and N&A	0.17	\$ 300.00	\$ 51.00
2/10/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Prepped and served N&A It to OC and calendared. FAB to Client.	1.67	\$ 150.00	\$ 250.50
2/10/2022	Breck Oyama (15+ Year Paralegal)	review calendar and draft N&A, email EL	0.08	\$ 300.00	\$ 24.00
2/25/2022	Caroline Tahmassian (10+ Year Attorney)	review case status; review complaint and email MC re Qs; call with MC re Qs; start draft 1AC	0.50	\$ 600.00	\$ 300.00
2/25/2022	Breck Oyama (15+ Year Paralegal)	check w/ team re 1AC/PAGA	0.08	\$ 300.00	\$ 24.00
2/25/2022	Maya Cheaitani (Formerly Employed 2nd Year Attorney)	call w CT/email team re complaint	1.00	\$ 250.00	\$ 250.00
2/28/2022	Breck Oyama (15+ Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
2/28/2022	Caroline Tahmassian (10+ Year Attorney)	draft/revise1AC and email dgs	0.75	\$ 600.00	\$ 450.00
3/1/2022	David Spivak (28+ Year Attorney)	Review and revise 1AC	0.58	\$ 900.00	\$ 522.00
3/1/2022	Caroline Tahmassian (10+ Year Attorney)	revised and email staff re 1AC	0.17	\$ 600.00	\$ 102.00
3/2/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Reviewed docs.	0.17	\$ 150.00	\$ 25.50
3/2/2022	Breck Oyama (15+ Year Paralegal)	review emails and N&A, update litigation chain	0.08	\$ 300.00	\$ 24.00
3/2/2022	Breck Oyama (15+ Year Paralegal)	review filings/emails	0.17	\$ 300.00	\$ 51.00
3/3/2022	Emily Ly (3rd Year Paralegal)	Prepped POS Summons and updated pos.	0.58	\$ 150.00	\$ 87.00
3/7/2022	Breck Oyama (15+ Year Paralegal)	review emails/filing, update deadline chain	0.08	\$ 300.00	\$ 24.00
3/7/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Edited POS Summons and finalized 1AC. Served, filed, circulated, and calendared.	0.75	\$ 150.00	\$ 112.50
3/8/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Uploaded 1AC to LWDA.	0.33	\$ 150.00	\$ 49.50
3/8/2022	Breck Oyama (15+ Year Paralegal)	review emails/filing, update deadline chain	0.08	\$ 300.00	\$ 24.00
4/6/2022	Emily Ly (3rd Year Paralegal)	Reviewed files and docket.	0.08	\$ 150.00	\$ 12.00
4/7/2022	Breck Oyama (15+ Year Paralegal)	review emails/deadlines	0.08	\$ 300.00	\$ 24.00
4/8/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Emailed Client Answer.	0.17	\$ 150.00	\$ 25.50
4/8/2022	Breck Oyama (15+ Year Paralegal)	review emails, fwd to EL	0.08	\$ 300.00	\$ 24.00
4/19/2022	Emily Ly (3rd Year Paralegal)	Checked docket. Drafted R4P and SROGs.	1.17	\$ 150.00	\$ 175.50
5/2/2022	Emily Ly (3rd Year Paralegal)	Reviewed calendar and emailed OC re meet and confer and calendared.	0.17	\$ 150.00	\$ 25.50

TSLF TIME LEON

Date	Attorney/Paralegal	Description	Hours (Decimal)	Hourly Rate	Pre-Multiplier Lodestar Amount
5/3/2022	Breck Oyama (15+ Year Paralegal)	review FV report/case summary/calendar, assign task to prep notice jury fees	0.08	\$ 300.00	\$ 24.00
5/4/2022	Caroline Tahmassian (10+ Year Attorney)	call with LE re case; prep for and meet and confer call with OC; email notes re call	1.00	\$ 600.00	\$ 600.00
5/4/2022	Emily Ly (3rd Year Paralegal)	Checked local rules. Call with CT re meet and confer.	0.42	\$ 150.00	\$ 63.00
5/4/2022	Emily Ly (3rd Year Paralegal)	Prepped draft BW Stip.	0.58	\$ 150.00	\$ 87.00
5/5/2022	Caroline Tahmassian (10+ Year Attorney)	call/email with EL re next steps; email dgs re case; draft stip to stay;	0.58	\$ 600.00	\$ 348.00
5/5/2022	Emily Ly (3rd Year Paralegal)	Reviewed BW Stip and prepped Protective Order. Sent to team for review. Called and texted Client.	0.50	\$ 150.00	\$ 75.00
5/5/2022	Emily Ly (3rd Year Paralegal)	Call with CT. Call to Client to reschedule call with CT and updated calendar.	0.25	\$ 150.00	\$ 37.50
5/6/2022	Breck Oyama (15+ Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
5/6/2022	Emily Ly (3rd Year Paralegal)	Messages with CT and texted Client. Reviewed emails. Sent draft BW Stip and Protective Order to OC.	0.33	\$ 150.00	\$ 49.50
5/9/2022	Emily Ly (3rd Year Paralegal)	Reviewed emails.	0.08	\$ 150.00	\$ 12.00
5/9/2022	Breck Oyama (15+ Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
5/9/2022	Caroline Tahmassian (10+ Year Attorney)	revise stip stay and email to OC	0.17	\$ 600.00	\$ 102.00
5/10/2022	Emily Ly (3rd Year Paralegal)	Reviewed emails.	0.08	\$ 150.00	\$ 12.00
5/10/2022	Caroline Tahmassian (10+ Year Attorney)	check CELA on proposed mediators and email dgs	0.25	\$ 600.00	\$ 150.00
5/10/2022	Breck Oyama (15+ Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
5/11/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Calendared. Call with Client and texted Client. Messages with CT.	0.17	\$ 150.00	\$ 25.50
5/12/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
5/12/2022	Caroline Tahmassian (10+ Year Attorney)	review claims; call with client; email dgs and staff re call and mediation discovery	0.50	\$ 600.00	\$ 300.00
5/12/2022	Daniela Linares (2nd Year Intake Assistant)	email	0.08	\$ 150.00	\$ 12.00
5/16/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
5/16/2022	Caroline Tahmassian (10+ Year Attorney)	review claims; update FV and generate mediation discovery; review docs and revise mediation discovery	0.75	\$ 600.00	\$ 450.00
5/17/2022	Emily Ly (3rd Year Paralegal)	Reviewed emails.	0.08	\$ 150.00	\$ 12.00
5/17/2022	Caroline Tahmassian (10+ Year Attorney)	research re construction company billing; call with client; revise mediation discovery requests and email dgs re requests	0.33	\$ 600.00	\$ 198.00
5/18/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails re mediation dates.	0.33	\$ 150.00	\$ 49.50
5/23/2022	Emily Ly (3rd Year Paralegal)	Messages with CT and reviewed emails.	0.25	\$ 150.00	\$ 37.50
5/23/2022	Caroline Tahmassian (10+ Year Attorney)	emails with OC re BW and mediation	0.17	\$ 600.00	\$ 102.00
5/23/2022	Caroline Tahmassian (10+ Year Attorney)	FU email to dgs re mediation discovery letter	0.08	\$ 600.00	\$ 48.00
5/24/2022	Caroline Tahmassian (10+ Year Attorney)	FU with dgs re mediation discovery letter and email EL re letter; revise stip to continue CMC and send to OC	0.33	\$ 600.00	\$ 198.00
5/24/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails re mediation.	0.17	\$ 150.00	\$ 25.50
5/25/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Served mediation discovery requests. Served, filed, and circulated Stip to Continue Trial. Calendared.	1.00	\$ 150.00	\$ 150.00
5/26/2022	Breck Oyama (15+ Year Paralegal)	review emails	0.08	\$ 300.00	\$ 24.00
6/1/2022	Emily Ly (3rd Year Paralegal)	Prepped Notice of Posting Jury Fees and Notice of Entry of Order. Served, filed, and circulated. Calendared.	0.83	\$ 150.00	\$ 124.50
6/2/2022	Emily Ly (3rd Year Paralegal)	Saved and circulated filed documents.	0.08	\$ 150.00	\$ 12.00
6/15/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
6/22/2022	Breck Oyama (15+ Year Paralegal)	review report, update case summary, review emails	0.08	\$ 300.00	\$ 24.00
7/6/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails re BW Stip and Protective Order.	0.08	\$ 150.00	\$ 12.00
8/30/2022	Caroline Tahmassian (10+ Year Attorney)	email OC re mediation discovery	0.08	\$ 600.00	\$ 48.00
9/13/2022	Daniela Linares (2nd Year Intake Assistant)	fwd email to team re excelsior	0.08	\$ 150.00	\$ 12.00
9/13/2022	Daniela Linares (2nd Year Intake Assistant)	call to client, lvm. text to client	0.08	\$ 150.00	\$ 12.00
9/15/2022	Emily Ly (3rd Year Paralegal)	Reviewed emails.	0.08	\$ 150.00	\$ 12.00
9/15/2022	Caroline Tahmassian (10+ Year Attorney)	check case status; emails to OC re mediation discovery	0.25	\$ 600.00	\$ 150.00
9/19/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails.	0.17	\$ 150.00	\$ 25.50
9/21/2022	Daniela Linares (2nd Year Intake Assistant)	email to team	0.08	\$ 150.00	\$ 12.00
9/26/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails.	0.17	\$ 150.00	\$ 25.50
10/3/2022	Emily Ly (3rd Year Paralegal)	Reviewed emails.	0.08	\$ 150.00	\$ 12.00
10/3/2022	Caroline Tahmassian (10+ Year Attorney)	emails with OC re mediation data; message dgs re sample	0.17	\$ 600.00	\$ 102.00
10/4/2022	Emily Ly (3rd Year Paralegal)	Reviewed emails.	0.08	\$ 150.00	\$ 12.00
10/11/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
10/12/2022	Emily Ly (3rd Year Paralegal)	Reviewed emails re mediation sample. Messages with CT. Reviewed mediation docs from Defendant and emailed team.	0.42	\$ 150.00	\$ 63.00
10/12/2022	Caroline Tahmassian (10+ Year Attorney)	email with OC	0.08	\$ 600.00	\$ 48.00
10/13/2022	Caroline Tahmassian (10+ Year Attorney)	review def doc production and email staff re docs	0.50	\$ 600.00	\$ 300.00
10/13/2022	Emily Ly (3rd Year Paralegal)	Reviewed emails. Left vm and emailed data analyst. Reviewed Def data and emailed team and data analyst.	0.58	\$ 150.00	\$ 87.00
10/17/2022	Emily Ly (3rd Year Paralegal)	Call with data analyst and emailed team. Reviewed def mediation doc production. OCR and emailed team.	1.75	\$ 150.00	\$ 262.50
10/17/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Call to data analyst.	0.17	\$ 150.00	\$ 25.50
10/18/2022	Emily Ly (3rd Year Paralegal)	Messages with CT. Reviewed and replied to emails. Calendared.	0.58	\$ 150.00	\$ 87.00
10/18/2022	Caroline Tahmassian (10+ Year Attorney)	prep for mediation and review docs produced; discuss mediation with EL; emails with Sri; call with Sri; emails to OC re mediation docs	3.50	\$ 600.00	\$ 2,100.00
10/18/2022	Emily Ly (3rd Year Paralegal)	Call with data analyst and CT and took notes. Reviewed and replied to emails. Reviewed Defendant docs.	1.00	\$ 150.00	\$ 150.00
10/18/2022	David Spivak (28+ Year Attorney)	call with CT re mediation	0.08	\$ 900.00	\$ 72.00
10/19/2022	Laura Solorzano (1st Year Intake Assistant)	call with EL, extract time sheets re November	0.33	\$ 150.00	\$ 49.50
10/19/2022	Emily Ly (3rd Year Paralegal)	Call with data entry and emailed team. Call with data analyst and emailed team.	0.83	\$ 150.00	\$ 124.50
10/19/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Reviewed def doc production.	1.08	\$ 150.00	\$ 162.00
10/19/2022	Emily Ly (3rd Year Paralegal)	Call with CT. Extracted November dates from time sheet. Emailed data entry.	1.25	\$ 150.00	\$ 187.50
10/20/2022	Emily Ly (3rd Year Paralegal)	Met with data entry. Reviewed emails.	0.25	\$ 150.00	\$ 37.50
10/21/2022	Emily Ly (3rd Year Paralegal)	Left vm and emailed data analyst.	0.33	\$ 150.00	\$ 49.50
10/24/2022	Emily Ly (3rd Year Paralegal)	Reviewed emails. Call with data entry. Call with CT and data analyst. Reviewed documents. Reviewed and replied to emails. Checked PAGA and docket for cases filed against Defendant. Messages with CT.	1.33	\$ 150.00	\$ 199.50
10/24/2022	Caroline Tahmassian (10+ Year Attorney)	review documents; review Sridhar result; emails with Sri; call with Sri	3.50	\$ 600.00	\$ 2,100.00
10/25/2022	Daniela Linares (2nd Year Intake Assistant)	call w ct and client. tc w eh l re case,emails.	1.25	\$ 150.00	\$ 187.50
10/25/2022	Daniela Linares (2nd Year Intake Assistant)	call w client emergency contact	0.08	\$ 150.00	\$ 12.00

TSLF TIME LEON

Date	Attorney/Paralegal	Description	Hours (Decimal)	Hourly Rate	Pre-Multiplier Lodestar Amount
10/25/2022	Daniela Linares (2nd Year Intake Assistant)	email	0.08	\$ 150.00	\$ 12.00
10/25/2022	Emily Ly (3rd Year Paralegal)	Call with DL re Plaintiff's time sheet. Reviewed and replied to emails.	0.33	\$ 150.00	\$ 49.50
10/25/2022	Caroline Tahmassian (10+ Year Attorney)	review documents; call with client; discuss docs with DL	2.50	\$ 600.00	\$ 1,500.00
10/25/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Reviewed Plaintiff's time sheet. Call to data analyst.	0.75	\$ 150.00	\$ 112.50
10/26/2022	Daniela Linares (2nd Year Intake Assistant)	email text to cl. tc w ct.	0.17	\$ 150.00	\$ 25.50
10/26/2022	Daniela Linares (2nd Year Intake Assistant)	call w ct	0.17	\$ 150.00	\$ 25.50
10/26/2022	Emily Ly (3rd Year Paralegal)	Reviewed emails.	0.17	\$ 150.00	\$ 25.50
10/26/2022	Caroline Tahmassian (10+ Year Attorney)	review documents; update FV mediation and intake tabs; draft mediation brief	6.50	\$ 600.00	\$ 3,900.00
10/27/2022	Caroline Tahmassian (10+ Year Attorney)	draft/revise mediation brief; emails with OC; emails with Sri; review records; review Sri results	4.00	\$ 600.00	\$ 2,400.00
10/27/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Messages with CT. Reviewed Plaintiff's time sheet and paystubs. Saved documents.	1.42	\$ 150.00	\$ 213.00
10/28/2022	David Spivak (28+ Year Attorney)	Review and revise mediation statement	1.00	\$ 900.00	\$ 900.00
10/28/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Saved docs. Sent CPRA request.	0.58	\$ 150.00	\$ 87.00
10/31/2022	Daniela Linares (2nd Year Intake Assistant)	call w client. tc w ct	0.08	\$ 150.00	\$ 12.00
10/31/2022	Emily Ly (3rd Year Paralegal)	Reviewed fees and costs. Called Court re remote appearance. Reviewed mediation brief and gathered exhibits. Processed Plaintiff's time sheet. Reviewed and replied to emails. Call data analyst.	3.00	\$ 150.00	\$ 450.00
10/31/2022	Caroline Tahmassian (10+ Year Attorney)	review docs	0.10	\$ 600.00	\$ 60.00
10/31/2022	Caroline Tahmassian (10+ Year Attorney)	review docs; revise brief; emails with Sri re data numbers	2.00	\$ 600.00	\$ 1,200.00
11/1/2022	Caroline Tahmassian (10+ Year Attorney)	Review docs; prep for mediation; draft/revise damages; email dgs and staff re damages	3.50	\$ 600.00	\$ 2,100.00
11/1/2022	Nora Greer (15+ Year Paralegal)	Review mediation exhibits	0.33	\$ 200.00	\$ 66.00
11/1/2022	David Spivak (28+ Year Attorney)	Review damages report	0.50	\$ 900.00	\$ 450.00
11/1/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Reviewed mediation brief. Saved docs. Spoke to CT continued to gather exhibits.	2.75	\$ 150.00	\$ 412.50
11/2/2022	Daniela Linares (2nd Year Intake Assistant)	tc w ct and ehl re case	0.17	\$ 150.00	\$ 25.50
11/2/2022	Emily Ly (3rd Year Paralegal)	Reviewed, submitted, and circulated mediation brief. Circulated defendant's mediation brief. Calls with Client. Call with DL. Reviewed and replied to emails. Call to cc and updated costs and fees.	1.92	\$ 150.00	\$ 288.00
11/2/2022	David Spivak (28+ Year Attorney)	Prep for mediation	1.00	\$ 900.00	\$ 900.00
11/2/2022	Breck Oyama (15+ Year Paralegal)	review emails, check w/ EL re future costs	0.17	\$ 300.00	\$ 51.00
11/2/2022	Daniela Linares (2nd Year Intake Assistant)	mtg w ehl	0.17	\$ 150.00	\$ 25.50
11/2/2022	Caroline Tahmassian (10+ Year Attorney)	review Def mediation brief; review timesheets; email/message dgs re Def's brief; prep for mediation	2.00	\$ 600.00	\$ 1,200.00
11/3/2022	Caroline Tahmassian (10+ Year Attorney)	mediation prep; attend mediation; draft stip to lift stay; email OC re BW and PO stips	4.75	\$ 600.00	\$ 2,850.00
11/3/2022	David Spivak (28+ Year Attorney)	Prep for mediation and attend mediation by zoom	3.58	\$ 900.00	\$ 3,222.00
11/3/2022	Emily Ly (3rd Year Paralegal)	Met with Client, DGS, CT. Call to mediator's office. Participated in mediation and took notes. Reviewed and replied to emails.	4.75	\$ 150.00	\$ 712.50
11/3/2022	Daniela Linares (2nd Year Intake Assistant)	emails, tc w ehl, mediation tasks	0.33	\$ 150.00	\$ 49.50
11/7/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
11/7/2022	Caroline Tahmassian (10+ Year Attorney)	finalize stip and email OC	0.25	\$ 600.00	\$ 150.00
11/8/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails.	0.17	\$ 150.00	\$ 25.50
11/9/2022	Breck Oyama (15+ Year Paralegal)	review emails/FV	0.08	\$ 300.00	\$ 24.00
11/10/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
11/14/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
11/16/2022	David Spivak (28+ Year Attorney)	Review OC changes to protective order	0.25	\$ 900.00	\$ 225.00
11/16/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Saved docs.	0.08	\$ 150.00	\$ 12.00
11/18/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Saved documents.	0.17	\$ 150.00	\$ 25.50
11/21/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Prepped Notice of Remote Appearance.	0.42	\$ 150.00	\$ 63.00
11/22/2022	Daniela Linares (2nd Year Intake Assistant)	email and case review, added pcm info to fv	0.17	\$ 150.00	\$ 25.50
11/22/2022	Daniela Linares (2nd Year Intake Assistant)	call w pcm	0.17	\$ 150.00	\$ 25.50
11/28/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Prepped discovery and emailed team for review.	0.75	\$ 150.00	\$ 112.50
11/29/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
11/30/2022	Daniela Linares (2nd Year Intake Assistant)	interview w pcm	0.58	\$ 150.00	\$ 87.00
11/30/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Reviewed stipulations. Served, filed, circulated notices and stipulations.	1.25	\$ 150.00	\$ 187.50
12/2/2022	Daniela Linares (2nd Year Intake Assistant)	calls from pcms, email to team, call w ehl. email review of how to handle	1.33	\$ 150.00	\$ 199.50
12/2/2022	Emily Ly (3rd Year Paralegal)	Refled documents. Checked local rules for informal discovery conference.	0.42	\$ 150.00	\$ 63.00
12/2/2022	Nora Greer (15+ Year Paralegal)	TC wiht PCM, transfer call to emily	0.08	\$ 200.00	\$ 16.00
12/2/2022	David Spivak (28+ Year Attorney)	Call with Caroline about pick up Stix process, implemented by defendant	0.25	\$ 900.00	\$ 225.00
12/2/2022	Caroline Tahmassian (10+ Year Attorney)	review OC BW revisions; review release offer; call with EL; call with dgs; emails staff re release ; call with OC re BW; email dgs re call with OC	1.00	\$ 600.00	\$ 600.00
12/2/2022	Emily Ly (3rd Year Paralegal)	Call with pcm and emailed team. Checked docket re filing.	0.83	\$ 150.00	\$ 124.50
12/2/2022	Breck Oyama (15+ Year Paralegal)	review emails/filings	0.08	\$ 300.00	\$ 24.00
12/5/2022	Daniela Linares (2nd Year Intake Assistant)	email to team	0.17	\$ 150.00	\$ 25.50
12/5/2022	Daniela Linares (2nd Year Intake Assistant)	email rev	0.08	\$ 150.00	\$ 12.00
12/5/2022	Breck Oyama (15+ Year Paralegal)	review emails/filing	0.08	\$ 300.00	\$ 24.00
12/5/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails re BW.	0.25	\$ 150.00	\$ 37.50
12/6/2022	Daniela Linares (2nd Year Intake Assistant)	call from pcm	0.33	\$ 150.00	\$ 49.50
12/7/2022	Laura Solorzano (1st Year Intake Assistant)	call from pcm	0.17	\$ 150.00	\$ 25.50
12/7/2022	Emily Ly (3rd Year Paralegal)	Reviewed emails.	0.17	\$ 150.00	\$ 25.50
12/8/2022	Laura Solorzano (1st Year Intake Assistant)	call from pcm- transfer call	0.08	\$ 150.00	\$ 12.00
12/8/2022	Daniela Linares (2nd Year Intake Assistant)	call w ehl, review notes, call w pcm, emails	0.75	\$ 150.00	\$ 112.50
12/8/2022	Nora Greer (15+ Year Paralegal)	TC with PCM, transfer call to EL	0.08	\$ 200.00	\$ 16.00
12/8/2022	Emily Ly (3rd Year Paralegal)	Call from pcm.	0.17	\$ 150.00	\$ 25.50
12/8/2022	Emily Ly (3rd Year Paralegal)	Checked docket for order. Prepped Notice of Entry of Orders. Prepared discovery for service.	0.67	\$ 150.00	\$ 100.50
12/8/2022	Emily Ly (3rd Year Paralegal)	Met with DL re pcm calls. Call to pcm to schedule calls and call to Court re filing.	0.50	\$ 150.00	\$ 75.00

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Date	Attorney/Paralegal	Description	Hours (Decimal)	Hourly Rate	Pre-Multiplier Lodestar Amount
12/9/2022	Emily Ly (3rd Year Paralegal)	Served discovery and notice of entry. Filed notice of entry. Calendared. Reviewed emails.	0.50	\$ 150.00	\$ 75.00
12/9/2022	Daniela Linares (2nd Year Intake Assistant)	email rev, save docs	0.17	\$ 150.00	\$ 25.50
12/9/2022	Daniela Linares (2nd Year Intake Assistant)	call w pcm	0.08	\$ 150.00	\$ 12.00
12/12/2022	Emily Ly (3rd Year Paralegal)	Reviewed emails.	0.08	\$ 150.00	\$ 12.00
12/13/2022	Emily Ly (3rd Year Paralegal)	Call from Client.	0.08	\$ 150.00	\$ 12.00
12/13/2022	Daniela Linares (2nd Year Intake Assistant)	email review, email to team	0.08	\$ 150.00	\$ 12.00
12/13/2022	Daniela Linares (2nd Year Intake Assistant)	call w pcm	0.83	\$ 150.00	\$ 124.50
12/14/2022	Daniela Linares (2nd Year Intake Assistant)	call prep, called pcm, lvm, email to team, fixed notes	0.33	\$ 150.00	\$ 49.50
12/14/2022	Daniela Linares (2nd Year Intake Assistant)	email review, fixed notes, email to team, interview, tc w ehl	1.00	\$ 150.00	\$ 150.00
12/15/2022	Daniela Linares (2nd Year Intake Assistant)	interview, notes, emails, prep, sent autho	1.42	\$ 150.00	\$ 213.00
12/15/2022	Emily Ly (3rd Year Paralegal)	Reviewed emails.	0.08	\$ 150.00	\$ 12.00
12/15/2022	Caroline Tahmassian (10+ Year Attorney)	review all emails re witnesses and releases; message with DL re owner other business; message dgs re research	0.50	\$ 600.00	\$ 300.00
12/16/2022	Daniela Linares (2nd Year Intake Assistant)	tc w ct, call w pcm, email review, call to pcm, schedule call	0.50	\$ 150.00	\$ 75.00
12/16/2022	Daniela Linares (2nd Year Intake Assistant)	mailed autho	0.17	\$ 150.00	\$ 25.50
12/19/2022	Daniela Linares (2nd Year Intake Assistant)	call w pcm w ct	0.58	\$ 150.00	\$ 87.00
12/19/2022	Caroline Tahmassian (10+ Year Attorney)	research/prep for call with witness; interview witness	1.00	\$ 600.00	\$ 600.00
12/20/2022	Daniela Linares (2nd Year Intake Assistant)	sent new autho to pcm	0.17	\$ 150.00	\$ 25.50
12/20/2022	Daniela Linares (2nd Year Intake Assistant)	saved and entered expense	0.08	\$ 150.00	\$ 12.00
12/22/2022	Daniela Linares (2nd Year Intake Assistant)	saved and entered expenses	0.08	\$ 150.00	\$ 12.00
12/27/2022	Daniela Linares (2nd Year Intake Assistant)	email rev	0.08	\$ 150.00	\$ 12.00
12/27/2022	David Spivak (28+ Year Attorney)	Search for defendant's business affiliates with R.J.F.	1.17	\$ 900.00	\$ 1,053.00
12/29/2022	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
1/3/2023	Daniela Linares (2nd Year Intake Assistant)	EMAIL REV	0.08	\$ 150.00	\$ 12.00
1/3/2023	Caroline Tahmassian (10+ Year Attorney)	review case status; draft initial CMC stm; email OC	1.00	\$ 600.00	\$ 600.00
1/3/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Checked local rules re cmc statement. Reviewed and replied to emails.	0.50	\$ 150.00	\$ 75.00
1/3/2023	Emily Ly (3rd Year Paralegal)	Reviewed emails and calendared.	0.08	\$ 150.00	\$ 12.00
1/4/2023	Caroline Tahmassian (10+ Year Attorney)	email OC draft CMC stm	0.17	\$ 600.00	\$ 102.00
1/4/2023	Breck Oyama (15+ Year Paralegal)	review emails/calendar, update litigation chain	0.17	\$ 300.00	\$ 51.00
1/5/2023	Emily Ly (3rd Year Paralegal)	Served, filed, and circulated joint cmc statement.	0.42	\$ 150.00	\$ 63.00
1/6/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Saved docs.	0.17	\$ 150.00	\$ 25.50
1/6/2023	Caroline Tahmassian (10+ Year Attorney)	review dgs email; call with dgs	0.17	\$ 600.00	\$ 102.00
1/9/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Calendared.	0.08	\$ 150.00	\$ 12.00
1/9/2023	Caroline Tahmassian (10+ Year Attorney)	emails with OC to set up a call	0.08	\$ 600.00	\$ 48.00
1/11/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Checked docket. Scheduled appearance for CT.	0.25	\$ 150.00	\$ 37.50
1/12/2023	Caroline Tahmassian (10+ Year Attorney)	review joint report and case status and prep for hearing; attend hearing; email dgs notes of hearing	1.00	\$ 600.00	\$ 600.00
1/18/2023	Caroline Tahmassian (10+ Year Attorney)	prep for call with OC; call with OC re releases and mediation; email dgs re call	0.50	\$ 600.00	\$ 300.00
1/18/2023	Emily Ly (3rd Year Paralegal)	Reviewed emails and saved docs. Circulated MO and calendared.	0.42	\$ 150.00	\$ 63.00
1/23/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails.	0.25	\$ 150.00	\$ 37.50
1/23/2023	Daniela Linares (2nd Year Intake Assistant)	email rev	0.08	\$ 150.00	\$ 12.00
1/24/2023	Emily Ly (3rd Year Paralegal)	Reviewed emails.	0.08	\$ 150.00	\$ 12.00
2/1/2023	Caroline Tahmassian (10+ Year Attorney)	review case law re pick up stick and email dgs	0.33	\$ 600.00	\$ 198.00
2/9/2023	Daniela Linares (2nd Year Intake Assistant)	email review	0.08	\$ 150.00	\$ 12.00
2/14/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Updated calendar.	0.17	\$ 150.00	\$ 25.50
2/15/2023	Caroline Tahmassian (10+ Year Attorney)	email OC; revise damages and email dgs and LE re next steps and mediation; email EL re mediation dates	1.00	\$ 600.00	\$ 600.00
2/15/2023	Breck Oyama (15+ Year Paralegal)	review emails/FV/filing, update litigation chain	0.17	\$ 300.00	\$ 51.00
2/15/2023	Daniela Linares (2nd Year Intake Assistant)	email review	0.08	\$ 150.00	\$ 12.00
2/16/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails.	0.17	\$ 150.00	\$ 25.50
2/17/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
2/21/2023	Daniela Linares (2nd Year Intake Assistant)	email review	0.08	\$ 150.00	\$ 12.00
2/21/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Calendared.	0.25	\$ 150.00	\$ 37.50
2/22/2023	Daniela Linares (2nd Year Intake Assistant)	email rev	0.17	\$ 150.00	\$ 25.50
2/22/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Calendared.	0.25	\$ 150.00	\$ 37.50
2/22/2023	Caroline Tahmassian (10+ Year Attorney)	emails with OC to schedule call	0.17	\$ 600.00	\$ 102.00
2/24/2023	Daniela Linares (2nd Year Intake Assistant)	email review	0.08	\$ 150.00	\$ 12.00
2/28/2023	Daniela Linares (2nd Year Intake Assistant)	email rev	0.08	\$ 150.00	\$ 12.00
3/1/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Calendared. Called and texted Client.	0.33	\$ 150.00	\$ 49.50
3/1/2023	Caroline Tahmassian (10+ Year Attorney)	prep for call with OC; emails to mediator; email OC re mediation; messages with EL re mediation; revise damages	0.50	\$ 600.00	\$ 300.00
3/1/2023	Daniela Linares (2nd Year Intake Assistant)	email rev, rev notes, call to cl - lvm.	0.25	\$ 150.00	\$ 37.50
3/2/2023	Daniela Linares (2nd Year Intake Assistant)	email rev	0.08	\$ 150.00	\$ 12.00
3/2/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Calendared.	0.50	\$ 150.00	\$ 75.00
3/3/2023	Caroline Tahmassian (10+ Year Attorney)	emails with OC and mediator re mediation date/time	0.17	\$ 600.00	\$ 102.00
3/3/2023	Emily Ly (3rd Year Paralegal)	Reviewed emails. Calendared.	0.25	\$ 150.00	\$ 37.50
3/6/2023	Emily Ly (3rd Year Paralegal)	Reviewed emails and updated calendar.	0.08	\$ 150.00	\$ 12.00
3/6/2023	Daniela Linares (2nd Year Intake Assistant)	email rev	0.08	\$ 150.00	\$ 12.00
3/10/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
3/13/2023	Emily Ly (3rd Year Paralegal)	Reviewed emails. Updated calendar and call Client.	0.08	\$ 150.00	\$ 12.00
3/14/2023	Emily Ly (3rd Year Paralegal)	Reviewed emails.	0.17	\$ 150.00	\$ 25.50
3/17/2023	Caroline Tahmassian (10+ Year Attorney)	review stip	0.08	\$ 600.00	\$ 48.00
3/17/2023	Emily Ly (3rd Year Paralegal)	Drafted stip to continue CMC. Checked docket. Messages with CT. Reviewed and replied to emails.	0.67	\$ 150.00	\$ 100.50
3/17/2023	Emily Ly (3rd Year Paralegal)	Served, filed, and circulated stip to continue CMC.	0.50	\$ 150.00	\$ 75.00
3/20/2023	Nora Greer (15+ Year Paralegal)	TC with PCM, update phone number in FV, messages re same to EL	0.08	\$ 200.00	\$ 16.00
3/21/2023	Daniela Linares (2nd Year Intake Assistant)	email review	0.08	\$ 150.00	\$ 12.00
3/21/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Checked docket and updated calendar. Prepped, served, filed, and circulated Notice of Entry of Order. Called and texted to Client. Call with CT and client.	1.50	\$ 150.00	\$ 225.00
3/22/2023	Caroline Tahmassian (10+ Year Attorney)	calls/emails with dgs and EL re ST claim; call with client	0.50	\$ 600.00	\$ 300.00
4/7/2023	Breck Oyama (15+ Year Paralegal)	review emails/FV	0.17	\$ 300.00	\$ 51.00
5/10/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Checked LWDA and Lexis for cases against Defendant.	0.25	\$ 150.00	\$ 37.50
5/15/2023	Daniela Linares (2nd Year Intake Assistant)	call and text to client, tc w ehl	0.08	\$ 150.00	\$ 12.00

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Date	Attorney/Paralegal	Description	Hours (Decimal)	Hourly Rate	Pre-Multiplier Lodestar Amount
5/15/2023	Daniela Linares (2nd Year Intake Assistant)	call to emergency contact	0.08	\$ 150.00	\$ 12.00
5/15/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Sent updated costs and fees to team. Call with CT. Circulated Def's mediation statement.	0.92	\$ 150.00	\$ 138.00
5/15/2023	Laura Solorzano (1st Year Intake Assistant)	fw email to DL	0.08	\$ 150.00	\$ 12.00
5/15/2023	Daniela Linares (2nd Year Intake Assistant)	email rev	0.08	\$ 150.00	\$ 12.00
5/15/2023	Daniela Linares (2nd Year Intake Assistant)	email review	0.08	\$ 150.00	\$ 12.00
5/15/2023	Caroline Tahmassian (10+ Year Attorney)	re ise damages; review OC mediation brief; call with EL	1.50	\$ 600.00	\$ 900.00
5/16/2023	David Spivak (28+ Year Attorney)	Prepare for mediation and participate in mediation	4.00	\$ 900.00	\$ 3,600.00
5/16/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Messages with team re mediation.	0.42	\$ 150.00	\$ 63.00
5/16/2023	Daniela Linares (2nd Year Intake Assistant)	pcm notes for ct for mediation call with emergency contact and our client. text thread, email rev, gc rev	1.17	\$ 150.00	\$ 175.50
5/16/2023	Daniela Linares (2nd Year Intake Assistant)	tc w ehl re case, call to client, call to client emergency contact	0.08	\$ 150.00	\$ 12.00
5/16/2023	Laura Solorzano (1st Year Intake Assistant)	search for client, rc with EL, Rc with team, call GF re mediation	0.33	\$ 150.00	\$ 49.50
5/16/2023	Caroline Tahmassian (10+ Year Attorney)	prep and attend mediation; draft MOU	6.00	\$ 600.00	\$ 3,600.00
5/17/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails and calendared.	0.08	\$ 150.00	\$ 12.00
5/17/2023	Daniela Linares (2nd Year Intake Assistant)	email rev	0.08	\$ 150.00	\$ 12.00
5/18/2023	Caroline Tahmassian (10+ Year Attorney)	revire mediator's proposa; email EL re proposal	0.08	\$ 600.00	\$ 48.00
5/18/2023	Emily Ly (3rd Year Paralegal)	Called and emailed Client.	0.25	\$ 150.00	\$ 37.50
5/19/2023	Caroline Tahmassian (10+ Year Attorney)	call with client; email mediator	0.25	\$ 600.00	\$ 150.00
5/19/2023	Emily Ly (3rd Year Paralegal)	Call with Client.	0.25	\$ 150.00	\$ 37.50
5/19/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Prepped, served, filed, and circulated stip.	0.75	\$ 150.00	\$ 112.50
5/23/2023	Daniela Linares (2nd Year Intake Assistant)	email rev	0.08	\$ 150.00	\$ 12.00
5/26/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails and updated calendar.	0.17	\$ 150.00	\$ 25.50
6/5/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Saved docs. Served, filed, and circulated Notice of Entry of Order.	0.33	\$ 150.00	\$ 49.50
6/6/2023	Caroline Tahmassian (10+ Year Attorney)	review MOU; email dgs; email OC MOU	0.25	\$ 600.00	\$ 150.00
6/7/2023	Daniela Linares (2nd Year Intake Assistant)	email review	0.08	\$ 150.00	\$ 12.00
6/23/2023	Daniela Linares (2nd Year Intake Assistant)	email review	0.08	\$ 150.00	\$ 12.00
6/26/2023	Emily Ly (3rd Year Paralegal)	Reviewed emails.	0.08	\$ 150.00	\$ 12.00
6/27/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Saved docs.	0.08	\$ 150.00	\$ 12.00
6/28/2023	Caroline Tahmassian (10+ Year Attorney)	emails to OC re MOU revisions; review claims;	0.25	\$ 600.00	\$ 150.00
6/28/2023	Emily Ly (3rd Year Paralegal)	Reviewed emails.	0.08	\$ 150.00	\$ 12.00
7/3/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Enter Lexis usage to FV	0.08	\$ 200.00	\$ 16.00
7/4/2023	David Spivak (28+ Year Attorney)	review changes to MOU; instructions to staff	0.33	\$ 900.00	\$ 297.00
7/12/2023	Daniela Linares (2nd Year Intake Assistant)	email rev	0.08	\$ 150.00	\$ 12.00
7/13/2023	Caroline Tahmassian (10+ Year Attorney)	revise MOU; draft stip and ZAC	1.25	\$ 600.00	\$ 750.00
7/21/2023	Caroline Tahmassian (10+ Year Attorney)	finalize stip and ZAC; revise MOU and email OC	0.25	\$ 600.00	\$ 150.00
8/2/2023	Caroline Tahmassian (10+ Year Attorney)	FU with OC re MOU/stip	0.08	\$ 600.00	\$ 48.00
8/3/2023	Daniela Linares (2nd Year Intake Assistant)	email rev	0.08	\$ 150.00	\$ 12.00
8/3/2023	Emily Ly (3rd Year Paralegal)	Circulated MOU for signatures.	0.25	\$ 150.00	\$ 37.50
8/8/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails.	0.08	\$ 150.00	\$ 12.00
8/10/2023	Daniela Linares (2nd Year Intake Assistant)	emails	0.08	\$ 150.00	\$ 12.00
8/14/2023	Daniela Linares (2nd Year Intake Assistant)	case and email rv rev	0.17	\$ 150.00	\$ 25.50
8/14/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Reviewed stip to file ZAC.	0.42	\$ 150.00	\$ 63.00
8/15/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Served, filed and circulated stip to file ZAC.	0.83	\$ 150.00	\$ 124.50
8/18/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Saved docs. Emailed TPA re bids for settlement.	0.33	\$ 150.00	\$ 49.50
8/21/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Saved docs. Emailed TPA bids to OC.	0.33	\$ 150.00	\$ 49.50
8/21/2023	Daniela Linares (2nd Year Intake Assistant)	email rev	0.08	\$ 150.00	\$ 12.00
8/23/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Saved docs. Uploaded filed ZAC to LWDA.	0.58	\$ 150.00	\$ 87.00
8/30/2023	Emily Ly (3rd Year Paralegal)	Prepped, served, filed, and circulated Notice of Entry of Order.	0.67	\$ 150.00	\$ 100.50
8/31/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Circulated fully executed MOU. Saved docs.	0.25	\$ 150.00	\$ 37.50
9/1/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails.	0.17	\$ 150.00	\$ 25.50
9/1/2023	Caroline Tahmassian (10+ Year Attorney)	review stip and email OC and staff	0.17	\$ 600.00	\$ 102.00
9/4/2023	David Spivak (28+ Year Attorney)	Prepare settlement agreement and exhibit (long form)	2.75	\$ 900.00	\$ 2,475.00
9/6/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Saved docs.	0.17	\$ 150.00	\$ 25.50
9/6/2023	Daniela Linares (2nd Year Intake Assistant)	email review, tc w ehl, email to team	0.25	\$ 150.00	\$ 37.50
9/6/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Reviewed settlement agreement and emailed OC.	0.50	\$ 150.00	\$ 75.00
9/14/2023	Daniela Linares (2nd Year Intake Assistant)	email	0.17	\$ 150.00	\$ 25.50
9/22/2023	David Spivak (28+ Year Attorney)	review and respondo to OC revisions of settlement agreement	0.58	\$ 900.00	\$ 522.00
10/5/2023	Daniela Linares (2nd Year Intake Assistant)	f/u w oc	0.08	\$ 150.00	\$ 12.00
10/11/2023	Emily Ly (3rd Year Paralegal)	Circulated answer to ZAC. Reviewed and replied to emails.	0.33	\$ 150.00	\$ 49.50
10/19/2023	Emily Ly (3rd Year Paralegal)	Left vm for Client.	0.08	\$ 150.00	\$ 12.00
10/19/2023	Emily Ly (3rd Year Paralegal)	Call from Client.	0.17	\$ 150.00	\$ 25.50
10/19/2023	David Spivak (28+ Year Attorney)	review changes by opposing counsel to settlement agreement	0.25	\$ 900.00	\$ 225.00
10/20/2023	Emily Ly (3rd Year Paralegal)	Finalized and circulated settlement for signatures.	0.67	\$ 150.00	\$ 100.50
10/25/2023	Emily Ly (3rd Year Paralegal)	Call to client re settlement agreement.	0.08	\$ 150.00	\$ 12.00
10/30/2023	Daniela Linares (2nd Year Intake Assistant)	email rev, call w client, email to team	0.17	\$ 150.00	\$ 25.50
11/14/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails.	0.25	\$ 150.00	\$ 37.50
11/15/2023	Daniela Linares (2nd Year Intake Assistant)	email review	0.08	\$ 150.00	\$ 12.00
11/16/2023	Breck Oyama (15+ Year Paralegal)	review emails/FV, update deadline chains	0.17	\$ 300.00	\$ 51.00
11/22/2023	Daniela Linares (2nd Year Intake Assistant)	call w pcm	0.08	\$ 150.00	\$ 12.00
12/7/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Filled in settlement and settlement+ tabs.	1.33	\$ 150.00	\$ 199.50
12/8/2023	Nora Greer (15+ Year Paralegal)	TC with EL re case	0.08	\$ 200.00	\$ 16.00
12/11/2023	Daniela Linares (2nd Year Intake Assistant)	email rev	0.08	\$ 150.00	\$ 12.00
1/4/2024	Emily Ly (3rd Year Paralegal)	Finished filling in settlement tabs. Reviewed and replied to emails.	0.50	\$ 150.00	\$ 75.00
1/8/2024	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Served, filed, and circulated stip to continue.	0.58	\$ 150.00	\$ 87.00
1/8/2024	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Checked docket. Prepped stip.	0.67	\$ 150.00	\$ 100.50
1/9/2024	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Checked docket.	0.17	\$ 150.00	\$ 25.50
1/9/2024	Henry Michael (1st Year Intern)	Entering Lexis expense	0.08	\$ 150.00	\$ 12.00
1/9/2024	David Spivak (28+ Year Attorney)	prepare mx for prelim aproval	3.08	\$ 900.00	\$ 2,772.00

TSLF TIME LEON

Date	Attorney/Paralegal	Description	Hours (Decimal)	Hourly Rate	Pre-Multiplier Lodestar Amount
1/11/2024	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Calendared. Prepped, served, filed, and circulated Notice of Entry of Order.	0.58	\$ 150.00	\$ 87.00
1/19/2024	Emily Ly (3rd Year Paralegal)	Worked on mx for prelim approval. Reviewed and replied to emails.	1.75	\$ 150.00	\$ 262.50
1/29/2024	Breck Oyama (15+ Year Paralegal)	review emails/calendar, email EL task	0.08	\$ 300.00	\$ 24.00
2/1/2024	Emily Ly (3rd Year Paralegal)	Reviewed mx for prelim approval and emailed team.	1.00	\$ 150.00	\$ 150.00
2/6/2024	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails.	0.25	\$ 150.00	\$ 37.50
2/13/2024	Nora Greer (15+ Year Paralegal)	Transfer call from PCM to EL	0.08	\$ 200.00	\$ 16.00
2/26/2024	Emily Ly (3rd Year Paralegal)	Reviewed mx for prelim approval and sent it to OC.	0.50	\$ 150.00	\$ 75.00
3/5/2024	Daniela Linares (2nd Year Intake Assistant)	email review	0.08	\$ 150.00	\$ 12.00
3/12/2024	Daniela Linares (2nd Year Intake Assistant)	email rev	0.08	\$ 150.00	\$ 12.00
3/12/2024	Daniela Linares (2nd Year Intake Assistant)	email rev	0.08	\$ 150.00	\$ 12.00
3/14/2024	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails.	0.25	\$ 150.00	\$ 37.50
3/14/2024	Caroline Tahmassian (10+ Year Attorney)	review motion docs and email team re financial discovery	0.50	\$ 600.00	\$ 300.00
3/15/2024	Caroline Tahmassian (10+ Year Attorney)	VMs/call/emails with OC; email team re call notes	0.33	\$ 600.00	\$ 198.00
3/18/2024	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails.	0.17	\$ 150.00	\$ 25.50
3/19/2024	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Call to and from court re mx for prelim date.	0.25	\$ 150.00	\$ 37.50
3/27/2024	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Calls to Court to reserve mx date.	0.17	\$ 150.00	\$ 25.50
4/5/2024	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Work on mx for prelim.	1.67	\$ 150.00	\$ 250.50
4/8/2024	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Prepped, served, and circulated stip to continue cmc.	1.25	\$ 150.00	\$ 187.50
4/8/2024	Caroline Tahmassian (10+ Year Attorney)	review/revise stip continue CMC	0.25	\$ 600.00	\$ 150.00
4/12/2024	Daniela Linares (2nd Year Intake Assistant)	call to client, search client online	0.25	\$ 150.00	\$ 37.50
4/17/2024	Laura Solorzano (1st Year Intake Assistant)	review emails, search for P	0.33	\$ 150.00	\$ 49.50
4/17/2024	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Calls to Clerk.	0.33	\$ 150.00	\$ 49.50
4/19/2024	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails.	0.33	\$ 150.00	\$ 49.50
4/23/2024	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails.	0.17	\$ 150.00	\$ 25.50
4/25/2024	Nora Greer (15+ Year Paralegal)	TC with EL re MX	0.25	\$ 200.00	\$ 50.00
4/25/2024	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Gathered exhibits and worked on TOA. Call with NG re page formatting.	2.58	\$ 150.00	\$ 387.00
4/25/2024	Laura Solorzano (1st Year Intake Assistant)	call from pcm	0.08	\$ 150.00	\$ 12.00
4/26/2024	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Continued to work on TOA/TOC. Calls to client. Reviewed, served, filed, and circulated mx for prelim approval.	3.50	\$ 150.00	\$ 525.00
4/26/2024	Nora Greer (15+ Year Paralegal)	Review Mx Prelim	0.33	\$ 200.00	\$ 66.00
4/26/2024	Daniela Linares (2nd Year Intake Assistant)	email rev	0.08	\$ 150.00	\$ 12.00
5/1/2024	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails.	0.25	\$ 150.00	\$ 37.50
5/29/2024	Emily Ly (3rd Year Paralegal)	Checked docket. Emailed team.	0.17	\$ 150.00	\$ 25.50
5/30/2024	Caroline Tahmassian (10+ Year Attorney)	draft report; emssage with EL re report	0.25	\$ 600.00	\$ 150.00
5/30/2024	Emily Ly (3rd Year Paralegal)	Reviewed, served, and filed jsr. Calls to OC's office. Reviewed and replied to emails. Prepped, served, and filed Notice of Entry of Order.	0.75	\$ 150.00	\$ 112.50
6/3/2024	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Prepped and served Notice and proposed order for remote appearance.	1.00	\$ 150.00	\$ 150.00
6/4/2024	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Circulated tentative. Calendared. Messages with team.	0.50	\$ 150.00	\$ 75.00
6/10/2024	Breck Oyama (15+ Year Paralegal)	update PAMx deadline chain	0.08	\$ 300.00	\$ 24.00
6/11/2024	Emily Ly (3rd Year Paralegal)	Calls to Court re cmc.	0.25	\$ 150.00	\$ 37.50
6/12/2024	Lauren Davis (10+ Year Attorney)	confer with CT regarding upcoming CMC	0.08	\$ 150.00	\$ 12.00
6/12/2024	Caroline Tahmassian (10+ Year Attorney)	cal with LD re CMC; email EL re CMC	0.17	\$ 600.00	\$ 102.00
6/12/2024	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Calls to Court re CMC. Served and filed Notice of Appearance.	1.00	\$ 150.00	\$ 150.00
6/13/2024	Nora Greer (15+ Year Paralegal)	TC with EL re Docket	0.17	\$ 200.00	\$ 34.00
6/13/2024	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Calls to Court re CMC. Calendared.	0.42	\$ 150.00	\$ 63.00
6/17/2024	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Prepped, served, and filed Notice of Remote Appearance for mx for prelim approval.	1.00	\$ 150.00	\$ 150.00
6/25/2024	Caroline Tahmassian (10+ Year Attorney)	discuss TR and email/message team ; email OC re TR	0.25	\$ 600.00	\$ 150.00
6/25/2024	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Circulated tentative. Call to Court.	0.17	\$ 150.00	\$ 25.50
7/3/2024	Daniela Linares (2nd Year Intake Assistant)	email rev, tc w ehl, call w ehl	0.25	\$ 150.00	\$ 37.50
7/5/2024	Daniela Linares (2nd Year Intake Assistant)	snooze email	0.08	\$ 150.00	\$ 12.00
7/9/2024	Emily Ly (3rd Year Paralegal)	Reviewed emails.	0.08	\$ 150.00	\$ 12.00
7/12/2024	Caroline Tahmassian (10+ Year Attorney)	review court prelim apprival order and prep for call with OC; call with OC to discuss order; email notes of call to team	1.00	\$ 600.00	\$ 600.00
7/18/2024	Henry Michael (1st Year Intern)	Entering Lexis expense	0.08	\$ 150.00	\$ 12.00
7/23/2024	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails.	0.17	\$ 150.00	\$ 25.50
7/24/2024	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Saved docs. Reviewed stip.	0.33	\$ 150.00	\$ 49.50
7/24/2024	Caroline Tahmassian (10+ Year Attorney)	review D decl and email OC re approval motion	0.25	\$ 600.00	\$ 150.00
8/1/2024	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Saved docs. Calendared.	0.33	\$ 150.00	\$ 49.50
8/2/2024	Nora Greer (15+ Year Paralegal)	Transfer PCM call to EL	0.08	\$ 200.00	\$ 16.00
8/13/2024	Emily Ly (3rd Year Paralegal)	Reviewed client decl for mx for prelim and Court's minute order.	0.50	\$ 150.00	\$ 75.00
10/9/2024	Caroline Tahmassian (10+ Year Attorney)	review court TR; review def decl; draft renewed motion	3.50	\$ 600.00	\$ 2,100.00
10/10/2024	Caroline Tahmassian (10+ Year Attorney)	drat renewed motion for prelim approval	2.50	\$ 600.00	\$ 1,500.00
10/10/2024	David Spivak (28+ Year Attorney)	review and revise renewed mx prelim approval	0.50	\$ 900.00	\$ 450.00
10/11/2024	Caroline Tahmassian (10+ Year Attorney)	revise renewed motion and email OC	0.50	\$ 600.00	\$ 300.00
10/16/2024	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Call to Court to acquire mx for prelim dates. Calendared.	0.50	\$ 150.00	\$ 75.00
10/17/2024	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Calls to Court. Updated calendar.	0.25	\$ 150.00	\$ 37.50
10/23/2024	Caroline Tahmassian (10+ Year Attorney)	emails with OC re renewed motion; call/msg with EL re exhibit	0.33	\$ 600.00	\$ 198.00
10/23/2024	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Reviewed exhibits and emailed to OC.	0.42	\$ 150.00	\$ 63.00
11/1/2024	Daniela Linares (2nd Year Intake Assistant)	email review	0.17	\$ 150.00	\$ 25.50
11/12/2024	Emily Ly (3rd Year Paralegal)	Did client time log. Reviewed and replied to emails.	1.00	\$ 150.00	\$ 150.00
11/12/2024	Daniela Linares (2nd Year Intake Assistant)	calls w pcm, tc w ehl, email review	0.25	\$ 150.00	\$ 37.50
11/14/2024	Daniela Linares (2nd Year Intake Assistant)	email review, calls to client to all avail numbers - out of service, email to team, email to client	0.25	\$ 150.00	\$ 37.50
11/18/2024	Emily Ly (3rd Year Paralegal)	Worked on renewed mx for prelim approval. Reviewed and replied to emails. Saved docs. Worked on TSLF time and costs.	1.67	\$ 150.00	\$ 250.50
11/19/2024	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Saved docs. Continued to work on renewed mx for prelim approval doing TOA and gathering exhibits.	1.92	\$ 150.00	\$ 288.00
11/22/2024	Emily Ly (3rd Year Paralegal)	Continue to review mx for prelim approval.	0.75	\$ 150.00	\$ 112.50

TSLF TIME LEON

Date	Attorney/Paralegal	Description	Hours (Decimal)	Hourly Rate	Pre-Multiplier Lodestar Amount
11/25/2024	Daniela Linares (2nd Year Intake Assistant)	email	0.08	\$ 150.00	\$ 12.00
11/27/2024	Daniela Linares (2nd Year Intake Assistant)	call w ehl	0.08	\$ 150.00	\$ 12.00
11/27/2024	Daniela Linares (2nd Year Intake Assistant)	call w client, email to team	0.17	\$ 150.00	\$ 25.50
12/9/2024	Emily Ly (3rd Year Paralegal)	Checked docket, saved docs, and updated calendar. Reviewed and replied to emails.	0.33	\$ 150.00	\$ 49.50
12/9/2024	Daniela Linares (2nd Year Intake Assistant)	tc w ehl, updated fv	0.08	\$ 150.00	\$ 12.00
12/9/2024	Emily Ly (3rd Year Paralegal)	Called, texted, and emailed client.	0.17	\$ 150.00	\$ 25.50
		TOTAL PRE-MULTIPLIER AS OF 12/12/24	227.85		\$ 84,456.00

EXHIBIT 27

TSLF COSTS LEON

Date	Expense Type	Expense Description	Expense Amount
12/23/2021	LWDA Filing Fee	21.12.23 LWDA LTR RECEIPT	\$ 75.00
1/10/2022	Postage	22.01.10 Excelsior Invoice # 80942	\$ 45.71
2/2/2022	Lexis or Westlaw	Lexis usage Jan 2022	\$ 10.64
2/8/2022	Attorney Service-Filing	22.02.08 Odyssey File & Serve - Envelope Receipt	\$ 1,478.06
2/10/2022	Photocopies	22.02.10 el It re sagaser, watkins & wieland notice acknowledgment receipt Davis & Roberts Construction	\$ 5.50
3/1/2022	Postage	Stamps usage Feb 2022	\$ 8.58
3/7/2022	Attorney Service-Filing	22.03.07 Odyssey File & Serve - Envelope Receipt	\$ 3.60
5/25/2022	Attorney Service-Filing	22.05.25 Odyssey File & Serve - Envelope Receipt	\$ 24.15
6/1/2022	Attorney Service-Filing	22.06.01 Odyssey File & Serve - Envelope Receipt - Jury Fees	\$ 157.72
9/29/2022	Postage	22.09.29 Invoice_82761_Excelsior Prepaid Envelope	\$ 24.23
10/25/2022	Data Entry	22.10.25 Invoice from REDACTED (8881)	\$ 600.00
11/2/2022	Lexis or Westlaw	Lexis usage Oct 2022	\$ 47.63
11/3/2022	Mediator Fees	Inv_108482_from_Howard_R._Broadman_Private_Judge_A_Law_Corporation_27680	\$ 6,000.00
11/5/2022	Expert or Data Analysis	Invoice 2035 - Leon - 11-04-2022	\$ 2,800.00
11/30/2022	Attorney Service-Filing	22.11.30 Odyssey File & Serve - Envelope Receipt	\$ 3.60
12/2/2022	Lexis or Westlaw	Lexis usage Nov 2022	\$ 6.47
12/2/2022	Attorney Service-Filing	22.12.02 Odyssey File & Serve - Envelope Receipt	\$ 44.70
12/9/2022	Attorney Service-Filing	22.12.09 Odyssey File & Serve - Envelope Receipt	\$ 3.60
12/20/2022	Postage	22.12.20 Invoice 7235630_pcm autho	\$ 1.93
12/22/2022	Postage	22.12.22 Invoice_7248321	\$ 2.03
1/3/2023	Lexis or Westlaw	Lexis Usage December 2022	\$ 7.26
1/5/2023	Attorney Service-Filing	23.01.05 Odyssey File & Serve - Envelope Receipt	\$ 3.60
1/11/2023	CourtCall	23.01.11 CourtCallAppearanceInvoice_11644327_2023 0111122606_INVO	\$ 72.00
2/2/2023	Lexis or Westlaw	Lexis usage Jan 2023	\$ 7.13
3/1/2023	Lexis or Westlaw	Lexis Usage February 2023	\$ 6.85
3/17/2023	Attorney Service-Filing	23.03.17 Odyssey File & Serve - Envelope Receipt	\$ 24.15
3/21/2023	Attorney Service-Filing	23.03.21 Odyssey File & Serve - Envelope Receipt	\$ 3.60
4/3/2023	Lexis or Westlaw	Lexis Usage March 2023	\$ 6.88
5/1/2023	Lexis or Westlaw	Lexis Usage April 2023	\$ 6.38
5/16/2023	Mediator Fees	Inv_1085961_from_Howard_R._Broadman_Private_Judge_A_Law_Corporation_12164	\$ 3,000.00
5/19/2023	Attorney Service-Filing	23.05.19 Odyssey File & Serve - Envelope Receipt	\$ 24.15
6/1/2023	Lexis or Westlaw	Lexis Usage May 2023	\$ 7.84

TSLF COSTS LEON

Date	Expense Type	Expense Description	Expense Amount
6/5/2023	Attorney Service-Filing	23.06.05 Odyssey File & Serve - Envelope Receipt	\$ 3.60
6/26/2023	Lexis or Westlaw	Lexis usage June 2023	\$ 5.60
8/2/2023	Lexis or Westlaw	Lexis Usage July 2023	\$ 4.97
8/15/2023	Attorney Service-Filing	23.08.15 Odyssey File & Serve - Envelope Receipt	\$ 24.15
8/30/2023	Attorney Service-Filing	23.08.30 Odyssey File & Serve - Envelope Receipt	\$ 3.60
9/1/2023	Lexis or Westlaw	Lexis usage Aug 2023	\$ 4.80
9/1/2023	Lexis or Westlaw	Westlaw usage Aug 2023	\$ 1.16
10/2/2023	Lexis or Westlaw	Lexis Usages September 2023	\$ 5.85
11/1/2023	Lexis or Westlaw	Lexis Usages October 2023	\$ 5.71
12/1/2023	Lexis or Westlaw	Lexis Usages November 2023	\$ 6.32
1/8/2024	Attorney Service-Filing	24.01.08 Odyssey File & Serve - Envelope Receipt	\$ 3.60
1/11/2024	Attorney Service-Filing	24.01.11 Odyssey File & Serve - Envelope Receipt	\$ 3.60
1/16/2024	Lexis or Westlaw	Lexis usage Dec 2023	\$ 7.06
2/1/2024	Lexis or Westlaw	Westlaw usage Jan 2024	\$ 3.53
3/7/2024	Lexis or Westlaw	Lexis Usages Feb 2024	\$ 3.69
4/2/2024	Lexis or Westlaw	Lexis usage Mar 2024	\$ 5.57
4/8/2024	Attorney Service-Filing	24.04.08 Odyssey File & Serve - Envelope Receipt	\$ 24.15
4/26/2024	Attorney Service-Filing	24.04.26 Odyssey File & Serve - Envelope Receipt	\$ 65.25
5/9/2024	Lexis or Westlaw	Lexis Usage April 2024	\$ 5.68
5/30/2024	Attorney Service-Filing	24.05.30 Odyssey File & Serve - Envelope Receipt	\$ 3.60
6/3/2024	Attorney Service-Filing	24.06.03 Odyssey File & Serve - Envelope Receipt	\$ 3.60
6/4/2024	Lexis or Westlaw	Westlaw usage May 2024	\$ 5.57
6/6/2024	Lexis or Westlaw	Lexis usage May 2024	\$ 6.78
6/12/2024	Attorney Service-Filing	24.06.12 Odyssey File & Serve - Envelope Receipt	\$ 3.60
6/17/2024	Attorney Service-Filing	24.06.17 Odyssey File & Serve - Envelope Receipt	\$ 3.60
7/15/2024	Lexis or Westlaw	Westlaw usage June 2024	\$ 7.06
7/18/2024	Lexis or Westlaw	Lexis usage June 2024	\$ 6.41
8/7/2024	Lexis or Westlaw	Lexis usage July 2024	\$ 6.44
9/10/2024	Lexis or Westlaw	Lexis usage August 2024	\$ 6.32
10/28/2024	Lexis or Westlaw	SEPT 2024 Lexis Usage	\$ 5.76
11/7/2024	Lexis or Westlaw	OCT 2024 Lexis Usage	\$ 3.59
TBD	Attorney Service-Filing	Estimated Attorney Service charges for efiling renewed motion for preliminary approval	\$ 65.25
TBD	Attorney Service-Filing	Estimated Attorney Service charges for efiling notice of entry of order of preliminary approval	\$ 4.50
TBD	Attorney Service-Filing	Estimated Attorney Service charges for efiling motion for final approval	\$ 65.25
TBD	Attorney Service-Filing	Estimated Attorney Service charges for efiling supplemental administrator's declaration	\$ 4.50

TSLF COSTS LEON

Date	Expense Type	Expense Description	Expense Amount
TBD	Attorney Service-Filing	Estimated Attorney Service charges for efilng notice of entry of order and judgment	\$ 4.50
TBD	Attorney Service-Filing	Estimated Attorney Service charges for efilng final accounting declarations	\$ 4.50
TBD	Attorney Service-Filing	Estimated Attorney Service charges for efilng supplemental final accounting declarations	\$ 4.50
TSLF CURRENT COSTS THROUGH 12/12/24			\$ 14,763.21
UELG CURRENT COSTS THROUGH 12/12/24			\$ 8.41
TSLF ESTIMATED FUTURE COSTS			\$ 153.00
TOTAL APPROX COSTS THROUGH FINAL ACCOUNTING			\$ 14,924.62

Firm	Total Costs
The Spivak Law Firm	\$ 14,916.21
United Employees Law Group	\$ 8.41
Grand Total	\$ 14,924.62

EXHIBIT 28

LEGEND

Abbreviation	Definition
1AC	first amended complaint
2AC	second amended complaint
AB	Atkinson Baker
admin	administration or administrator
agmt	agreement
Amanda K. Miller	Counsel for Defendant
app	approval
autho	authorization
b/c	because
BO	Breck Oyama, paralegal for Plaintiff's counsel
Breck	Breck Oyama, paralegal for Plaintiff's counsel
BW	Belaire West
calcs	calculations
Caroline Tahmassian	Attorney for Plaintiff
CL	client
cmc	case management conference
cmo	case management order
conf	conference
CPRA	California public records act
CT	Caroline Tahmassian, Attorney for Plaintiff
Daniela	Daniela Linares, Intake Assistant for Plaintiff's counsel
David	David Spivak, attorney for Plaintiff
Davis & Roberts Construction, Inc.	Defendant
decl	declaration
def	defendant
DFEH	Department Fair Housing and Employment
DGS	David Spivak, attorney for Plaintiff
disc	discovery
DL	Daniela Linares, Intake Assistant for Plaintiff's counsel
DL	download
DLSE	Division of Labor Standards Enforcement
doc	document
docs	documents
Ds	Defendants
ee	employee
eer	employer
EHL	Emily Ly, Paralegal for Plaintiff's counsel
EL	Emily Ly, Paralegal for Plaintiff's counsel
Emily Ly	Emily Ly, Paralegal for Plaintiff's counsel
env	envelope
evid pres	evidence preservation
exh	exhibit
ext	extension
f/u	follow up
FAMx	final approval mx
FAO	final approval order
fed	federal
FOIA	freedom of information act
fyi	for your information
Haines	Walter Haines, attorney for Plaintiff
Henry	Henry Michael, Intern for Plaintiff's counsel
HM	Henry Michael, Intern for Plaintiff's counsel
hrs	hours
Ian B. Wieland	Counsel for Defendant

Abbreviation	Definition
indiv	individual
ISC	initial status conference
JB	Jessica Bencomo, Formerly Employed Legal Secretary for Plaintiff's counsel
Jessica	Jessica Bencomo, Formerly Employed Legal Secretary for Plaintiff's counsel
Jorge L. Leon	Plaintiff
JSR	Joint Status Report
Laura Solorzano	Intake Assistant for Plaintiff's counsel
Lauren Davis	Attorney for Plaintiff
LC	Lizzett (Rubalcava) Cortez, paralegal for Plaintiff's counsel
Leon	Plaintiff Jorge L. Leon
Lizzett	Lizzett (Rubalcava) Cortez, paralegal for Plaintiff's counsel
LRD	Lauren Davis, Attorney for Plaintiff
LS	Intake Assistant for Plaintiff's counsel
lt	letter
LWDA	Labor and Workforce Development Agency
M&C	meet and confer
Maya	Maya Cheaitani, Formerly Employed Attorney for Plaintiff's counsel
MC	Maya Cheaitani, Formerly Employed Attorney for Plaintiff's counsel
Mediator	Hon. Howard R. Broadman
MOU	memorandum of understanding
MPA	memorandum of points and authorities
mtg	meeting
mx	motion
N&A	Notice of Acknowledgment and Receipt
NG	Nora Greer, paralegal for Plaintiff's counsel
Nora	Nora Greer, paralegal for Plaintiff's counsel
OC	attorney for Defendants
OC	opposing counsel
OCR	optical character recognition
OneLegal	Attorney service for court filing and service of process
Online Legal Courier	Attorney service for court filing and service of process
OPC	opposing counsel
Oyama	Breck Oyama, paralegal for Plaintiff's counsel
PAGA	private attorneys general act
PAMx	preliminary approval mx
PAO	preliminary approval order
PCM	putative class member
plf	Plaintiff
PMK	person most knowledgeable
PMQ	person most qualified
PO	proposed order
pos	proof of service
postlim	postliminary
prelim	preliminary
prep	preparation/prepare
prop	proposed
r4p	request for production
Rapid Legal	Attorney service for court filing and service of process
re	regarding
req	request
resp	response
rev	revised
rog	interrogatory
rogs	interrogatory
S&C	summons and complaint
SA	settlement agreement
sched	schedule/scheduling

Abbreviation	Definition
SGS	Stacy Sussman, formerly employed Legal Secretary for Plaintiff's counsel
SOL	statute of limitations
SOP	Service of process
SOS	Secretary of State
Spivak	David Spivak, attorney for Plaintiff
srog	special interrogatory
Stacy Sussman	Stacy Sussman, formerly employed Legal Secretary for Plaintiff's counsel
stip	stipulation
suppl	supplement/supplemental
TC	telephone call
teleconf	teleconference
TOA	table of authorities
TOC	table of contents
TPA	third party administrator
UELG	United Employee Law Group, PC , attorney for Plaintiff
vcad	Outlook contact
VM	voicemail
vmail	voicemail
Walter Haines	Attorney for Plaintiff