

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

7
8 Attorneys for Plaintiff(s),
LUIS LARRABURU, and all others similarly situated

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

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

16 *Plaintiff(s),*

17 vs.

18 AMERICAN MERCHANDISING
19 SPECIALISTS, INC., a North Carolina
20 corporation; and DOES 1–50, inclusive,

21 *Defendant(s).*

Case No. 21STCV17704

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

Hearing Date: September 1, 2022
Hearing Time: 10:00 a.m.
Hearing Dept.: SSC-9, The Honorable
Yvette M. Palazuelos

Action filed: May 11, 2021



SPIVAK LAW
Employee Rights Attorneys

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

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

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ADDITIONAL ATTORNEYS FOR PLAINTIFF

WALTER L. HAINES (SBN 71075)
walter@uelglaw.com
UNITED EMPLOYEES LAW GROUP
4276 Katella Ave
Suite 301
Los Alamitos, CA 90720
Telephone: (562) 256-1047
Facsimile: (562) 256-1006



SPIVAK LAW
Employee Rights Attorneys

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

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

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

3 I, DAVID SPIVAK, declare as follows:

4 1. I am an attorney duly licensed to practice law in the State of California and am an
5 attorney of record for Plaintiff Luis Larraburu (“Plaintiff”) in his lawsuit against Defendant
6 American Merchandising Specialists, Inc. (“Defendant”). Plaintiff and Defendant are
collectively referred to as the “Parties.”

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

9 3. The JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND
10 RELEASE OF CLAIMS (the “Settlement”) is attached hereto as **Exhibit 1**.

11 ***Factual and Procedural Background***

12 4. Defendant operates a retail service company that provides retail solutions for
13 Samsung and other customers, such as product knowledge training and equipment maintenance
14 and repair. Defendant employed Plaintiff as a marketing representative from about October 2019
until January 2020.

15 5. On December 3, 2021 Plaintiff notified Defendant and the California Labor and
16 Workforce Development Agency (“LWDA”), pursuant to the California Private Attorneys
17 General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”), of alleged Labor
18 Code violations committed by Defendant. A true and correct copy of the letter to the LWDA
dated December 3, 2021 is attached hereto as **Exhibit 2**.

19 6. On May 11, 2021, Plaintiff filed a Class Action Complaint in the Los Angeles
20 County Superior Court, Case No. 21STCV17704, against Defendant on behalf of himself and
21 others similarly situated, alleging causes of action on a class-wide basis for: (1) Failure to Pay
22 All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198); (2) Failure
23 to Provide Rest Breaks (Lab. Code §§226.7 and 1198); (3) Failure to Provide Meal Periods (Lab.
24 Code §§226.7, 512 and 1198); (4) Failure to Indemnify (Lab. Code §§ 1198 and 2802); (5) Wage
25 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 August 6, 2021
26 Defendant filed an answer to Plaintiff’s Class Complaint. Defendant denies all of Plaintiff’s
27 allegations and strongly contends that its wage and hour policies, practices and procedures are
28



1 fully compliant with all applicable laws. A true and correct copy of the complaint is attached
2 hereto as **Exhibit 3**. A true and correct copy of Defendant's Answer is attached hereto as **Exhibit**
3 **4**. Defendant denies all of Plaintiff's allegations and strongly contends that its wage and hour
4 policies, practices and procedures are fully compliant with all applicable laws.

5 7. The Parties thereafter engaged in an informal, voluntary exchange of information
6 in the context of privileged settlement discussions to facilitate an early mediation. Defendant
7 produced Plaintiff's entire personnel file (including policies and agreements he signed and
8 acknowledged), copies of its relevant company written policies, time-keeping records, email
9 messages, and paycheck data and records for the putative class, and more detailed time and
10 payroll data for a random sample of putative class members specifically selected by Plaintiff's
11 counsel.

12 8. On November 15, 2021, following much of the foregoing informal discovery and
13 exchange of information, the Parties participated in a mediation session presided over by
14 Mediator David Phillips, an experienced class action mediator. During the mediation, the Parties
15 had a full day of productive negotiations and reached agreement on a class-wide settlement
16 during the second mediation session. During the mediation sessions, each side, represented by
17 his/its respective counsel, recognized the risk of an adverse result in the Action and agreed to
18 settle the Action and all other matters covered by this Agreement pursuant to the terms and
19 conditions of this Agreement.

20 *Ascertainable and Numerous Class*

21 9. A class is ascertainable when it may be readily identified without unreasonable
22 expense or time by reference to official records. Here, Plaintiff maintains that the above-defined
23 Class is ascertainable because its members may be identified by reference to Defendant's records
24 and Defendant has agreed to share the relevant information from its records to facilitate the
25 settlement process. Therefore, the Settlement Class is ascertainable.

26 10. The Settlement Class has sufficiently numerous members to render joinder
27 impractical. No set number is required as a matter of law to maintain a class action. The California
28 Supreme Court has upheld a class of as few as 10 individuals. Defendant estimates that there are
approximately 115 Class Members. Plaintiff maintains that it would be impractical and
economically inefficient to require each Settlement Class Member to separately maintain an



1 individual action or be joined as a named plaintiff in this action. In light of these considerations,
2 the Settlement Class' membership is sufficiently numerous.

3 ***Predominant Common Questions***

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

22 ***Typicality***

23 12. Plaintiff contends that his claims are typical for the purposes of certifying the
24 Settlement Class. Plaintiff asserts that he, like absent Class Members was subject to the same
25 relevant policies and procedures governing his compensation, hours of work and meal and rest
26 periods. Because Plaintiff contends that he was subject to the same general course of conduct as
27 absent Class Members, resolving the common questions as they apply to Plaintiff will determine
28 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.
Accordingly, Plaintiff's claims are typical of the Class.



1 *Adequacy*

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

7 14. To the best of my knowledge, neither Plaintiff nor I have any conflicts of interest
8 with the absent Settlement Class Members. Plaintiff contends that he is an adequate class
9 representative. Plaintiff and the Class Members have strong and co-extensive interests in this
10 litigation because they all worked for Defendant during the relevant time period, allegedly
11 suffered the same alleged injuries from the same alleged course of conduct, and there is no
12 evidence of any conflict of interest between Plaintiff and the Class Members. Moreover, Plaintiff
13 has demonstrated his commitment to the Settlement Class by, among other things, retaining
14 experienced counsel, providing counsel with documents and extensively speaking with them to
15 assist in identifying the claims asserted in this case, assisting them in identifying witnesses, as
16 well as exposing himself to the risk of attorneys' fees and costs awards against him if this lawsuit
17 had been unsuccessful. Thus, Plaintiff is adequate to serve as settlement class representative.

18 *Background of Class Counsel*

19 15. In 1991, I earned a Bachelor of the Arts degree with a major in Political Science
20 from the University of California at Berkeley. In 1995, I earned a Juris Doctor degree from
21 Southwestern University School of Law.

22 16. In December of 1995, the Supreme Court for the State of California admitted me
23 as an Attorney and Counselor at Law and licensed me to practice law in all the Courts of this
24 State. On May 11, 2012, I also became admitted to the District of Columbia Bar. In February
25 2013, I became admitted to the New York State Bar.

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

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

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

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

4 19. Since I started practicing law, I have tried many cases before courts, arbitrators
5 and government agencies. Some of my cases are:

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

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

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

 d. *Imagraph, Inc. (Steve Shiffman) v. Mohamed T. Nehmeh*, Orange County
Superior Court, Central Justice Center (the Honorable Kirk H. Nakamura presiding), 2004.
Plaintiff, who I represented pro bono sought the return of \$45,000.00 he paid to an attorney



1 escrow officer who subsequently absconded with the money. The jury awarded compensatory
2 damages. The Judgment with interest is now far in excess of that amount. Soon after this case
3 was litigated, the State Bar of California awarded me the Wiley W. Manuel Award for Pro Bono
4 Legal Services.

5 e. *Rick Pierce v. Department of Treasury*, Merit Systems Protection Board
6 (1999). Administrative Judge awarded compensatory damages to wrongfully terminated
Customs Agent, followed by an award of Attorneys' fees and costs.

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

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

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

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



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

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

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

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).

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

18 ***Class Action Treatment Is Superior***

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

28 ***The Settlement is Presumptively Fair***

29 24. The class settlement here satisfies all of the *Kullar* factors. The Settlement
30 resulted from thorough, arms’ length, negotiations between experienced counsel with the
31 assistance of a respected mediator after sufficient discovery was exchanged to assess the relative



1 strengths and weaknesses of their respective cases and Defendant's estimated exposure. Both
2 defense counsel and I are particularly experienced in employment law and wage and hour class
3 actions. We are experienced and qualified to evaluate the class claims, the viability of the
4 defenses, and the risks and benefits of settlement versus trial on a fully informed basis. I have
5 negotiated many wage and hour class settlements, including many involving the same issues
6 presented here. Counsel on both sides share the view that the Settlement is a fair and reasonable
7 settlement in light of the complexities of the case and uncertainties of class certification and
litigation, and a fair result for the Class Members.

8 *Exposure & Risk Analysis*

9 25. Plaintiff alleged that defendants failed to pay him and the other Class Members
10 for all time spent traveling as part of their job duties, failed to pay overtime wages to him and the
11 other Class Members on quarterly performance bonuses they earned, required him and other
12 Class Members to remain on duty for meal periods and rest breaks, fail to pay him and the other
13 Class Members premium wages for days on which they were unable to take meal breaks and rest
14 breaks, failed to indemnify them for all mileage they incurred traveling for work, issued
15 incomplete and inaccurate wage statements, and failed to timely pay them their final wages upon
16 the end of the employment relationship.. Plaintiff prepared "damages" estimates in advance of
17 the mediation. In advance of the mediation, Plaintiff determined Defendant's maximum exposure
18 for restitution and penalties to be approximately \$2,817,990.53 (consisting of \$61,249.91 in
19 unpaid wages, \$120,943.12 in missed meal period premium wages, \$133,599.96 in missed rest
20 break premium wages, \$143,600.00 for wage statement penalties, \$361,257.30 for waiting time
21 penalties, and \$1,846,850.00 for civil penalties). True and correct copies of the spreadsheets I
22 prepared for mediation of this Action are collectively attached to this declaration as **Exhibit 5**.
23 The estimates are in essence "home run" projections that omit data points that will undoubtedly
24 reduce the maximum possible damages award and do not factor in any of the risks involved in
25 litigating this Action. Plaintiff calculated the damages based on the number of workweeks and
26 pay periods provided by Defendant, Plaintiff's reports, and the sample data. *Id.* Plaintiff also
27 considered the possibility that Defendant could launch a *Pick Up Stix* campaign and pursue
28 individual release agreements from the Class Members. Defendant also represented that it had
interviewed all of Defendant's current employees regarding Plaintiff's claims, all of whom would
provide declarations, under penalty of perjury, that were favorable to Defendant with respect to



1 the relevant factual issues at issue in Plaintiff's action. Plaintiff's Counsel applied discounts to
2 the maximum exposure to account for all other risks discussed below. While it is difficult to
3 assign anything but crudely-determined percentages of risk to any of the claims, it is safe to say
4 that the risk that a *Pick Up Stix* campaign would preclude recovery for such employees is
5 substantial and alone justifies a significant discount because Defendant would likely by trial have
6 gathered releases from the majority of the Class Members. A settlement for approximately 7.63%
7 of the potential recovery is a proportion substantially in excess of recovery proportions
sanctioned by existing case law.⁸

8 26. My initial estimates do not realistically account for the risks outlined below or the
9 risk that a class will not be certified. Therefore, I believe a class settlement for \$215,000.00 is
10 fair and reasonable.

11 27. **Risks Associated with Unpaid Wages Claim.** There is a risk that Plaintiff's
12 recovery for unpaid wages would be extremely limited at best, largely because Defendant's
13 written policies throughout the relevant time period prohibited off-the-clock work. Off-the-clock
14 claims are difficult where a defendant requires in its written policies that all work must take place
15 while clocked in. *See Jong v. Kaiser Foundation Hospital* (2012) 226 Cal.App.4th 391 (employer
16 must have notice of off-the-clock work for it to be compensable). *Id.* In its written employment
17 policies, Defendant mandates that employees must record all time worked accurately on their
18 time records and strictly prohibit employees from performing any work off-the-clock. Moreover,
19 while Defendant disputes that off-the-clock work occurred, it contends that any time spent off
20 the clock was *de minimis*. The California Supreme Court in *Troester v. Starbucks Corp.* (2018)
21 5 Cal. 5th 829, 835 suggested that irregular and minute periods of time may still be subject to a
22 *de minimis* defense even if compensable. (Stating that "We do not decide whether there are
circumstances where compensable time is so minute or irregular that it is unreasonable to expect

23 ⁸ See, e.g., *In re Newbridge Networks Sec. Litig.*, 1998 WL 765724 at *2 (D.D.C. Oct. 23, 1998)
24 ("[A]n agreement that secures roughly six to twelve percent of a total trial recovery . . . seems to
25 be within the targeted range of reasonableness."); *Wise v. Ulta Salon, Cosmetics & Fragrance,*
26 *Inc.* 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the
27 proposed allocation to settle class claims was at least 9.53 percent); *Bravo v. Gale Triangle, Inc.*,
28 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.").



1 the time to be recorded.”). Following *Troester*, Defendant contends that the *de minimis* doctrine
2 may apply here because the time spent off the clock were minute and insignificant. Accordingly,
3 a large award of penalties seems unlikely with respect to this claim.

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

14 29. **Risks Associated with the Meal Period Claims.** There are risks to Plaintiff’s
15 meal period claim. Plaintiff argued that Defendant required him and the class members to travel
16 and monitor mobile electronic communication devices during meal breaks. However, Defendant
17 presented written policies that prohibited such conduct. Defendant contends that, to establish a
18 violation for missed meal periods, a plaintiff must do more than show that a meal break was not
19 taken. *Brinker*, 53 Cal. 4th at 1004. So long as an employer provides employees with a
20 “reasonable opportunity” to take a duty-free meal period, it has no further duty to “police meal
21 breaks and ensure no work thereafter is performed.” *Id.* at 1040-41. *Id.* Instead, a plaintiff must
22 show the employer impeded, discouraged, or prohibited the employee from taking a proper break,
23 or otherwise failed to release the employee of all control. *Id.* “Thus, the crucial issue with regard
24 to the meal break claim is the reason that a particular employee may have failed to take a meal
25 break.” *Washington v. Joe’s Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. *Id.*

26 30. Defendant contends it did not impede or discourage Plaintiff, or any other
27 employees, from taking their meal or rest periods. Defendant’s policies mandate that employees
28 take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time
of their meal breaks each day on their time records. The time records that comprise the random
sample Defendant produced to Plaintiff for purposes of mediation show that meal periods were
taken the vast majority of the time. Of the time records that show a late, short or no lunch,



1 individualized evidence may be necessary to determine whether they occurred due to conduct of
2 the Defendant or each of the employees concerned. Accordingly, there is a significant risk that
3 the value of Plaintiff's meal period claim would be substantially reduced at trial.

4 31. **Risks Associated with the Rest Break Claims.** There are risks to Plaintiff's rest
5 period claim. Plaintiff argued that Defendant required him and the class members to travel and
6 monitor mobile electronic communication devices during rest breaks. However, Defendant
7 presented written policies that prohibited such conduct. Employers are not required to record rest
8 periods and such periods are paid. Defendant contends it provided non-exempt employees the
9 opportunity to take rest periods in accordance with California law. Further, Defendant's written
10 policies on meal and rest periods are consistent with the Wage Order. Thus, unlike meal periods,
11 where there are often records showing whether an employee clocked out or not, there is no such
12 evidence to prove a missed rest period or that the employer refused to authorize and permit one.
13 *Id.* Managing such claims at trial has become exceedingly difficult. Plaintiff will depend on
14 sample witness testimony and surveys to prove the claims. While a victory with such evidence is
15 certainly possible, relevant caselaw makes such claims risky from a trial management and due
16 process perspective. *See Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1, 31 (explaining
17 "[I]f sufficient common questions exist to support class certification, it may be possible to
18 manage individual issues through the use of surveys and statistical sampling."); *Tyson Foods,*
19 *Inc. v. Boupheko* (2015) 136 S.Ct. 382; *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426.

20 32. **Risks Associated with the Failure to Indemnify Claim.** There is a risk that the
21 Court may consider Plaintiff's claims as to Defendant's alleged failure to indemnify for business
22 expenses to be individual in nature and thus decline to certify the class. Plaintiff claims that
23 Defendant did not reimburse its employees for all mileage they incurred traveling as part of their
24 job duties. However, defendant presented evidence of substantial mileage reimbursement.
25 Furthermore, Defendant presented evidence that it allowed its employees to "challenge" the GPS
26 records of mileage that defendant utilized to determine mileage reimbursement. When employees
27 challenged the mileage under payments, Defendant paid the employees the mileage they sought
28 without dispute. Plaintiff alleges that Defendant required Plaintiff and the Class Members to use
their personal items including cellular phones, computers and other electronic devices, vehicles,
and tools, and failed to indemnify them for these business expenses. Defendant presented
evidence that it has supplied its employees with tools, equipment, and other supplies and had an



1 expense reimbursement policy. As such, there is a risk that the Court may consider Plaintiff's
2 claims to be individual in nature and unfit for class wide resolution.

3 **33. Risks Associated with the Statutory "Wage Statement" Penalty Claims.**

4 Plaintiff also asserts claims for wage statement violations, untimely wage violations, and PAGA
5 penalties. Plaintiff claims that Defendant failed to issue accurate and complete itemized wage
6 statements. His claim is derivative of his other claims above. If they fail, the wage statement
7 claim also fails. Under Labor Code section 226, wage statements must include various
8 information, including the applicable rates of pay, corresponding hours worked, and gross pay.
9 Here, Plaintiff's wage statement claim has the same underlying risks as the above claims, as it is
10 derivative of them. On their face, the wage statements issued by Defendant comply with the
11 requirements of Labor Code section 226. Further, to the extent that Plaintiff claims Defendant's
12 wage statements were inaccurate because they did not include wages or premium payments that
13 they contend Defendant should have paid, Plaintiff's claims are subject to additional risk, as case
14 law suggests that such premium payments are not to be considered wages, and therefore do not
15 give rise to claims under section 203. *See Jones v. Spherion Staffing, LLC*, 2012 U.S. Dist. LEXIS
16 112396 at * 26 (C.D. Cal. Aug. 7, 2012) (no claim for Labor Code section 203 penalties based
17 on meal period claims because "the underlying violation that gives rise to a section 226.7 [meal
18 period] claim is not the nonpayment of wages"); *Nguyen v. Baxter Healthcare Corp.* 2011 U.S.
19 Dist. LEXIS 141135 at * 24 (C.D. Cal. Nov. 28, 2011) (holding that Section 226(a) does not even
20 cover meal period premium pay). Accordingly, the *Jones* and *Nguyen* decisions will likely
21 foreclose this claim.⁹

22 **34. Risks Associated with The Waiting Time Penalties Claim.** Plaintiff's claims

23 for untimely wages is predicated on Labor Code section 201 to 203. Plaintiff claims that
24 Defendant failed to timely pay all final wages at the conclusion of employment. His claim is
25 derivative of his other claims above. If they fail, the waiting time penalty claims also fails.
26 Defendant can argue based on the *Jones* and *Nguyen* decisions, *supra*, that meal or rest premium
27 pay is not a "wage" for purposes of Labor Code section 203 penalties. Further, in the recent
28 decision *Ferra v. Loews Hollywood Hotel, LLC* (2019) 40 Cal.App. 5th 1239, the Court of Appeal
held that unlawful meal and rest periods under section 226.7 cannot serve as a basis for recovery
of penalties under section 203. *Id.* at 1252 ("We conclude that the administrative and legislative

9



1 history of the statute indicates that . . . the Legislature intended section 226.7 first and foremost
2 to *compensate* employeesSection 226.7’s additional hour of pay is a premium wage . . .not
3 a penalty.”) (internal citations and quotation marks omitted). Under the *Loews* decision, it is
4 highly unlikely that the Court will permit untimely wage penalties for Defendant’s alleged failure
5 to provide meal and rest period penalties.

6 35. **Risks Associated with the PAGA Claim.** Plaintiff predicates his demand for
7 civil penalties on the theories of recovery outlined above. If those theories fail, so too will be
8 private attorney general claim. Regarding PAGA, a court has discretion to award a lesser amount
9 than the maximum penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management,*
10 *Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendant
11 has posed valid defenses to the Labor Code claims underlying Plaintiff’s PAGA allegations.
12 Thus, the PAGA claims likewise face significant uncertainty. There is a risk that the Court would
13 consider the maximum civil penalty available to be confiscatory. Moreover, the current COVID-
14 19 pandemic could motivate the Court to further reduce the penalty award to avoid what it may
15 consider a confiscatory taking.

16 36. This uncertainty increases Plaintiff’s risk of pursuing the PAGA claims and
17 required a significant discount for settlement purposes. For mediation purposes, Plaintiff’s
18 counsel estimated a maximum exposure of approximately \$1,846,850.00 in civil penalties. This
19 estimate did not take into account any of the risks discussed above and assumed a violation for
20 every single pay period. *Id.* Plaintiff’s counsel also assessed multiple penalties for the same pay
21 period for the same alleged violations of different Labor Code provisions and derivative
22 violations. Although two federal district court decisions held that “stacking” PAGA penalties in
23 this fashion may be appropriate to determine the amount in controversy for purposes of removal
24 jurisdiction, Plaintiff’s counsel is not aware of any California state courts awarding plaintiffs
25 multiple PAGA penalties for the same violation for the same pay period under different Labor
26 Code provisions. This may be because the PAGA does not provide for what many employers
27 characterize as claim splitting and not merely stacking.



1 37. I am aware of only two significant awards under the PAGA in a contested
2 proceeding, both issued by federal district courts.¹⁰ PAGA penalty awards are often small even
3 for egregious, intentional violations of the Labor Code.¹¹

4 38. 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 39. The United States Supreme Court announced on December 15, 2021 that, in the
11 near future, it will hear the matter of *Viking River Cruises, Inc. v. Moriana*, No. 20-1573, and
12 decide (likely no later than the end of summer 2022) whether or not to overrule the California

13 ¹⁰ In *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2019) U.S. Dist. LEXIS 13253, the court awarded
14 civil penalties under the PAGA of approximately \$25 million, representing a 25% reduction from
15 plaintiff's claim for approximately \$33 million. *Bernstein* represents a unique set of
16 circumstances that is distinguishable from the case at hand. Notably, the plaintiffs in *Bernstein*
17 suffered a particularly sizeable injury – the court found that the defendant's policies caused
18 damages to the plaintiffs in excess of \$45 million. *Id.* at 20. Additionally, the defendants in
19 *Bernstein*, who the court noted had received “millions of dollars from the state of California” to
20 train their flight attendants, engaged in glaring violations of the labor code, such as failing to
21 compensate its flight attendants for work performed outside of “block time” (time during which
22 the aircraft is moving), including time spent participating in pre-flight briefings, boarding
23 passengers, and deplaning. *Bernstein v. Virgin Am., Inc.* (N.D. Cal 2017) 227 F. Supp. 3d 1049,
24 1055-1058. Indeed, the defendant's liability was so clear in *Bernstein* that the case was resolved
25 on the plaintiffs' motion for summary judgment. *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2019)
26 U.S. Dist. LEXIS 13253.

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 ¹¹ 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 complaint is attached as **Exhibit 6**. The plaintiff sought in excess of \$9 million
32 in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M. Sohigian
33 awarded approximately \$325,000 in civil penalties under the PAGA. A true and correct copy of
34 the statement of decision is attached as **Exhibit 7**, 19:8-20:19. Also, on October 24, 2017, the
35 Los Angeles Superior Court awarded a prevailing PAGA plaintiff civil, represented by very
36 experienced counsel, penalties totaling only \$50.00. *Shields v. Security Paving Company, Inc.*,
37 LA Superior Court case no. BC492828. A similar result could occur here.



Supreme Court's decision in *Iskanian v. CLS Transportation* (2014) 59 Cal.4th 348 that a private arbitration agreement cannot deprive an employee of his right to sue under PAGA in a court of law. If the Supreme Court sides with the Petitioner, Plaintiff's PAGA claim may be subject to an arbitration agreement allowing only bilateral arbitration and, consequently, inhibiting the claim altogether. While such an outcome would conflict squarely with *EEOC v. Waffle House* (2002) 534 US 279 (private settlement agreements do not preclude government prosecutions on behalf of employee signatories to such agreements), this potential outcome is a risk.

40. **Risks Associated with A Pick-Up Stix Campaign.** An employer enjoys the right to settle a putative class member's disputed wage claims individually, without the consent or involvement of class counsel. (See *Chindarah v. Pick Up Stix, Inc.* 171 Cal. App. 4th 796 (2009). As discussed above, Defendant may launch a "pick off" settlement campaign to pursue individual release agreements from the Class Members, thereby potentially narrowing the size of the Settlement Class – 115 members - until it is no longer numerous enough for class certification. *Id.* Plaintiff, then, may not have sufficient number of employees to represent. This led to a significant reduction of claim value in settlement negotiations.

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

Allocation of the PAGA Payment

42. The settlement of PAGA penalties in the sum of \$4000.00, of which 75% (\$3000.00) will be paid to the LWDA and 25% (\$1000.00) will be distributed to the PAGA



Members, is reasonable and appropriate under the circumstances. The Parties negotiated a good faith amount for PAGA penalties to be paid to the LWDA and to the Class. The portion to be paid to the LWDA was not the result of self-interest at the expense of other Class Members.

Attorneys' Fees and Costs

43. I intend to request Class Counsel Attorneys' Fees of \$71,666.66 (one-third of the \$215,000.00) and Class Counsel's litigation costs incurred in prosecuting this Action, which I currently estimate to be approximately \$12,345.67 and will be no more than \$17,500.00 at the conclusion of matters related to the Settlement. In view of my efforts and risks in pursuing this case these amounts are well within the range of reasonableness and thus warrant this Court's preliminary approval. In addition, based on my experience in wage and hour class action matters, fee awards of approximately one-third of the settlement fund are routinely approved as reasonable. I have been awarded attorneys' fees equaling approximately one-third of the fund in several recent wage and hour class actions, including: *Alvarez v. Gary Grace Enterprises, LP*, Marin County Superior Court, Case No. CIV1002553 (one-third of fund); *Calderon v. Greatcall, Inc.*, San Diego Superior Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of fund); *Butler v. Lexxiom, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1001579 (one-third of fund); *Perez v. Southwest Dealer Services, Inc.*, Los Angeles County Superior Court, Case No. BC439253 (one-third of fund); *O'Brien v. Optima Network Services, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1107056 (one-third of fund); *Noyd v. The Cristcat Group, et al.*, Los Angeles County Superior Court, Case No. BC439558 (one-third of fund); *Huynh v. Carefusion Resources, LLC, et al.*, San Diego Sup.Ct., Case No. 37-2009-00103277-CU-OE-CTL (one-third of fund); *Cunningham v. DPI Specialty Foods West, Inc.*, Los Angeles Sup.Ct., Case No. BC465017 (one-third of fund); *Stucker v. L'Oreal USA S/D, Inc.*, Los Angeles Sup. Ct., Case No. BC456080 (one-third of fund); *Valdez v. Healthcare Services Group, Inc.*, Los Angeles Sup.Ct., Case No. BC462917 (one-third of fund); *Hernandez, et al v. HSBC*, U.S. District Court, Central District of California, Case No. 10-CV-4753 (one-third of fund); *Sandoval, et al. v. Thrifty Payless, Inc., et al.* Los Angeles Sup.Ct., Case No. BC431249 (one-third of fund); *Alafa v. Custom Built Personal Training, Inc.*, Tulare County Superior Court, Case No. VCU-245496 (one-third of fund); *Nardone v. Sequoia Beverage Company, LP*, Tulare Sup.Ct., Case No. VCU-248370 (one-third of fund); *Rosen v. Image Transfer*, Los Angeles Sup.Ct., Case No. BC511702 (one-third of fund); *Tucker v. Maly's West, Inc.*, Los Angeles



1 Sup.Ct., Case No. BC483920 (one-third of fund); *King v. Build.com*, Butte Sup.Ct., Case No.
2 159985 (one-third of fund); *Clifford v. Anderson Hay & Grain*, Los Angeles Sup.Ct., Case No.
3 BC517625 (one-third of fund); *Nichols, et al. v. Vitamin Shoppe*, Contra Costa Sup.Ct., Case No.
4 CIVMSC13-01136 (one-third of fund); *Clarke v. Insight Global*, U.S. District Court, Southern
5 District of California, Case No. 13-CV-0357 (one-third of fund); *Fischer, et al. v. National*
6 *Distribution Centers LP, et al.*, Riverside Sup.Ct., Case No. RIC1114952 (one-third of fund);
7 *Shaw, et al. v. Interthinx, Inc.*, United States District Court for the District of Colorado, Case No.
8 13-CV-01229-REB-BNB (one-third of fund); *Ogbuehi v. Comcast of California/ Colorado/*
9 *Florida/ Oregon, Inc.*, United States District Court, Eastern District of California, Case No.
10 EDCV13-00672-KJM-KJN (one-third of fund); *Lynch, et al. v. American Guard Services*, Los
11 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
14 of fund); *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-1500-CV-
282679 (one-third of fund); *Linder, et al. v. Warehouse Services, Inc.*, San Bernardino Superior
Court, Case No. CIVDS1500146 (one-third of fund).

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

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



SPIVAK LAW
Employee Rights Attorneys

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

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

1 ***Class Representative Payment.***

2 46. The Settlement provides that Plaintiff may seek a Class Representative Payment.
3 of \$15,000.00. This amount is entirely reasonable given Plaintiff's efforts in this Action and the
4 risks he undertook on behalf of Class Members. Here, Plaintiff has devoted many hours
5 advancing the interests of the Settlement Class. Plaintiff has done this by, among other things,
6 retaining experienced counsel, providing them with information about his work history with
7 Defendant and Defendant's policies and practices with respect to the wage and hour claims at
8 issue, assisting counsel in identifying witnesses, traveling to and participating in mediation, and
9 being actively involved in the settlement process to ensure a fair result for the Settlement Class
10 as a whole. In doing this, Plaintiff has been exposed to significant risks, including the risk of an
11 order to pay Defendant's attorneys' fees and costs if this action had been unsuccessful (*See* Labor
12 Code §§ 218.5-218.6). The efforts and risks that Plaintiff undertook on behalf of the Settlement
13 Class shows that the proposed Class Representative Payment is fair, adequate, and reasonable,
14 and thus warrant preliminary approval.

15 ***Payment of Settlement Shares***

16 47. The Payment of Settlement Shares will be paid to each Class Member based on
17 his or her eligible Work Weeks compared to the total Work Weeks. Settlement, § III(D)(b).
18 Because this method compensates Class Members based on the extent of their potential injuries,
19 in that Class Members who worked for Defendant longer would have been subject to more
20 alleged violations, it is fair, adequate, and reasonable.

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

22 48. If the settlement is preliminarily approved, Class Members will be provided with
23 the NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR COURT
24 APPROVAL (attached as Exhibit A to the Settlement) and an opportunity to object (attached as
25 Exhibit B to the Settlement). The parties' proposed notice fully complies with California Rules
26 of Court 3.766(d) and 3.769(f) and will allow Class Members to make informed responses to the
27 proposed settlement. *Id.* The Settlement requires distribution of the Notice by First Class U.S.
28 mail only. Settlement, § IV(B)(2). Although there are current employee Class Members, it is
uncertain whether Defendant's records of their contact information include email addresses and
Class Members, who perform all of their work away from a desk, are not in a position to check
their emails. As such, notice by mail alone is fair, adequate, and reasonable. The Notice Packet



(attached as Exhibits 1 and 2 to the Settlement) provides Class Members with all pertinent information that they need to fully evaluate their options and exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among other things: (1) what the Settlement is about; (2) who is a Settlement Class Member; (3) how Class Counsel will be paid; (4) how to submit an exclusion request not to be bound by the Settlement; (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how payments to Class Members will be calculated; (8) how the disputes will be resolved; and (9) the estimated Individual Settlement Payment for each Class Member. Additionally, the Notice will include the number of Eligible Workweeks a Class Member had during the Class Period. Accordingly, the Notice should be approved because it describes the Settlement with sufficient clarity and specificity to explain to Class Members what this action is about, their rights under the Settlement, and how to exercise those rights. As such, the parties' proposed Notice fully complies with California Rules of Court 3.766(d) and 3.769(f) and will allow Class Members to make informed responses to the proposed settlement.

Settlement Administration Duties

49. The duties of the Settlement Administrator are spelled out in section III(C) of the Settlement and in the bid provided by Phoenix Settlement Administrators a true and correct copy of which is attached hereto as **Exhibit 8**.

Settlement Administration Costs

50. With regard to the settlement administration costs provision, it is reasonable. Before agreeing to Phoenix Settlement Administrators, the Parties sought and reviewed bids from other reputable third-party administrators: (A) ILYM Group, Inc. = \$7,500; (B) CPT Group, Inc. = \$8,500.00; and C) Phoenix Settlement Administrators = \$6,000. A true and correct copy of the bid from ILYM Group, Inc. is attached hereto as **Exhibit 9**. A true and correct copy of the bid from CPT Group, Inc. is attached hereto as **Exhibit 10**. The bid provided by Phoenix Settlement Administrators was comparable. Thus, settlement administration costs provision should be given preliminary approval.

Notice of Settlement to the LWDA

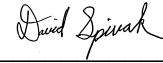
51. Pursuant to Labor Code § 2699(l)(2), Plaintiff submitted a copy of the Settlement with the Labor and Workforce Development Agency ("LWDA") at the same time Plaintiff's



1 Motion is being filed with the Court. A true and correct copy of Plaintiff's submission with the
2 LWDA and a confirmation email is attached hereto as **Exhibit 11**.

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

5 Executed on Monday, June 06, 2022 at Sherman Oaks, California.

6 

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DAVID SPIVAK,
8 Declarant
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SPIVAK LAW
Employee Rights Attorneys

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

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

EXHIBIT 1

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

10 Attorneys for Plaintiff,
11 LUIS LARRABURU, and all others similarly situated
12 (Additional attorneys for parties on following page)

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF LOS ANGELES**

15 **(UNLIMITED JURISDICTION)**

16 LUIS LARRABURU, on behalf of himself and
17 all others similarly situated, and as an “aggrieved
18 employee” on behalf of other “aggrieved
19 employees” under the Labor Code Private
20 Attorneys General Act of 2004,

21 *Plaintiff,*

22 vs.

23 AMERICAN MERCHANDISING
24 SPECIALISTS, INC., a North Carolina
25 corporation; and DOES 1–50, inclusive,

26 *Defendant(s).*

Case No. 21STCV17704

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND
RELEASE OF CLAIMS**

Action filed: May 11, 2021
Department: 9, The Honorable Yvette M.
Palazuelos

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1 This Joint Stipulation of Class Action Settlement and Release of Claims (“Settlement
2 Agreement” or “Agreement”) is made and entered into by and between Plaintiff Luis Larraburu
3 (“Plaintiff” or “Class Representative”), individually and on behalf of all putative class members,
4 on the one hand, and Defendant American Merchandising Specialists, Inc. (“Defendant”).
5 Plaintiff and Defendant are collectively referred to herein as the “Parties.”

6 **I. DEFINITIONS.**

7 The following definitions are applicable to this Settlement Agreement, in addition to other
8 terms defined elsewhere in the Agreement:

9 **A. “Action”** shall mean: (1) the civil action commenced on May 11, 2021, by
10 Plaintiff against Defendant in the Superior Court of California, County of LOS ANGELES, Case
11 No. 21STCV17704, entitled: “Luis Larraburu, on behalf of himself, and all others similarly
12 situated, and as an ‘aggrieved employee’ on behalf of other ‘aggrieved employees’ under the
13 Labor Code Private Attorneys General Act of 2004, *Plaintiff(s)*, vs. American Merchandising
14 Specialists, Inc., a North Carolina corporation; and DOES 1 through 50, inclusive,
15 *Defendant(s)*.”

16 **B. “Class,” “Class Members,” or “Settlement Class”** shall mean all current and
17 former non-exempt employees who are or were employed by Defendant in the State of California
18 at any time during the Class Period. Defendant estimates that there were approximately 115
19 members.

20 **C. “Work Weeks”** for each Settlement Class Members means each workweek in
21 which a Participating Class Member worked at least one day for Defendant in California during
22 the Class Period, according to Defendant’s records.

23 **D. “Class Counsel”** shall mean the attorneys representing Plaintiff in the Action:
24 David G. Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law
25 Group.

26 **E. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses**
27 **Payment”** shall mean the amounts awarded to Class Counsel by the Court to compensate them
28 for, respectively, their fees and expenses in connection with the Action, including their pre-filing

1 investigation, their filing of the Action and all related litigation activities, this Settlement, and all
2 post-Settlement compliance procedures.

3 **F. “Class Notice”** shall mean the Notice of Proposed Settlement attached as **Exhibit**
4 **A** and incorporated by reference into this Agreement.

5 **G. “Class Period”** shall mean the period of time from August 25, 2016 through
6 preliminary approval order date or March 15, 2022, whichever is earlier.

7 **H. “Class Representative Payment”** shall mean the special payment made to
8 Plaintiff in his capacity as Class Representative to compensate him for initiating the Action,
9 performing work in support of the Action, and undertaking the risk of liability for attorneys’ fees
10 and expenses in the event he was unsuccessful in the prosecution of the Action.

11 **I. “PAGA”** shall mean the California Labor Code Private Attorneys General Act of
12 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”).

13 **J. “PAGA Member”** shall mean any and all Settlement Class Members who worked
14 for Defendant from August 20, 2019 through preliminary approval order date or March 15, 2022,
15 whichever is earlier.

16 **K. “PAGA Period”** shall mean the time between August 20, 2019 through
17 preliminary approval order date or March 15, 2022, whichever is earlier.

18 **L. “PAGA Penalties”** shall mean the amount that the Parties have agreed to allocate
19 for settlement of claims for civil penalties arising under PAGA. The Parties have agreed to
20 allocate Four Thousand Dollars and Zero Cents (\$4,000.00) of the Gross Settlement Amount as
21 PAGA Penalties. Seventy-Five percent (75%) of the PAGA Penalties in the amount of Three
22 Thousand Dollars and Zero Cents (\$3,000.00) shall be paid directly to the LWDA in accordance
23 with PAGA. The remaining Twenty-Five percent (25%) of the PAGA Penalties in the amount of
24 One Thousand Dollars and Zero Cents (\$1,000.00), shall be distributed to PAGA Members.
25 PAGA Members will receive payment from the employee portion of the PAGA Penalties
26 regardless of their decision to participate in the class portion of the Settlement if the allocation
27 for PAGA Penalties is approved by the Court.

28 **M. “PAGA Work Weeks”** shall mean the number of weeks of employment for each

1 PAGA Member as a non-exempt employee during the PAGA Period. The Settlement
2 Administrator will calculate the number of PAGA Work Weeks by calculating the number of
3 days each PAGA Member was employed using their original hire date and final termination date,
4 excluding any time they were unemployed in between during that time period, during the PAGA
5 Period, dividing by seven (7), and rounding up to the nearest whole number.

6 N. “**Court**” shall mean the Superior Court for the County of Los Angeles, 312 North
7 Spring Street, Los Angeles, CA 90012.

8 O. “**Defense Counsel**” shall mean the attorneys representing Defendant in the
9 Action: Thalia S. Rofos of Lewis Brisbois Bisgaard & Smith, LLP.

10 P. “**Effective Date**” is defined as follows: If no objection to this Settlement or to any
11 of the terms and or conditions of the Settlement are filed by Plaintiff, another member of the
12 Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur on the day that
13 the Court enters an order of final approval of this Settlement; however, if any objection to this
14 Settlement or to any of the terms and or conditions of the Stipulation is filed by a member of the
15 Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur upon the
16 expiration of the time for the filing any appeal of the order of final approval of this Settlement.
17 If an appeal is filed or any writ granted, then the Effective Date shall occur after the appeal has
18 been dismissed or the writ dissolved and when there is no further time to appeal the dismissal of
19 the appeal or the dissolution of the writ.

20 Q. “**Final Approval Hearing**” shall mean the hearing to be conducted by the Court
21 to determine whether to approve finally and implement the terms of this Agreement.

22 R. “**Gross Settlement Amount**” shall mean the Gross Settlement Amount of Two
23 Hundred and Fifteen Thousand Dollars and No Cents (\$215,000.00) payable by Defendant as
24 provided by this Agreement, plus Defendant’s employer-side payroll taxes. Defendant estimated
25 for purposes of mediation that there are 6,042.00 Work Weeks by 115 Class Members for the
26 period of August 25, 2016 through November 15, 2021. These numbers would be expected to
27 increase proportionately for the passage of time between that date and the time of court
28 approval. Before the Parties seek or a Party seeks court approval of the Settlement, the Settlement

1 Administrator will advise Plaintiff's counsel of Defendant's report of the total number of Work
2 Weeks and Class Members. If the Work Weeks and/or Class Members as of the date the Court
3 approves the settlement exceeds the referenced 6,042.00 Work Weeks and/or 115 Class Members
4 by more than 10.00%, the Gross Settlement Amount, including the Class Counsel Fees Payment,
5 the Class Representative Payment, and the LWDA payment, will increase proportionally
6 according to the number of additional Work Weeks or Class Members, whichever results in a
7 higher increase in the Gross Settlement Amount.

8 **S. "Judgment"** shall mean the Order of Final Judgment entered by the Court that
9 the Parties anticipate will be entered following a Final Approval Hearing on the Settlement in
10 this Action.

11 **T. "Net Settlement Amount"** shall mean \$215,000.00 payable by Defendant
12 pursuant to this Settlement, less:

- 13 **1.** the Class Representative Payment approved by the Court;
- 14 **2.** the Class Counsel Fees Payment (one-third or 33 and 1/3% of Gross
15 Settlement Amount) and the Class Counsel Litigation Expenses Payment (of not more than
16 \$17,500.00) approved by the Court;
- 17 **3.** the Settlement Administrator's reasonable fees and expenses approved by
18 the Court (not to exceed \$10,000.00);
- 19 **4.** the amount of \$4,000.00 paid to the Labor Workforce Development
20 Agency of California and PAGA members for the PAGA claim;
- 21 **5.** any other fees or expenses (other than attorneys' fees and expenses)
22 incurred by Plaintiff in implementing the terms and conditions of this Agreement as approved by
23 the Court.

24 ///

25 **U. "Participating Class" or "Participating Class Members"** shall mean all
26 Settlement Class members who do not submit a valid letter requesting to be excluded from the
27 Settlement, consistent with the terms set forth in this Settlement Agreement.

28 **V. "Preliminary Approval of the Settlement"** shall mean the Court's preliminary

1 approval of the Settlement without material change.

2 **W. “Settlement”** shall mean the disposition of the Action and all related claims
3 effectuated by this Agreement.

4 **X. “Settlement Administrator”** shall mean Phoenix. or another administrator
5 proposed by the Parties and appointed by the Court to administer the Settlement.

6 **Y. “Settlement Share”** shall mean each Class Member’s allocated share of the Net
7 Settlement Amount as provided by this Agreement.

8 **II. RECITALS**

9 **A.** On or about December 3, 2021, Plaintiff, through his attorneys, sent a letter to the
10 Labor Workforce Development Agency (“LWDA”) alleging the following against Defendant:
11 failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods,
12 failure to indemnify for business expenses, failure to issue proper wage statements, failure to
13 timely pay wages and related allegations (the “PAGA letter”). Plaintiff asserted these
14 representative claims on behalf of all Class Members who are or were employed during the
15 applicable statutory period.

16 **B.** On May 11, 2021, Plaintiff filed a class action complaint in the Los Angeles
17 Superior Court, alleging the same wage and hour claims as set forth in the earlier PAGA letter
18 and adding a cause of action for unfair competition. On December 23, 2021, Plaintiff filed a first
19 amended class action complaint in the Los Angeles County Superior Court, adding causes of
20 action under Labor Code section 226 for incomplete and inaccurate wage statements and the
21 Labor Code Private Attorneys General Act of 2004 (“PAGA”). The first amended complaint is
22 the “Operative Complaint.”

23 **C.** On January 23, 2022, Defendant answered Plaintiff’s First Amended Complaint
24 and denied, and continues to deny, all of Plaintiff’s material allegations. Specifically, Defendant
25 denies that Plaintiff and putative class members are entitled to additional wages and overtime
26 pay. Defendant contends it paid the putative class members for all hours worked as required by
27 law, including all vacation and sick days. Defendant denies the Class Members were deprived of
28 meal and rest periods, allege that it had meal and rest break policies and procedures in place to

1 ensure compliance with California law, and alleges that employees were allowed to take their
2 rest and meal periods. Defendant further alleges that the unpaid wage, improper wage statement,
3 and rest and meal period claims are not amenable to class treatment because common issues do
4 not predominate. Defendant asserts that the waiting time penalties claim will fail as to former
5 Class Members who cannot prevail on the claims described above. Defendant denies that it failed
6 to issue accurate itemized wage statements, or otherwise failed to keep accurate and complete
7 employment records. Defendant denied that it failed to reimburse Class Members for mileage
8 and telecom expenses.

9 **D.** 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 and Class Member Shane Rollman's entire personnel file (including policies
12 and agreements he signed and acknowledged), copies of its relevant company written policies,
13 time-keeping records, and paycheck data and records for the putative class, and more detailed
14 time and payroll data for a random sample of putative class members specifically selected by
15 Plaintiff's counsel.

16 **E.** On November 15, 2021, following much of the foregoing informal discovery and
17 exchange of information, the Parties participated in a mediation session presided over by
18 Mediator David Phillips, an experienced class action mediator. During the mediation, the Parties
19 had a full day of productive negotiations and reached agreement on a class-wide settlement
20 during the second mediation session. During the mediation sessions, each side, represented by
21 its respective counsel, recognized the risk of an adverse result in the Action and agreed to settle
22 the Action and all other matters covered by this Agreement pursuant to the terms and conditions
23 of this Agreement.

24 **F.** Based on their own thorough, independent investigation and evaluation of this
25 case, Class Counsel are of the opinion that the settlement with Defendant for the consideration
26 and on the terms set forth in this Agreement is fair, reasonable, adequate, and in the best interest
27 of the Settlement Class in light of all known facts and circumstances, including the risk of
28 significant costs and delay, the risk of non-certification of the Class, the defenses asserted by

1 Defendant, the risks of adverse determinations on the merits, and numerous potential appellate
2 issues. Although Defendant contends it has no liability in this case, Defendant's counsel shares
3 Class Counsel's belief that the Agreement represents a fair and adequate settlement given the
4 respective risks associated with the case.

5 **G.** This Agreement represents a compromise and settlement of highly disputed
6 claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant
7 that Plaintiff's claims in the Action have merit or that it has any liability to Plaintiff or the Class
8 on those claims or to the State, or as an admission by Plaintiff that Defendant's defenses raised
9 in the Action have merit. This Agreement is intended to fully, finally, and forever compromise,
10 release, resolve, discharge, and settle the released claims subject to the terms and conditions set
11 forth in this Agreement.

12 Based on the foregoing Recitals, the Parties agree as follows:

13 **III. SETTLEMENT TERMS AND CONDITIONS**

14 **A. Certification for Settlement Purposes.** Solely for the purposes of effectuating
15 this Settlement, and subject to Court approval, the Parties hereby stipulate to the conditional
16 certification of the Settlement Class. The Parties agree that if for any reason the Settlement is not
17 preliminarily and finally approved, the conditional certification of the Settlement Class will be
18 of no force or effect, does not constitute an admission by Defendant that class certification is
19 proper, and will not be deemed admissible in this or any other proceeding, and that the Parties
20 will litigate the issue of class certification.

21 **B. Gross Settlement Amount.** Subject to the terms and conditions of this
22 Agreement, the Gross Settlement Amount of Two Hundred and Fifteen Thousand Dollars and
23 Zero Cents (\$215,000.00), plus Defendant's employer share of employer-side payroll taxes, is
24 the maximum amount payable by Defendant. In no event will Defendant be required to pay more
25 than the Gross Settlement Amount for distribution to the Plaintiff, Class Counsel, Class
26 Members, LWDA, and Settlement Administrator. However, if the number of Class Members
27 increases by more than 10.00%, the Defendant will pay a pro rata increase in the Gross Settlement
28 Amount, including pro rata increases in the Class Counsel Fees Payment, and allocation to the

1 Private Attorneys General Act claim. Likewise, if the number of Work Weeks increases by more
2 than 10.00%, the Defendant will pay a pro rata increase in the Gross Settlement Amount,
3 including pro rata increases in the Class Counsel Fees Payment, Class Representative Payment,
4 and allocation to the Private Attorneys General Act claim. The release provisions of this
5 Settlement will not take effect until Defendant has paid the Gross Settlement Amount in full per
6 this Settlement Agreement.

7 **C. Payments to Plaintiff and Class Counsel and Others.** Subject to the terms and
8 conditions of this Agreement, the Settlement Administrator will make the following payments
9 out of the Gross Settlement Amount as follows:

10 **1. To Plaintiff.**

11 **(a) Class Representative Payment.** In addition to his Settlement
12 Share, Plaintiff will apply to the Court for an award of not more than Fifteen Thousand Dollars
13 and No Cents (\$15,000.00) as his Class Representative Payment. Defendant will not oppose a
14 Class Representative Payment of not more than \$15,000.00. Plaintiff will receive no other
15 payment other than his Settlement Share and Class Representative Payment, and acknowledges
16 that he is aware of no other facts or circumstances related to his employment with Defendant that
17 could give rise to any additional entitlement to any further payments. The Settlement
18 Administrator will pay the Class Representative Payment approved by the Court out of the Gross
19 Settlement Amount. Payroll taxes, withholdings, and deductions will not be taken from the Class
20 Representative Payment, and instead a Form 1099 will be issued to Plaintiff with respect to that
21 payment. Plaintiff agrees to assume all responsibility and liability for the payment of taxes due
22 on the Class Representative Payment. Any portion of the Class Representative Payment not
23 awarded to Plaintiff will not revert to Defendant, but instead shall be returned to the Net
24 Settlement Amount.

25 **2. To Class Counsel.** Class Counsel will apply to the Court for an award of
26 not more than Seventy One Thousand Six Hundred Sixty Six Dollars and Sixty Six Cents
27 (\$71,666.66) (which is 33 and 1/3% of the Gross Settlement Amount) as their Class Counsel
28 Fees Payment and an amount not more than Seventeen Thousand Five Hundred Dollars and No

1 Cents (\$17,500.00) as their Class Counsel Litigation Expenses Payment, and Defendant will not
2 oppose this request. The Settlement Administrator will pay the amount approved by the Court
3 (but not more than Seventy One Thousand Six Hundred Sixty Six Dollars and Sixty Six Cents
4 (\$71,666.66) in fees and not more than Seventeen Thousand Five Hundred Dollars and No Cents
5 (\$17,500.00) in expenses) out of the Gross Settlement Amount. Withholding and deductions will
6 not be taken from the Class Counsel Fees and Litigation Expenses Payment and one or more
7 Forms 1099 will be issued to Class Counsel with respect to those payments.

8 **3. To the Settlement Administrator.** The Settlement Administrator will be
9 paid from the Gross Settlement Amount its reasonable fees and expenses as approved by the
10 Court in an amount currently estimated to not exceed Ten Thousand Dollars and No Cents
11 (\$10,000.00).

12 **4. To the LWDA.** The Parties will jointly apply to the Court for approval of
13 a settlement of claims under the Private Attorneys General Act (“PAGA”), California Labor Code
14 section 2698, *et seq.*, for Four Thousand Dollars and No Cents (\$4,000.00), of which, payment
15 from the Gross Settlement Amount to the LWDA will be made in the amount of Three Thousand
16 Dollars and No Cents (\$3,000.00), which is 75% of the PAGA settlement. One Thousand Dollars
17 and No Cents (\$1,000.00), 25% of the PAGA settlement, will remain in the Net Settlement
18 Amount for distribution.

19 **D. Allocation of Net Settlement Amount and Calculation of Settlement Shares.**
20 Subject to the terms and conditions of this Agreement, the Settlement Administrator will
21 distribute a payment from the Net Settlement Amount to each Participating Class Member. The
22 Settlement Share for each Participating Class Member will be calculated as follows,
23 understanding that the formulas below do not constitute an admission by either party, and are
24 intended only to provide a practical means to simplify and administer the claims process:

25 **(a) Participating Class Members’ Settlement Shares.** The
26 settlement shares are allocated 15.00% to wages (for which employment taxes will be deducted
27 and W-2s issued) and 85.00% to penalties (for which 1099s will be issued).

28 **(b) Settlement Ratio Calculation.** The Settlement Administrator

1 shall assign to each Class Member a “Settlement Ratio,” which shall be a fractional number
2 comprised of (a) that Class Member’s Individual Work Weeks as the numerator, and (b) the
3 aggregate total of all Class Members’ Individual Work Weeks as the denominator. The
4 Settlement Administrator shall assign to each Class Member the “Settlement Share” which shall
5 be calculated by multiplying that Class Member’s Settlement Ratio by amount allocated to Class
6 Members from the Net Settlement Amount.

7 **2. Settlement Share Worksheet.** Upon calculation of the Class Members’
8 Settlement Share, the Settlement Administrator shall furnish to Class Counsel and Defense
9 counsel a worksheet containing a list unique identifying numbers for each of the Class Members
10 with their corresponding Individual Work Weeks and Settlement Shares.

11 **3. Individual Settlement Amounts for the PAGA Payments.** The Individual
12 Settlement Amount for each PAGA Member will be calculated by the Settlement Administrator
13 using the Class Data provided by Defendant. The Settlement Administrator will calculate the
14 number of PAGA Work Weeks by calculating the number of days each PAGA Member was
15 employed using their original hire date and final termination date, excluding any time they were
16 unemployed in between during that time period, during the PAGA Period, dividing by seven (7),
17 and rounding up to the nearest whole number. PAGA Members shall receive their portion of the
18 PAGA Penalties regardless of their decision to opt-out of the class settlement.

19 **4. Taxes and Withholdings.** Each Settlement Share is intended, in part, to
20 settle the Class Members’ claims for unpaid wages. Each Class Member shall be individually
21 responsible for the employee’s share of applicable payroll tax withholdings and deductions.
22 Accordingly, each Settlement Share allocated to wages will be reduced by applicable employee-
23 side payroll tax withholdings and deductions, and the Settlement Administrator will issue a Form
24 W-2 to each Participating Class Member. Defendant will be responsible for the normal
25 employer’s share of any payroll tax attributable to the wage portion of the Settlement Share
26 payments. Defendant’s payment of the normal employer’s share of payroll taxes attributable to
27 the wage portion of the Settlement Share payments will be in addition to the Gross Settlement
28 Amount or Net Settlement Amount.

1 **E. Appointment of Settlement Administrator.** The Parties will ask the Court to
2 appoint Phoenix Settlement Administrators, a qualified administrator, to serve as the Settlement
3 Administrator, which, as a condition of appointment, will agree to be bound by this Agreement
4 with respect to the performance of its duties and its compensation. The Settlement
5 Administrator's duties will include preparing, printing, and mailing the Class Notice to all Class
6 Members; and using reasonable measures to contact all Class Members, including conducting a
7 National Change of Address search on all Class Members before mailing the Class Notice to
8 each Class Member's address. The Settlement Administrator's duties will also include re-mailing
9 the Class Notice to the Class Member's new address for those Class Members whose address has
10 changed; providing the Parties with weekly status reports about the delivery of Class Notice;
11 calculating Settlement Shares; issuing and distributing checks to effectuate the payments due
12 under the Settlement; reporting to the Court as required; and otherwise administering the
13 Settlement pursuant to this Agreement. The Settlement Administrator's reasonable fees and
14 expenses, including the cost of printing and mailing the Class Notice, will be paid out of the
15 Gross Settlement Amount, as set forth herein, subject to Court approval. Any portion of the of
16 the Settlement Administrator's fees and expenses that are not used or which are not awarded by
17 the Court will not revert to Defendant, but instead will be part of the Net Settlement Amount for
18 distribution to Participating Class Members. If the Settlement Administrator's fees and expenses
19 exceed Ten Thousand Dollars and No Cents (\$10,000.00), such cost will be deducted from the
20 Net Settlement Amount.

21 **IV. PROCEDURES FOR APPROVING SETTLEMENT**

22 **A. Motion for Preliminary Approval of Settlement by the Court.** Class Counsel
23 will move the Court for an order granting Preliminary Approval of the Settlement (the "Motion
24 for Preliminary Approval"), setting a date for the Final Approval Hearing, and approving the
25 Class Notice (attached as **Exhibit A** to this Agreement), the Exclusion Request form (attached
26 as **Exhibit B** to this Agreement), and the Work Weeks Dispute form (attached as **Exhibit C** to
27 this Agreement). Any disagreement among the Parties concerning the Class Notice or other
28 documents necessary to implement the Settlement will be referred to the Court.

1 **1.** At the hearing on the Motion for Preliminary Approval, the Parties
2 anticipate that they will appear and support the granting of the motion, and that Class Counsel
3 will submit an Order Granting Preliminary Approval of Settlement, Approval of Notice to Class
4 and Setting Hearing for Final Approval of Settlement.

5 **2.** Should the Court decline to approve the Settlement, the Settlement will be
6 null and void and the Parties will have no further obligations under it.

7 **B. Notice to Class Members.** After the Court enters its order granting Preliminary
8 Approval of the Settlement, every Class Member will be provided with a “Class Notice.”

9 **1. List of Class Members.** Within fourteen (14) days after the Court grants
10 Preliminary Approval of the Settlement, Defendant shall provide to the Settlement Administrator
11 only:

12 **(a)** An electronic database of all Class Members, last known mailing
13 address, Social Security number, Defendant’s employee identification number, and dates of
14 employment as non-exempt employees (“Class Members’ Data”).

15 **(b)** Corresponding to each Class Member’s name, Defendant shall
16 provide a figure indicating the dates of employment as a non-exempt employee in the State of
17 California at any time during the Class Period so that the Settlement Administrator can calculate
18 the total number of Work Weeks during the Class Period in which that Class Member was
19 employed by Defendant as a Class Member. That number of Work Weeks shall be referred to as
20 that Class Member’s “Individual Work Weeks.”

21 **(c)** If any of the Class Members’ Data are unavailable to Defendant,
22 Defendant will so inform Class Counsel and the Parties will make its best efforts to reconstruct
23 or otherwise agree upon the Class Members’ Data prior to when it must be submitted to the
24 Settlement Administrator. Class Members’ Data will otherwise remain confidential and will not
25 be disclosed to anyone, except as necessary to applicable taxing authorities, or pursuant to
26 Defendant’s express written authorization or by order of the Court.

27 **2. Mailing of Class Notice.** Within fourteen (14) days after receiving the
28 Class Members’ Data, or as soon thereafter as it can do so, the Settlement Administrator will

1 mail the Class Notice to all identified Class Members via first-class U.S. mail using the mailing
2 address information provided by Defendant, unless modified by any updated address information
3 that the Settlement Administrator obtains in the course of administration of the Settlement.

4 **3. Returned Class Notice.** If a Class Notice is returned because of an
5 incorrect address, the Settlement Administrator will promptly, and not later than ten (10) days
6 from receipt of the returned Class Notice, search for a more current address for the Class Member
7 and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the
8 Class Members' Data and otherwise work with Defendant's Counsel and Class Counsel to find
9 a more current address. The Settlement Administrator will be responsible for taking reasonable
10 steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace the mailing
11 address of any Class Member for whom a Class Notice is returned as undeliverable by the U.S.
12 Postal Service. These reasonable steps shall include the tracking of all undelivered mail;
13 performing address searches for all mail returned without a forwarding address, including but not
14 limited to a skip trace; and promptly re-mailing to Class Members for whom new addresses are
15 found. If the Class Notice is re-mailed, the Settlement Administrator will note for its own records
16 and notify Class Counsel and Defendant's Counsel of the date and address of each such re-
17 mailing as part of a weekly status report provided to the Parties.

18 **4. Declaration of Settlement Administrator.** Not later than twenty-one
19 (21) court days prior to the Final Approval Hearing, the Settlement Administrator will provide
20 the Parties for filing with the Court a declaration of due diligence setting forth its compliance
21 with its obligations under this Agreement. Prior to the Final Approval Hearing, the Settlement
22 Administrator will supplement its declaration of due diligence if any material changes occur from
23 the date of the filing of its prior declaration.

24 **C. Disputed Class Member Settlement Shares.** If a Class Member disputes his/her
25 estimated Settlement Share, the Class Member may produce evidence to the Settlement
26 Administrator for the Class Period. In order for the dispute to be considered, he/she must follow
27 the directions on the Class Notice. To be valid and timely, all disputes and supporting documents
28 must be postmarked by the date specified in the Class Notice (no less than 60 days from the initial

mailing of the Class Notice by the Settlement Administrator). A Class Member may use the Work Weeks Dispute form (**Exhibit C** to this Settlement), though a Class Member is not obligated to do so to request exclusion from the Settlement.

D. Requests for Exclusion from Settlement; and Objections to Settlement. Class Members may submit requests to be excluded from the effect of the Settlement, or objections to the Settlement, pursuant to the following procedures:

1. Request for Exclusion from Settlement. A Class Member may request to be excluded from the effect of this Agreement, and any payment of amounts under this Agreement, by timely mailing a letter to the Settlement Administrator stating that the Class Member wants to be excluded from this Action. This letter must include the Class Member's name, address, telephone number, and signature. To be valid and timely, the request to be excluded must be postmarked by the date specified in the Class Notice (no more than 60 days from the initial mailing of the Class Notice by the Settlement Administrator). A Class Member may use the Exclusion Request form (**Exhibit B** to this Settlement), though a Class Member is not obligated to do so to request exclusion from the Settlement. A Class Member who properly submits a valid and timely request to be excluded from the Action shall not receive any payment of any kind in connection with this Agreement or this Action, shall not be bound by or receive any benefit of this Agreement, and shall have no standing to object to the Settlement. A request for exclusion must be mailed to the Settlement Administrator at the address provided on the Class Notice. The Settlement Administrator shall transmit the request for exclusion to counsel for the Parties as follows:

To Class Counsel:

David G. Spivak, Esq.
The Spivak Law Firm
8605 Santa Monica Blvd., PMB 42554
West Hollywood, CA 90069

To Defense Counsel:

Thalia S. Rofos, Esq.
Lewis Brisbois Bisgaard & Smith, LLP
Thalia S. Rofos Esq.
650 Town Center Drive
Suite 1400
Costa Mesa, CA 92626

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1 **2. Objections to Settlement.** The Class Notice will provide that any Class
2 Member who does not request exclusion from the Action and who wishes to object to the
3 Settlement should submit an objection in writing to the Settlement Administrator not later than
4 60 days after the Settlement Administrator mails the Class Notice. The written objection to the
5 Settlement should set forth the grounds for the objection and the other information required by
6 this paragraph. The objection should be mailed to the Settlement Administrator at the address
7 provided on the Class Notice. The Settlement Administrator shall transmit the objections to
8 counsel for the Parties as follows:

9 **E. Report.** Not later than fourteen (14) days after the deadline for submission of
10 requests for exclusion, the Settlement Administrator will provide the Parties with a complete and
11 accurate list of all Class Members who sent timely requests to be excluded from the Action and
12 all Class Members who objected to the settlement.

13 **F. No Solicitation of Objection; Right to Void.** Neither the Parties, nor their
14 respective counsel, will directly or indirectly solicit or otherwise encourage any Class Member
15 to seek exclusion from the Settlement, object to the Settlement, or to appeal from the Judgment.
16 If Class Members accounting for more than 5.00% of the Class submit valid requests to be
17 excluded from the Settlement, then Defendant shall have the unilateral right to void this
18 Settlement. Defendant may do so by giving notice to Class Counsel and the Court of its election
19 to void the Settlement not later than seven (7) days before the Final Approval Hearing. No sums
20 shall be payable by Defendant if this Agreement is voided as provided for herein with one
21 exception: Defendant agrees to pay any fees owing to the Settlement Administrator for services
22 rendered in the event Defendant exercises its right to void the Settlement.

23 **G. Additional Briefing and Final Approval.** Plaintiff will file with the Court a
24 motion for final approval of the Settlement and payment of the Settlement Administrator's
25 reasonable fees and expenses and a memorandum in support of their motion; and Plaintiff and
26 Class Counsel will serve on Defendant and file with the Court a motion for awards of the Class
27 Representative Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation
28 Expenses Payment pursuant to this Settlement, and memoranda in support of their motions.

1 Before the Final Approval Hearing, the Parties shall be entitled to file and serve a
2 response to any Class Member's objection to the Settlement and/or reply in support of their
3 motion for final approval of the Settlement, and payment of the Settlement Administrator's
4 reasonable fees and expenses to the extent that any opposition to the motion is filed; and Plaintiff
5 and Class Counsel may file replies in support of their motions for the Class Representative
6 Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment.

7 If the Court ultimately does not grant final approval of the Settlement or grants final
8 approval conditioned on any material change to the Settlement, then either Party will have the
9 unilateral right to void the Settlement in its entirety; if that occurs, the Parties will have no further
10 obligations under the Settlement, including any obligation by Defendant to pay the Gross
11 Settlement Amount or any amounts that otherwise would have been payable under this
12 Agreement, except that Defendant and Plaintiff will jointly and equally pay the Settlement
13 Administrator's reasonable fees and expenses incurred as of the date that the Party exercises the
14 right to void the Settlement under this Paragraph. However, an award by the Court of a lesser
15 amount than that sought by Plaintiff and Class Counsel for the Class Representative Payment,
16 the Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment, will not
17 constitute a material modification to the Settlement within the meaning of this Paragraph and
18 shall not render the Settlement voidable. Plaintiff and Class Counsel shall retain the right to
19 appeal awards of attorneys' fees and costs less than requested.

20 Upon final approval of the Settlement by the Court at or after the Final Approval Hearing,
21 the Parties will present for the Court's approval and entry a Proposed Final Order and Judgment.
22 The Final Order and Judgment shall permanently bar all Participating Class Members from
23 prosecuting against Defendant any claims within the scope of the Releases contained in this
24 Agreement.

25 After entry of the Judgment, the Court will have continuing jurisdiction over the Action
26 and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement
27 administration matters, and (iii) addressing such post-Judgment matters as may be appropriate
28 under court rules or applicable law.

1 **H. Waiver of Right to Appeal.** Provided that the Judgment is consistent with the
2 terms and conditions of this Agreement, and that no Class Member timely objects to the
3 Settlement and formally intervenes into the action as required under the California Supreme
4 Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 4th 260, 228 Cal. Rptr. 3d 106
5 (2018) or files a motion pursuant to Civil Procedure Code section 663, Defendant, and its
6 respective counsel hereby waive, except as provided for in this Agreement or prohibited by law,
7 any and all rights to appeal from the Judgment, including all rights to any post-judgment
8 proceeding and appellate proceeding, such as a motion to vacate judgment, a motion for new
9 trial, any extraordinary writ, and any appeal, and the Judgment therefore will become non-
10 appealable at the time it is entered. The waiver of appeal does not include any waiver of the right
11 to oppose any appeal, appellate proceedings, or post-judgment proceedings. If an appeal is taken
12 from the Judgment, the time for consummation of the Settlement (including making any
13 payments under the Settlement) will be suspended until the appeal is fully and finally resolved
14 and the Judgment, consistent with the terms of this Agreement, becomes Final.

15 **I. Vacating, Reversal, or Material Modification of Judgment on Appeal or**
16 **Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other
17 motion, petition, writ, application, or appeal, the reviewing court vacates, reverses, or modifies
18 the Judgment such that there is a material modification to the Settlement, and that court's decision
19 is not completely reversed and the Judgment is not fully affirmed on review by a higher court,
20 then either Plaintiff or Defendant will have the unilateral right to void the Settlement, which the
21 Party must do by giving written notice to the other Parties, the reviewing court, and the Court,
22 not later than fourteen (14) days after the reviewing court's decision vacating, reversing, or
23 materially modifying the Judgment becomes final. The Party exercising its right to unilaterally
24 void the Settlement pursuant to this provision agrees to pay any fees owing to the Settlement
25 Administrator for services rendered. An order vacating, reversing or modifying the Court's award
26 of the Class Representative Payment, or the Class Counsel Fees Payment and/or Class Counsel
27 Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of
28 the Judgment within the meaning of this paragraph, and shall not render the Settlement voidable.

1 **J. Establishment of Settlement Account.** The Settlement Administrator shall
2 establish a Settlement Account for distributing Settlement Shares and Payments identified in this
3 Agreement. Within fourteen (14) calendar days of the Effective Date, Defendant shall pay the
4 Gross Settlement Amount into the Settlement Account.

5 **K. Payment of Settlement Shares.** Within ten (10) calendar days of receipt of the
6 Gross Settlement Amount, the Settlement Administrator shall pay Settlement Shares, from the
7 Settlement Account, to all Class Members (who do not submit valid requests to be excluded from
8 the Action). The Settlement Administrator shall pay each Settlement Share by sending a check
9 in the appropriate amount to the Class Member at the address indicated in the list of Class
10 Member names and addresses provided by Defendant, or as subsequently determined by the
11 Settlement Administrator to be the correct address.

12 **L. Uncashed Settlement Share Checks.** Any check issued by the Settlement
13 Administrator to Class Members who do not timely and validly opt out shall be negotiable for
14 one hundred and eighty (180) calendar days. Those funds represented by checks returned as
15 undeliverable and those checks remaining un-cashed for more than 180 days after issuance
16 (collectively, “Voided Settlement Checks”), plus any interest that has accrued on those funds,
17 will be paid to the California Unclaimed Property Fund.

18 **M.** The Settlement Administrator will mail or wire all required payments no later than
19 fourteen (14) calendar days after receipt of the funds representing the Gross Settlement Amount
20 from Defendant. Proof of payment will be filed with the Court.

21 **N. Final Report by Settlement Administrator to Court.** Within ten (10) calendar
22 days after final disbursement of all funds from the Settlement Account, the Settlement
23 Administrator will serve on the Parties for filing with the Court a declaration providing a final
24 summary report on the disbursements of all funds from the Settlement Account.

25 **V. RELEASE OF CLAIMS**

26 **A. Plaintiff and Class Members.** The Parties agree that it is their intent that the
27 resolution set forth in this Settlement will release any further attempt, by lawsuit, administrative
28 claim or action, arbitration, demand, or other action of any kind by each and all of the Settlement

1 Class Members (including participation to any extent in any representative or collective action),
2 against Defendant and all of those entities' and individual's past, present and future agents,
3 employees, servants, officers, directors, partners, trustees, representatives, shareholders,
4 stockholders, attorneys, parents, subsidiaries, equity sponsors, related corporations, divisions,
5 joint venturers, assigns, predecessors, successors, service providers, insurers, consultants,
6 subcontractors, joint employers, employee benefit plans and fiduciaries thereof, affiliated
7 organizations, and all persons acting under, by, through or in concert with any of them, and each
8 of them, arising during the period August 25, 2016 through preliminary approval order date or
9 March 15, 2022, whichever is earlier, and arising from, could have been asserted, or related in
10 any way to the claims asserted in the Action against Defendant based on the facts pleaded in the
11 Operative Complaint. The Settlement Class Members will release and discharge Defendant, and
12 any of its former and present parents, subsidiaries, owners, shareholders, officers, directors,
13 employees, affiliates, successors, assigns, agents, attorneys, legal representatives ("Released
14 Parties"). This release will not take effect until Defendant has paid the Gross Settlement Amount
15 in full per this Settlement Agreement.

16 **B. Class Counsel.** As of the date the Judgment becomes Final, and except as
17 otherwise provided by this Agreement, Class Counsel and any counsel associated with Class
18 Counsel (The Spivak Law Firm and United Employees Law Group), including without limitation
19 David G. Spivak, Esq. and Walter L. Haines, Esq., waive any claim to costs and attorneys' fees
20 and expenses against Defendant or the Releasees arising from or related to the Action, except
21 those incurred to enforce this Agreement and collect the Judgment, including but not limited to
22 claims based on the California Labor Code, the California Civil Code, the California Code of
23 Civil Procedure, the Fair Labor and Standards Act, or any other statute or law (the "Class Counsel
24 Released Claims").

25 **C. Released Claims.** Released Claims by the Participating Class Members include
26 all claims alleged in the operative First Amended Complaint along with related claims that could
27 have been alleged based on the facts alleged in the operative First Amended Complaint including:
28 (1) claims for unpaid wages (including but not limited to overtime pay, minimum wage, regular

1 wages, missed meal period premium pay, missed rest period premium pay, failure to pay wages
2 of terminated or resigned employees, or other benefits), and claims for interest, penalties, or
3 premiums in connection therewith, as well as any claims under the California Labor Code, any
4 applicable California Wage Order(s); (2) claims for failure to comply with the employee itemized
5 wage statement provision under California Labor Code section 226; (3) claims for failure to
6 provide or make available meal and rest periods as required under California Labor Code §512
7 and IWC Wage Orders; (4) claims for failure to indemnify as required under California Labor
8 Code §§1198 and 2802); (5) penalties for violations of the California Labor Code; (6) violation
9 of California Business and Professions Code Section 17200, et seq.; and (7) all other claims under
10 California common law, the California Labor Code, California Wage Orders, the California
11 Business and Professions Code, set forth in the Complaint including alleged violation of
12 California Labor Code sections 201-204, 210, 215-216, 218.5, 225.5, 226, 226.3, 226.6, 226.7,
13 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, 2699, 2699.3,
14 2699.5, 2802, California Civil Code sections 1021.5, 3287, 3288, California Business and
15 Professions Code sections 17000 and 17200 et. seq., the relevant Wage Orders issued by the
16 Industrial Welfare Commission, or any other claim for any statutory or civil penalty that have
17 been, or could have been, asserted based on the facts alleged in the First Amended Complaint
18 under California law that arise from the allegations as pled including claims for damages,
19 reimbursement, restitution, losses, penalties, fines, liens, attorney's fees, costs, expenses, debts,
20 interest, injunctive or declaratory relief, liquidated damages or similar relief. The Final Judgment
21 shall cover and bar each and every Participating Class Member from asserting any Released
22 Claims in the future. PAGA claims – include the underlying claims alleged in the PAGA notice
23 letter and Plaintiff's Operative Complaint - will be released, and PAGA Members will be entitled
24 to their portion of the PAGA Payment, regardless of whether or not the Participating Class
25 Member opts-out or excludes him or herself from the Class.

26 **D. Dismissal of the *Rollman* Action.** Ten calendar days following the preliminary
27 approval of the settlement, the Parties will stipulate to dismiss with prejudice *Shane Rollman v.*
28 *American Merchandising Specialists, Inc.* action, USDC Case No.: 2:20-CV-02371-KJM-JDP.

1 **VI. NON-PUBLICITY PROVISION**

2 The Parties and their counsel agree that they will not issue any press releases, initiate any
3 contact with the press, respond to any press inquiry, or have any communication with the press
4 about the fact, amount, or terms of the Settlement. In addition, the Parties and their counsel agree
5 that they will not engage in any advertising or distribute any marketing materials relating to the
6 Settlement of this case in any manner that identifies the Defendant, including but not limited to
7 any postings on any websites maintained by Class Counsel. Neither Plaintiff nor Class Counsel
8 will discuss the terms or the fact of the Settlement with third parties other than (1) their immediate
9 family members, (2) their respective accountants or lawyers as necessary for tax purposes; or (3)
10 other Class Members. Plaintiff and Class Counsel agree not to publish any of the terms or
11 conditions of this Settlement in any manner that identifies the Defendant. However, Class
12 Counsel may identify this Settlement in other matters to demonstrate their adequacy as counsel
13 in such other matters.

14 **VII. MISCELLANEOUS TERMS**

15 **A. No Effect on Other Benefits.** The Settlement Shares will not result in any
16 additional employee benefit payments (such as pension, ERISA, 401(k), vacation, or bonus) and
17 shall not have any effect on the eligibility for, or calculation of, any employee benefit. Plaintiff
18 and Class Members will be deemed to have waived all such claims, whether known or unknown
19 by them, as part of their release of claims under this Agreement.

20 **B. No Admission of Liability.** Defendant denies that it has engaged in any unlawful
21 activity, has failed to comply with the law in any respect, or has any liability to anyone under the
22 claims asserted in the Action. This Agreement is entered into solely for the purpose of
23 compromising highly disputed claims. Nothing in this Agreement is intended or will be construed
24 as an admission of liability or wrongdoing by Defendant, or an admission by Plaintiff that any of
25 his claims was non-meritorious or any defense asserted by Defendant was meritorious. This
26 Settlement and the fact that Plaintiff and Defendant were willing to settle the Action will have
27 no bearing on, and will not be admissible in connection with, any litigation (other than solely in
28 connection with the Settlement).

1 **C.** Whether or not the Judgment becomes Final, neither the Settlement, this
2 Agreement, any document, statement, proceeding or conduct related to the Settlement or the
3 Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or
4 admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to
5 Defendant or any other Releasees, including, but not limited to, evidence of a presumption,
6 concession, indication or admission by any of the Releasees of any liability, fault, wrongdoing,
7 omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any
8 of the Releasees, in any further proceeding in the Action, or any other civil, criminal or
9 administrative action or proceeding except for purposes of effectuating the Settlement pursuant
10 to this Agreement.

11 **D. Integrated Agreement.** After this Agreement is signed and delivered by all
12 Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement
13 between the Parties relating to the Settlement, and it will then be deemed that no oral
14 representations, warranties, covenants, or inducements have been made to any Party concerning
15 this Agreement or its exhibits other than the representations, warranties, covenants, and
16 inducements expressly stated in this Agreement and its exhibits.

17 **E. Attorney Authorization.** Class Counsel and Defense Counsel warrant and
18 represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate
19 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate
20 its terms, and to execute any other documents required to effectuate the terms of this Agreement.
21 The Parties and their counsel will cooperate with each other and use their best efforts to effect
22 the implementation of the Settlement. In the event the Parties are unable to reach agreement on
23 the form or content of any document needed to implement the Agreement, or on any supplemental
24 provisions that may become necessary to effectuate the terms of this Agreement, the Parties will
25 seek the assistance of the Court, and in all cases, all such documents, supplemental provisions
26 and assistance of the court will be consistent with this Agreement.

27 **F. Modification of Agreement.** This Agreement, and all parts of it, may be
28 amended, modified, changed, or waived only by an express written instrument signed by all

Parties or their successors-in-interest.

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

H. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.

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

J. Fair Settlement. The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, considering all relevant factors, current and potential.

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

L. Notice. All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third calendar day after mailing by United States mail, addressed as follows:

To Class Counsel:
David G. Spivak, Esq.
The Spivak Law Firm
8605 Santa Monica Blvd., PMB 42554
West Hollywood, CA 90069

To Defense Counsel:
Thalia S. Rofos, Esq.
Lewis Brisbois Bisgaard & Smith, LLP
Thalia S. Rofos Esq.
650 Town Center Drive
Suite 1400
Costa Mesa, CA 92626

M. Execution in Counterpart. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original

signed counterparts. Facsimile signatures will be presumptive evidence of execution of the original, which shall be produced on reasonable request. Any executed counterpart will be admissible to prove the existence and contents of this Agreement.

Dated: 03 / 07 / 2022

By: 
LUIS LARRABURU

Dated: 03/15/2022

By: 
ANGELA FOX
Vice President of Human Resources
AMERICAN MERCHANDISING
SPECIALISTS, INC.

THE SPIVAK LAW FIRM

Dated: 03 / 07 / 2022

By: 
DAVID G. SPIVAK,
MAYA CHEAITANI, Attorneys for
Plaintiff, LUIS LARRABURU, and all
others similarly situated

UNITED EMPLOYEES LAW GROUP

Dated: March 7, 2022

By: 
WALTER L. HAINES, Attorney for
Plaintiff, LUIS LARRABURU, and all
others similarly situated

LEWIS BRISBOIS BISGAARD & SMITH,
LLP

Dated: March 15, 2022

By: /s/ Efthalia S. Rofos
EFTHALIA S. ROFOS, Attorneys for
Defendant, AMERICAN
MERCHANDISING SPECIALISTS,
INC.

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EXHIBIT A

1 **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND**
2 **HEARING DATE FOR COURT APPROVAL**

3 *Luis Larraburu v. American Merchandising Specialists, Inc., Case No. 21STCV17704*

4 **As a current or former non-exempt employees of American Merchandising Specialists, Inc. in California, you may be entitled to receive money from a class action settlement.**

5 Phoenix ID: <<Phoenix ID>>
6 <<Name>>
7 <<Address1>>
8 <<Address2>>
9 <<City>>, <<State>> <<Zip
 Code>>

Please provide current address (if different) here:

10 *The Los Angeles County Superior Court has authorized this Class Notice.*
11 *This is not a solicitation from a lawyer.*

12 YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A CLASS ACTION
13 SETTLEMENT IF YOU ARE A CURRENT OR FORMER NON-EXEMPTEMPLOYEE OF
14 AMERICAN MERCHANDISING SPECIALISTS, INC. WHO WORKED IN THE STATE OF
15 CALIFORNIA BETWEEN AUGUST 25, 2016 AND <<PRELIMINARY APPROVAL
16 ORDER DATE OR MARCH 15, 2022, WHICHEVER IS EARLIER>>.

- 17 • A proposed settlement of \$215,000.00 (the “Gross Settlement Amount”) will be used to pay
18 claims to: All persons Defendant American Merchandising Specialists, Inc. employed as non-
19 exempt employee in the State of California during the “Class Period” of August 25, 2016 to
20 <<preliminary approval order date or March 15, 2022, whichever is earlier>> (the “Class
21 Members”). The Gross Settlement Amount includes (a) expenses and fees of the Settlement
22 Administrator up to \$10,000.00; (b) a Class Representative Payment of \$15,000.00 to the
23 Plaintiff Luis Larraburu as the class representative; (c) attorneys’ fees of up to \$71,666.66
24 and litigation expenses of up to \$17,500.00 to Class Counsel; and (d) \$4,000.00 allocated to
25 settle claims brought pursuant to the Private Attorneys General Act, California Labor Code
26 Section 2698, *et seq.* (“PAGA”)(75% of which will go to the California Labor & Workforce
27 Development Agency (“LWDA”) and 25% of which will go to Class Members). The Court
28 must approve these payments at the Final Approval Hearing.
- Defendant estimated for purposes of settlement negotiations leading up to the Settlement that there are 6042.00 Work Weeks by 115 Class Members for the period of August 25, 2016 through November 15, 2021. These numbers would be expected to increase proportionately for the passage of time between that date and the time of court approval. Before the Parties seek or a Party seeks final court approval of the Settlement, the Settlement Administrator will advise Plaintiff’s counsel of Defendant’s report of the total number of Work Weeks and Class Members. If the Work Weeks and/or Class Members as of the date the Court approves the settlement exceeds the referenced 6042.00 Work Weeks and/or 115 Class Members by more than 10.00%, the Gross Settlement Amount, including the Class Counsel Fees Payment, the

Class Representative Payment, and the LWDA payment, will increase proportionally according to the number of additional Work Weeks or Class Members, whichever results in a higher increase in the Gross Settlement Amount.

- The settlement resolves a lawsuit entitled *Luis Larraburu v. American Merchandising Specialists, Inc.*, Case No. 21STCV17704 (the “Action”) for Defendant’s alleged failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, and other legal consequences that would follow from these failures, including claims under California’s Business & Professions Code and PAGA. This settlement avoids the costs and risks from continuing the Action, pays money to persons like you, and releases Defendant from alleged liability.
- The Court has not made a determination of the validity of the claims in the Action. Defendant denies any and all liability arising from any of the claims and contends that at all relevant times it properly compensated the Class Members, provided lawful meal periods, authorized and permitted lawful rest breaks, reimbursed for all work expenses, provided accurate itemized wage statements, timely paid wages, and fully complied with all applicable laws.
- Class Members will receive a payment based on the number of Work Weeks, rounded up to the nearest full Work Week, during the Class Period.

**PLEASE READ THIS ENTIRE CLASS NOTICE CAREFULLY.
YOUR LEGAL RIGHTS ARE AFFECTED BY IT.**

WHO IS INCLUDED IN THE SETTLEMENT CLASS?

All current and former non-exempt employees who work or worked for Defendant at any time during the period of August 25, 2016 to <<preliminary approval order date or March 15, 2022, whichever is earlier>> (“Class Period”). The “Participating Class Members” does not include any person who submits a timely and valid request for exclusion as provided in this Notice.

WHO IS INCLUDED IN THE PAGA SETTLEMENT CLASS?

All Participating Class Members who worked for Defendant at any time during the period of August 20, 2019 to <<preliminary approval order date or March 15, 2022, whichever is earlier>> (“PAGA Period”). The PAGA Members includes any person worked during the PAGA Period even if that person submits a request for exclusions as provided in this Notice.

HOW MUCH WILL I GET?

You have a total number of <<number of Work Weeks>> Work Weeks during the Class and PAGA Periods.

It is expected that you will receive approximately <<Individual Settlement Payment amount>> from this Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

DO NOTHING	Receive a payment and give up your legal rights to pursue claims released by the settlement of the Action.
OPT OUT	Receive no payment and retain your legal rights to pursue class claims that would otherwise be released by the settlement of the Action.
OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator, Phoenix, about why you do not like the settlement and they will forward your concerns to counsel which will then be provided to the Court.
DISPUTE THE WORK WEEK CALCULATION	If you feel that you worked a different amount of Work Weeks as a non-exempt employee by Defendant than identified above, you may dispute that calculation by writing to the Settlement Administrator.
ATTEND A HEARING	You have the right to attend a fairness hearing that will be conducted by the Court, but you are not required to attend. If you timely file and serve a written objection, and if you also want to speak about your objection at the hearing, you should send a letter to the Settlement Administrator, Phoenix, providing notice of your intention to appear and speak at the hearing.

IMPORTANT INFORMATION ABOUT THE PROPOSED SETTLEMENT

1. Why did I get this Class Notice?

You were sent this Class Notice because you have a right to know about the proposed settlement in the Action and about all of your options before the Court rules on whether to finally approve the settlement. If the Court approves the settlement, and after any objections and appeals are resolved, a “Settlement Administrator” appointed by the Court will make the payments that the settlement allows. This Class Notice explains the Action, the proposed settlement, your legal rights, and what benefits are available and how to receive them.

The Court in charge of this case is the Los Angeles County Superior Court. The person who sued is called “Plaintiff” and the organization he sued is called “Defendant.”

2. What is the Action about?

In the Action, Luis Larraburu (“Plaintiff”) alleged multiple violations of the California Labor Code, the California Business & Professions Code, and PAGA, including causes of action for: failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, unfair competition under California’s Business & Professions Code, and claims for civil penalties for violations of the PAGA.

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3. Why is there a settlement?

The parties disagree on the probable outcome of the case with respect to liability, damages, and how much money could be recovered if the Plaintiff won at trial. Defendant believes the Plaintiff would not prevail if this case went to trial. The Court has not decided in favor of the Plaintiff or Defendant. There has been no trial in this case. Instead, both sides recognize the risks, expenses, and disruption associated with continued litigation and they have therefore chosen to resolve their differences by entering into a settlement. By doing so, the parties can avoid the cost of a trial, yet Class Members are still entitled to receive payments if they comply with the instructions in this Class Notice. The parties entered into this settlement after arms-length negotiations while using the services of an experienced and neutral mediator. The Plaintiff and Class Counsel believe that the proposed settlement is fair and reasonable and is in the best interest of the Class Members.

4. What is a class action settlement?

The Court must approve the terms of the proposed settlement as fair and reasonable. Once approved, the settlement will affect all Class Members, except those who have properly opted out. This Class Notice explains your legal rights, the terms of the settlement, what you must do to participate, and the amount of money you may receive. Please read this entire Class Notice carefully.

5. What should I do?

You can do nothing, and if you are entitled to a payment, you will be paid. Be mindful, however, that if this Class Notice reaches you and the address where you now live is different, you need to contact the Settlement Administrator and provide updated information so that any future correspondence or the settlement check itself reaches you and is not returned as an address unknown.

6. How much will my payment be?

After all fees, costs, and offsets are taken as set forth under the Settlement Agreement (which is available for review), the remainder will be used to pay Class Members a pro-rata payment based on the number of Work Weeks each Class Member worked during the Class Period (“Pro-Rata Share”).

The Settlement Administrator shall determine by how many Work Weeks each such Class Member has.

Your estimated payment is listed above, on page 2 of this document. If you do not dispute your Work Weeks calculation, and do not opt out of the settlement, you will be bound by the settlement and receive a settlement payment. **In other words, you do not need to take any action to receive a settlement payment.**

1 If you wish to dispute the number of Work Weeks credited to you or anything else about your
2 employment status, you must write to the Settlement Administrator indicating what you believe
3 is incorrect and return it on or before <<date>> [60 days after initial mailing] via U.S. Mail with
4 proof of the submission date (such as a postmark or delivery service date stamp). You may use
5 the enclosed Work Weeks Dispute Form_for this purpose. If the Settlement Administrator re-
6 mailed your Class Notice to a new address, you will have additional 30 days from the date of the
7 re-mailed Class Notice to write to the Settlement Administrator to dispute your Work Weeks
8 information. You must also send any documents or other information that you contend supports
9 your belief that the information set forth above is incorrect. The Settlement Administrator will
10 resolve any dispute based upon Defendant's records and any information you provide. Please be
11 advised that the information on this Notice is presumed to be correct unless the documents you
12 submit are company records from Defendant.

7. When would I get my payment?

13 The Court will hold a hearing on <<final approval hearing date>> at <<final approval hearing
14 time>> .m to decide whether to approve the proposed settlement. If the Court approves the
15 settlement and anyone objects, there may be appeals. It is always uncertain when these objections
16 and appeals can be resolved, and resolving them can take time. To check on the progress of the
17 settlement, call the Settlement Administrator at <<settlement administrator phone number>>, or
18 contact Class Counsel (see below for Class Counsel's contact information.). Please be patient.

19 You will have 180 days to cash your settlement check. If a mailed individual settlement payment
20 is not cashed by <<check cashing deadline>> (within 180 days of the date printed on the check),
21 all uncashed funds will be paid to the California State Controller's Office Unclaimed Property
22 Fund with the identity of the Class Member to whom the funds belong, to be held for the Class
23 Member.

8. What am I releasing?

24 If you do not exclude yourself from the settlement (according to the procedures explained below),
25 you will release certain claims as follows:

26 The Parties agree that it is their intent that the resolution set forth in this Settlement will
27 release any further attempt, by lawsuit, administrative claim or action, arbitration,
28 demand, or other action of any kind by each and all of the Settlement Class Members
(including participation to any extent in any representative or collective action), against
Defendant and all of those entities' and individual's past, present and future agents,
employees, servants, officers, directors, partners, trustees, representatives, shareholders,
stockholders, attorneys, parents, subsidiaries, equity sponsors, related corporations,
divisions, joint venturers, assigns, predecessors, successors, service providers, insurers,
consultants, subcontractors, joint employers, employee benefit plans and fiduciaries
thereof, affiliated organizations, and all persons acting under, by, through or in concert
with any of them, and each of them, arising during the period August 25, 2016 through
preliminary approval order date or March 15, 2022, whichever is earlier, and arising from,
could have been asserted, or related in any way to the claims asserted in the Action against
Defendant based on the facts pleaded in the Operative Complaint. The Settlement Class

Members will release and discharge Defendant, and any of its former and present parents, subsidiaries, owners, shareholders, officers, directors, employees, affiliates, successors, assigns, agents, attorneys, legal representatives.

Released Claims by the Participating Class Members include all claims alleged in the operative First Amended Complaint along with related claims that could have been alleged based on the facts alleged in the operative First Amended Complaint including: (1) claims for unpaid wages (including but not limited to overtime pay, minimum wage, regular wages, missed meal period premium pay, missed rest period premium pay, failure to pay wages of terminated or resigned employees, or other benefits), and claims for interest, penalties, or premiums in connection therewith, as well as any claims under the California Labor Code, any applicable California Wage Order(s); (2) claims for failure to comply with the employee itemized wage statement provision under California Labor Code section 226; (3) claims for failure to provide or make available meal and rest periods as required under California Labor Code §512 and IWC Wage Orders; (4) claims for failure to indemnify as required under California Labor Code §§1198 and 2802; (5) penalties for violations of the California Labor Code; (6) violation of California Business and Professions Code Section 17200, et seq.; and (7) all other claims under California common law, the California Labor Code, California Wage Orders, the California Business and Professions Code, set forth in the Complaint including alleged violation of California Labor Code sections 201-204, 210, 215-216, 218.5, 225.5, 226, 226.3, 226.6, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, 2699, 2699.3, 2699.5, 2802, California Civil Code sections 1021.5, 3287, 3288, California Business and Professions Code sections 17000 and 17200 et. seq., the relevant Wage Orders issued by the Industrial Welfare Commission, or any other claim for any statutory or civil penalty that have been, or could have been, asserted based on the facts alleged in the First Amended Complaint under California law that arise from the allegations as pled including claims for damages, reimbursement, restitution, losses, penalties, fines, liens, attorney's fees, costs, expenses, debts, interest, injunctive or declaratory relief, liquidated damages or similar relief. The Final Judgment shall cover and bar each and every Participating Class Member from asserting any Released Claims in the future. PAGA claims – include the underlying claims alleged in the PAGA notice letter and Plaintiff's Operative Complaint - will be released, and PAGA Members will be entitled to their portion of the PAGA Payment, regardless of whether or not the Participating Class Member opts-out or excludes him or herself from the Class.

The release provisions of this Settlement will not take effect until Defendant has paid the Gross Settlement Amount in full per this Settlement Agreement.

9. How can I opt out of this settlement?

You can opt out of this settlement and retain your rights. To do so, you must send a letter by mail to the Settlement Administrator with the following sentence, or something similar, stating: "I request to be excluded from the class action proceedings in the matter of *Luis Larraburu v. American Merchandising Specialists, Inc.*, Case No. 21STCV17704." You may use the enclosed "Election not to Participate in Settlement Form" for this purpose. You will have **60 days** from

1 the date of mailing of this Class Notice to do so. Your Opt-Out request must be in writing and
2 mailed to the Settlement Administrator, Phoenix, <<settlement administrator mailing address>>
3 and be postmarked no later than <<response deadline>>, or it will not be considered and you
4 will be bound by the settlement. If the Settlement Administrator re-mailed your Class Notice to
5 a new address, you will have additional 30 days from the date of the re-mailed Class Notice to
6 opt out. You must include your full name (and former names, if any) and address in your request
7 and you must sign the written request.

8 However, even if you opt-out of the class action settlement, you will still be entitled to your
9 portion of the PAGA penalties.

10 10. Do I have a lawyer in this case?

11 The Court has appointed David G. Spivak and The Spivak Law Firm, 8605 Santa Monica Blvd.,
12 PMB 42554, West Hollywood, CA 90069, telephone (213) 725-9094, david@spivaklaw.com,
13 to represent you and other Class Members in the Action. These lawyers are called Class Counsel.
14 They will be compensated from the Gross Settlement Amount as discussed in this Class Notice.
15 If you want to be represented by your own lawyer, you may hire one at your own expense.

16 11. How will the lawyers be paid?

17 Class Counsel will ask the Court to award them fees of approximately 33 and 1/3% (one-third)
18 of the Gross Settlement Amount. Class Counsel will also ask the Court to award them costs
19 incurred in connection with the Action. The Court may choose to award less than the amount
20 requested by Class Counsel.

21 12. How do I tell the Court that I do not like the settlement?

22 You can ask the Court to deny approval by objecting. You cannot ask the Court to order a larger
23 settlement; the Court can only approve or deny the settlement. If the Court denies the settlement,
24 no settlement payments will be sent out and the Action will continue. If that is what you want to
25 happen, you must object.

26 You may object to the proposed settlement in writing or in person. You may also appear at the
27 Final Approval Hearing, either in person or through your own attorney. If you appear through
28 your own attorney, you are responsible for paying that attorney. All written objections and
supporting papers should (a) clearly identify the case name and number (*Luis Larraburu v.*
American Merchandising Specialists, Inc., Case No. 21STCV17704), (b) be submitted to the
Settlement Administrator by mailing them to the Settlement Administrator, Phoenix,
<<settlement administrator mailing address>>, and (c) be filed or postmarked on or before
<<response deadline>>. If the Settlement Administrator re-mailed your Class Notice to a new
address, you will have additional 30 days from the date of the re-mailed Class Notice to object.
Class Members may appear at the final approval hearing to be heard on their objections, even if
they have not previously served a written objection.

1 **13. When and where will the Court decide whether to approve the settlement?**

2 The Court will hold a fairness hearing on <<final approval hearing date>> at <<final approval
3 hearing time>> .m at the Los Angeles County Superior Court, 312 North Spring Street, Los
4 Angeles, CA 90012 (The Honorable Yvette M. Palazuelos). At this hearing, the Court will
5 consider whether the settlement is fair, reasonable, and adequate. If there are objections that were
6 properly made, the Court will consider them. The Court will listen to people who have asked to
7 speak at the hearing. The Court may also decide how much to pay to Class Counsel. At or after
8 the hearing, the Court will decide whether to approve the settlement. We do not know how long
9 this decision will take.

10 **14. Do I have to come to the hearing?**

11 No. Class Counsel will answer any questions that the Court may have. But, you are welcome to
12 come at your own expense. If you sent an objection, you do not have to come to Court to talk
13 about it. As long as you timely mailed your written objection, the Court will consider it. You
14 may also pay your own lawyer to attend, but it is not required.

15 **15. May I speak at the hearing?**

16 Regardless of whether you properly objected to the settlement, you may speak at the fairness
17 hearing.

18 **16. What happens if I do nothing at all?**

19 You will participate in the settlement and receive payment. You will be bound by the release as
20 set forth herein.

21 **GETTING MORE INFORMATION**

22 This Class Notice summarizes the proposed settlement. You may call or contact Class Counsel
23 or the Settlement Administrator if you would like more information about the case. You may
24 call <<settlement administrator phone number>> or write the Settlement Administrator,
25 Phoenix, located at <<settlement administrator mailing address>>.

26 You can also access the Los Angeles County Superior Court's Online Services at
27 <https://www.>, or by visiting the Clerk's Office at the Los Angeles County
28 Superior Court, 312 North Spring Street, Los Angeles, CA 90012, between _:0 a.m. and _:0
p.m., Monday through Friday, excluding Court holidays.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE
TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.**

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EXHIBIT B

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, POSTMARKED NOT LATER
THAN <<RESPONSE DEADLINE>>:**

PLEASE NOTE THAT EVEN IF YOU EXCLUDE YOURSELF FROM THE SETTLEMENT, YOU WILL
STILL BE ENTITLED TO A PORTION OF THE PAGA PENALTIES.

Larraburu v. American Merchandising Specialists, Inc. Class Action Settlement 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.

(Typed or Printed Name)

(Address)

(City, State, Zip Code)

(Telephone Number, Including Area Code)

(Identification Number)

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

Dated: _____
(Signature)

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EXHIBIT C

1 **WORK WEEKS DISPUTE FORM**

2 Superior Court of The State of California

3 For The County of Los Angeles

4 *Luis Larraburu v. American Merchandising Specialists, Inc.*, Case No. 21STCV17704

5 Indicate Name/Address Changes, if any:

6 <<Name>>

7 <<Address>>

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

9 XX - XX - _ _ _ _

10 TO ALL NON-EXEMPT EMPLOYEES EMPLOYED BY DEFENDANT IN THE STATE OF CALIFORNIA
11 FROM AUGUST 25, 2016 THROUGH <<PRELIMINARY APPROVAL ORDER DATE OR MARCH 15, 2022,
12 WHICHEVER IS EARLIER>>.

13 The amount of your estimated Settlement Award is based upon the number of Eligible Work Weeks you worked
14 between August 25, 2016 and <<preliminary approval order date or March 15, 2022, whichever is earlier>>.
15 "Individual Work Weeks" are defined as any Work Week in which you worked at least one (1) day as a non-exempt
16 employee by Defendant of American Merchandising Specialists, Inc. ("Defendant") in California during the
17 calendar week. The number of August 25, 2016 applicable to your claim is set forth below.

18 **YOUR ELIGIBLE WORK WEEK**

19 Defendant's records indicate that you worked <<number of Work Weeks>> Work Weeks between August 25, 2016
20 and preliminary approval order date or March 15, 2022, whichever is earlier.

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

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

27 If you wish to dispute the number of August 25, 2016 credited to you, or anything else about your employment
28 status, you must complete and return this form by indicating what you believe is incorrect on the blank lines below
and return it on or before <<RESPONSE DEADLINE>> to the Settlement Administrator via U.S. Mail with proof
of the submission date (such as a postmark or delivery service date stamp). You must also send any documents or
other information that you contend supports your belief that the information set forth above is incorrect. The
Settlement Administrator will resolve any dispute based upon Defendant's records and any information you provide.
Please be advised that the information on this Work Weeks Dispute Form is presumed to be correct unless the
documents you submit are company records from Defendant.

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

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

LUIS LARRABURU, 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,

vs.

AMERICAN MERCHANDISING SPECIALISTS, INC., a North Carolina corporation; ; ; ; ; and DOES 1–50, inclusive,

Defendant(s).

Case No. 21STCV17704

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

Action filed: May 11, 2021
Department: 9, The Honorable Yvette M. Palazuelos

The Motion of Plaintiff Luis Larraburu (hereafter referred to as “Plaintiff”) for Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court, The Honorable Yvette M. Palazuelos presiding. The Court having considered the Motion, the Joint Stipulation of Class Action Settlement and Release of Claims (“Settlement” or “Settlement Agreement”), and supporting papers, HEREBY ORDERS THE FOLLOWING:

1. The Court grants preliminary approval of the Settlement and the Settlement Class

1 based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary
2 Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court
3 has determined there is sufficient evidence to preliminarily determine that (a) the terms of the
4 Settlement appear to be fair, adequate, and reasonable to the Settlement Class and (b) the
5 Settlement falls within the range of reasonableness and appears to be presumptively valid,
6 subject only to any objections that may be raised at the final hearing and final approval by this
7 Court. The Court will make a determination at the hearing on the motion for final approval of
8 class action settlement (the “Final Approval Hearing”) as to whether the Settlement is fair,
9 adequate and reasonable to the Settlement Class.

10 2. For purposes of this Preliminary Approval Order, the “Settlement Class” means
11 all current and former non-exempt employees who are or were employed by Defendant in the
12 State of California at any time during the Class Period (collectively “Class Members”). The
13 “Class Period” shall mean the period of time from August 25, 2016, through preliminary
14 approval order date or March 15, 2022, whichever is earlier. Defendant estimated for purposes
15 of mediation that there are 6042.00 Work Weeks by 115 Class Members for the period of August
16 25, 2016 through November 15, 2021. These numbers would be expected to increase
17 proportionately for the passage of time between that date and the time of court approval. Before
18 the Parties seek or a Party seeks court approval of the Settlement, the Settlement Administrator
19 will advise Plaintiff’s counsel of Defendant’s report of the total number of Work Weeks and
20 Class Members. If the Work Weeks and/or Class Members as of the date the Court approves the
21 settlement exceeds the referenced 6042.00 Work Weeks and/or 115 Class Members by more
22 than 10.00%, the Gross Settlement Amount, including the Class Counsel Fees Payment, the
23 Class Representative Payment, and the LWDA payment will increase proportionally according
24 to the number of additional Work Weeks or Class Members, whichever results in a higher
25 increase in the Gross Settlement Amount. The “Effective Date” means as follows: If no
26 objection to this Settlement or to any of the terms and or conditions of the Settlement are filed
27 by Plaintiff, another member of the Settlement class, or any intervenor to this Lawsuit, the
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1 Effective Date shall occur on the day that the Court enters an order of final approval of this
2 Settlement; however, if any objection to this Settlement or to any of the terms and or conditions
3 of the Stipulation is filed by a member of the Settlement class, or any intervenor to this Lawsuit,
4 the Effective Date shall occur upon the expiration of the time for the filing any appeal of the
5 order of final approval of this Settlement. If an appeal is filed or any writ granted, then the
6 Effective Date shall occur after the appeal has been dismissed or the writ dissolved and when
7 there is no further time to appeal the dismissal of the appeal or the dissolution of the writ. The
8 occurrence of the Effective Date is a prerequisite to any obligation of Defendant to pay any
9 funds into the Settlement Account.

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

13 4. The Court hereby preliminarily finds that the Settlement was the product of
14 serious, informed, non-collusive negotiations conducted at arm's length by the Parties. In
15 making this preliminary finding, the Court considered the nature of the claims set forth in the
16 pleadings, the amounts and kinds of benefits which shall be paid pursuant to the Settlement, the
17 allocation of Settlement proceeds to the Settlement Class, and the fact that the Settlement
18 represents a compromise of the Parties' respective positions. The Court further preliminarily
19 finds that the terms of the Settlement have no obvious deficiencies and do not improperly grant
20 preferential treatment to any individual Class Member. Accordingly, the Court preliminarily
21 finds that the Settlement was entered into in good faith.

22 5. The Court finds that the dates set forth in the Settlement for mailing and
23 distribution of the Class Notice meet the requirements of due process and provide the best notice
24 practicable under the circumstances, and constitute due and sufficient notice to all persons
25 entitled thereto, and directs the mailing of the Class Notice by first class mail to the Settlement
26 Class as set forth in the Settlement. Accordingly, the Court orders the following implementation
27 schedule for further proceedings:
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- a. By _____, Defendant shall provide _____, the appointed Settlement Administrator, with: (a) An electronic database of all Class Members, last known mailing address, Social Security number and Defendant’s employee identification number (“Class Members’ Data”); and (b) Corresponding to each Class Member’s name, Defendant shall provide a figure indicating the total number of Work Weeks during the Class Period in which Defendant employed the Class Member. That number of Work Weeks shall be referred to as that Class Member’s “Individual Work Weeks;” (c) If any of the Class Members’ Data are unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon the Class Members’ Data prior to when it must be submitted to the Settlement Administrator. Class Members’ Data will otherwise remain confidential and will not be disclosed to anyone, except as necessary to applicable taxing authorities, or pursuant to Defendant’s express written authorization or by order of the Court.
- b. **Mailing of Class Notice.** By _____, approximately fourteen (14) days after receiving the Class Members’ Data, or as soon thereafter as it can do so, the Settlement Administrator will mail the Class Notice to all identified Class Members via first-class U.S. mail using the mailing address information provided by Defendant, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.
- c. **Returned Class Notice.** If a Class Notice is returned because of an incorrect address, the Settlement Administrator will promptly, and not later than ten (10) days from receipt of the returned Class Notice, search for a more current address for the Class Member and re-mail the Class Notice to the Class

1 Member. The Settlement Administrator will use the Class Members' Data
2 and otherwise work with Defendant's Counsel and Class Counsel to find a
3 more current address. The Settlement Administrator will be responsible for
4 taking reasonable steps, consistent with its agreed-upon job parameters, court
5 orders, and fee, to trace the mailing address of any Class Member for whom
6 a Class Notice is returned as undeliverable by the U.S. Postal Service. These
7 reasonable steps shall include the tracking of all undelivered mail;
8 performing address searches for all mail returned without a forwarding
9 address; and promptly re-mailing to Class Members for whom new addresses
10 are found. If the Class Notice is re-mailed, the Settlement Administrator will
11 note for its own records and notify Class Counsel and Defendant's Counsel
12 of the date and address of each such re-mailing as part of a weekly status
13 report provided to the Parties.

14 d. **Declaration of Settlement Administrator.** Not later than twenty-one (21)
15 court days prior to the Final Approval Hearing, the Settlement Administrator
16 will provide the Parties for filing with the Court a declaration of due diligence
17 setting forth its compliance with its obligations under this Agreement. Prior
18 to the Final Approval Hearing, the Settlement Administrator will supplement
19 its declaration of due diligence if any material changes occur from the date
20 of the filing of its prior declaration.

21 e. **Requests for Exclusion from Settlement; and Objections to Settlement.**
22 Class Members may submit requests to be excluded from the effect of the
23 Settlement, or objections to the Settlement, pursuant to the following
24 procedures:

25 i. **Request for Exclusion from Settlement.** A Class Member may
26 request to be excluded from the effect of this Agreement, and any
27 payment of amounts under this Agreement, by timely mailing a letter
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1 to the Settlement Administrator stating that the Class Member wants
2 to be excluded from this Action. This letter must include the Class
3 Member's name, address, telephone number, and signature. To be
4 valid and timely, the request to be excluded must be postmarked by
5 the date specified in the Class Notice (_____, or 60 days
6 from the initial mailing of the Class Notice by the Settlement
7 Administrator). A Class Member who properly submits a valid and
8 timely request to be excluded from the Action shall not receive any
9 payment of any kind in connection with this Agreement or this
10 Action, shall not be bound by or receive any benefit of this
11 Agreement, and shall have no standing to object to the Settlement. A
12 request for exclusion must be mailed to the Settlement Administrator
13 at the address provided on the Class Notice. The Settlement
14 Administrator shall transmit the request for exclusion to counsel for
15 the Parties as follows:

16 *To Class Counsel:*

17 David G. Spivak, Esq.
18 The Spivak Law Firm
19 8605 Santa Monica Blvd., PMB 42554
West Hollywood, CA 90069

To Defense Counsel:

Thalia S. Rofos, Esq.
Lewis Brisbois Bisgaard & Smith, LLP
650 Town Center Drive
Suite 1400
Costa Mesa, CA 92626

- 20
21 ii. **Objections to Settlement.** The Class Notice will provide that any
22 Class Member who does not request exclusion from the Action and
23 who wishes to object to the Settlement should submit an objection in
24 writing to the Settlement Administrator by _____, or 60
25 days after the Settlement Administrator mails the Class Notice, a
26 written objection to the Settlement which sets forth the grounds for
27 the objection and the other information required by this paragraph.
28

1 The objection should be mailed to the Settlement Administrator at the
2 address provided on the Class Notice. The Settlement Administrator
3 shall transmit the objections to counsel for the Parties as follows:
4

5 *To Class Counsel:*

6 David G. Spivak, Esq.
7 The Spivak Law Firm
8 8605 Santa Monica Blvd., PMB 42554
9 West Hollywood, CA 90069

To Defense Counsel:

Thalia S. Rofos
Lewis Brisbois Bisgaard & Smith, LLP
650 Town Center Drive
Suite 1400
Costa Mesa, CA 92626

10 The written objection should state the objecting Class Member's full
11 name, address, and the approximate dates of his or her employment
12 with Defendant. The written objection should state the basis for each
13 specific objection and any legal support in clear and concise terms.
14 The written objection also should state whether the Class Member
15 intends to formally intervene and become a party of record in the
16 action, and upon formally intervening, appear and argue at the Final
17 Approval Hearing. However, the objectors will be provided with the
18 opportunity to speak at the final approval hearing regardless of
19 whether they have filed an appearance or submitted a written
20 opposition beforehand.

21 If the objecting Class Member does not formally intervene in the action
22 and/or the Court rejects the Class Member's objection, the Class
23 Member may still be bound by the terms of this Agreement.

- 24 f. **Report.** Not later than fourteen (14) days after the deadline for submission
25 of requests for exclusion, the Settlement Administrator will provide the
26 Parties with a complete and accurate list of all Class Members who sent
27 timely requests to be excluded from the Action and all Class Members who
28

1 objected to the settlement.

2 6. The Court approves, as to form and content, the Class Notice in substantially the
3 form attached as Exhibit A to the Settlement, the Exclusion Request form in substantially the
4 form attached as Exhibit B to the Settlement, and the Work Weeks Dispute form in substantially
5 the form attached as Exhibit C to the Settlement.

6 7. The Court approves, for settlement purposes only, David Spivak of The Spivak
7 Law Firm and Walter L. Haines of United Employees Law Group as Class Counsel.

8 8. The Court approves, for settlement purposes only, Luis Larraburu as the Class
9 Representative.

10 9. The Court approves Phoenix Settlement Administrators as the Settlement
11 Administrator.

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

14 11. The Court preliminarily approves the estimated Settlement Administrator costs
15 payable to the Settlement Administrator subject to final review by the Court.

16 12. The Court preliminarily approves Plaintiff's Class Representative Payment
17 subject to final review by the Court.

18 13. A Final Approval Hearing shall be held on _____ at _____.m. in
19 the Superior Court for the State of California, County of Los Angeles, located at the Los Angeles
20 Courthouse, 312 North Spring Street, Los Angeles, CA 90012 to consider the fairness, adequacy
21 and reasonableness of the proposed Settlement preliminarily approved by this Preliminary
22 Approval Order, and to consider the application of Class Counsel for attorneys' fees and costs
23 and the Class Representative Payment to the Class Representative. The notice of motion and all
24 briefs and materials in support of the motion for final approval of class action settlement and
25 motion for attorneys' fees and litigation costs shall be served and filed with this Court on or
26 before _____.

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

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

9 **IT IS SO ORDERED.**

10 DATED: _____

11 **THE HONORABLE YVETTE M. PALAZUELOS**
12 **JUDGE OF THE SUPERIOR COURT**

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

LUIS LARRABURU, 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,

vs.

AMERICAN MERCHANDISING
SPECIALISTS, INC., a North Carolina
corporation; and DOES 1–50, inclusive,

Defendant(s).

Case No. 21STCV17704

**[PROPOSED] FINAL ORDER AND
JUDGMENT APPROVING CLASS
ACTION SETTLEMENT**

Action filed: May 11, 2021
Department: 9, The Honorable Yvette M.
Palazuelos

This matter came on for hearing on _____ at _____.m. in
Department 9 of the above-captioned court on Plaintiff’s Motion for Final Approval of Class and
PAGA Action Settlement pursuant to California Rules of Court, Rule 3.769, as set forth in the
Joint Stipulation of Class Action Settlement and Release of Claims (the “Settlement”) filed
herewith which provides for a Gross Settlement Amount (“GSA”) of up to \$215,000.00 in

1 compromise of all disputed claims on behalf of all current and former non-exempt = employees
2 who are or were employed by Defendant in the State of California at any time during the period
3 of August 25, 2016 to <<preliminary approval order date or March 15, 2022, whichever is
4 earlier>> (“Settlement Class Period”). All capitalized terms used herein shall have the same
5 meaning as defined in the Settlement.
6

7 In accordance with the Court’s prior Order Granting Preliminary Approval of Class and
8 PAGA Action Settlement, Class and PAGA Members have been given notice of the terms of the
9 Settlement and the opportunity to submit a claim, request exclusion, comment upon or object to
10 it or to any of its terms. Having received and considered the Settlement, the supporting papers
11 filed by the Parties, and the evidence and argument received by the Court in conjunction with the
12 motions for preliminary and final approval of the Settlement, the Court grants final approval of
13 the Settlement and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE
14 FOLLOWING DETERMINATIONS¹:
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16 1. The Court has jurisdiction over the subject matter of the Action and over all
17 Parties to the Action, including all Class Members. Pursuant to this Court’s Order Granting
18 Preliminary Approval of Class Action Settlement of _____, the Class Notice was sent
19 to each Class Member by First Class U.S. mail. The Class Notice informed Class Members of
20 the terms of the Settlement, their right to receive their proportional share of the Settlement, their
21 right to request exclusion, their right to comment upon or object to the Settlement, and their right
22 to appear in person or by counsel at the final approval hearing and be heard regarding final
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25 _____
26 ¹ A true and correct copy of the Court’s ruling on the Motion for Final Approval of Class Action
27 Settlement entered on _____ is attached hereto as **Exhibit A** and incorporated by
28 reference. A true and correct copy of the Court’s Minute Order dated _____ is
attached hereto as **Exhibit B** and incorporated by reference.

1 approval of the Settlement. Adequate periods of time were provided by each of these procedures.
2 No member of the Settlement Class presented written objections to the proposed Settlement as
3 part of this notice process, stated an intention to appear, or actually appeared at the final approval
4 hearing.

5 2. For purposes of this Final Order and Judgment, the Class Members are all persons
6 non-exempt employees employed by Defendant in California during the Class Period. at any time
7 during the period of August 25, 2016 to <<preliminary approval order date or March 15, 2022,
8 whichever is earlier>> (“Settlement Class Period”).

9 3. The Court finds and determines that the notice procedure afforded adequate
10 protections to Class Members and provides the basis for the Court to make an informed decision
11 regarding final approval of the Settlement based on the responses of Class Members. The Court
12 finds and determines that the notice provided in this case was the best notice practicable, which
13 satisfied the requirements of law and due process as to all persons entitled to such notice.
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15 2. **Release by Plaintiff and Class and PAGA Members.** The Settlement will
16 release any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or
17 other action of any kind by each. and all of the Settlement Class Members (including participation
18 to any extent in any representative or collective action), against Defendant and all of those
19 entities’ and individual’s past, present and future agents, employees, servants, officers, directors,
20 partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries,
21 equity sponsors, related corporations, divisions, joint venturers, assigns, predecessors,
22 successors, service providers, insurers, consultants, subcontractors, joint employers, employee
23 benefit plans and fiduciaries thereof, affiliated organizations, and all persons acting under, by,
24 through or in concert with any of them, and each of them, arising during the period August 25,
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1 2016 through <<preliminary approval order date or March 15, 2022, whichever is earlier>>, and
2 arising from, could have been asserted, or related in any way to the claims asserted in the Action
3 against Defendant based on the facts pleaded in the Operative Complaint. The Settlement Class
4 Members will release and discharge Defendant, and any of its former and present parents,
5 subsidiaries, owners, shareholders, officers, directors, employees, affiliates, successors, assigns,
6 agents, attorneys, legal representatives (“Released Parties”). However, the release provisions of
7 this Settlement will not take effect until Defendant has paid the Gross Settlement Amount in full
8 per this Settlement Agreement.

10 3. **Released Claims.** Released Claims by the Participating Class Members include
11 all claims alleged in the operative First Amended Complaint along with related claims that could
12 have been alleged based on the facts alleged in the operative First Amended Complaint including:
13 (1) claims for unpaid wages (including but not limited to overtime pay, minimum wage, regular
14 wages, missed meal period premium pay, missed rest period premium pay, failure to pay wages
15 of terminated or resigned employees, or other benefits), and claims for interest, penalties, or
16 premiums in connection therewith, as well as any claims under the California Labor Code, any
17 applicable California Wage Order(s); (2) claims for failure to comply with the employee itemized
18 wage statement provision under California Labor Code section 226; (3) claims for failure to
19 provide or make available meal and rest periods as required under California Labor Code §512
20 and IWC Wage Orders; (4) claims for failure to indemnify as required under California Labor
21 Code §§1198 and 2802); (5) penalties for violations of the California Labor Code; (6) violation
22 of California Business and Professions Code Section 17200, et seq.; and (7) all other claims under
23 California common law, the California Labor Code, California Wage Orders, the California
24 Business and Professions Code, set forth in the Complaint including alleged violation of
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1 California Labor Code sections 201-204, 210, 215-216, 218.5, 225.5, 226, 226.3, 226.6, 226.7,
2 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, 2699, 2699.3,
3 2699.5, 2802, California Civil Code sections 1021.5, 3287, 3288, California Business and
4 Professions Code sections 17000 and 17200 et. seq., the relevant Wage Orders issued by the
5 Industrial Welfare Commission, or any other claim for any statutory or civil penalty that have
6 been, or could have been, asserted based on the facts alleged in the First Amended Complaint
7 under California law that arise from the allegations as pled including claims for damages,
8 reimbursement, restitution, losses, penalties, fines, liens, attorney's fees, costs, expenses, debts,
9 interest, injunctive or declaratory relief, liquidated damages or similar relief. The Final Judgment
10 shall cover and bar each and every Participating Class Member from asserting any Released
11 Claims in the future. PAGA claims – include the underlying claims alleged in the PAGA notice
12 letter and Plaintiff's Operative Complaint - will be released, and PAGA Members will be entitled
13 to their portion of the PAGA Payment, regardless of whether or not the Participating Class
14 Member opts-out or excludes him or herself from the Class.

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

3 5. The Court finds and determines that (a) the Settlement Shares to be paid to
4 Participating Class Members and (b) the LWDA payment as civil penalties under the California
5 Labor Code Private Attorneys General Act of 2004, as amended, California Labor Code sections
6 2699 *et seq.*, as provided for by the Settlement are fair and reasonable. The Court hereby grants
7 final approval to, and orders the payment of, those amounts be made to the Participating Class
8 Members and to the California Labor & Workforce Development Agency (“LWDA”), in
9 accordance with the terms of the Settlement.
10

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

13 a. Class Counsel fees & costs of \$71,666.66 in attorneys’ fees and
14 \$17,500.00 in litigation costs to Class Counsel;

15 b. \$15,000.00 as a Class Representative Payment award payable to Plaintiff
16 Luis Larraburu for his service as a Class Representative;

17 c. \$10,000.00 in costs of the Settlement Administrator payable to Phoenix
18 Settlement Administrators for its services as the Settlement Administrator; and
19

20 d. Payment of \$3,000.00 (75% of the (\$4,000.00 PAGA penalty) to the
21 LWDA.
22

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

3 8. Within 10 calendar days of the Effective Date of Settlement, Defendant shall
4 deposit the Settlement proceeds in an account designated by the Settlement Administrator: (i) the
5 total amount of all Settlement Shares to Participating Class Members, (ii) the Court approved
6 Class Counsel fees & costs, (iii) the Court-approved Class Representative Payment, (iv) the
7 Court-approved costs of the Settlement Administrator, and (v) the payment to the LWDA.

9 9. Defendant's payment of such sums shall be the sole financial obligation of
10 Defendant under the Settlement, and shall be in full satisfaction of all claims released herein,
11 including, without limitation, all claims for wages, penalties, interest, attorneys' fees, costs and
12 expenses.

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

19 11. The Parties shall file a final accounting report by _____. A non-
20 appearance case review re submission of a final report is scheduled for _____ at
21 _____**.m. in Department 9.** The Parties shall also prepare and file a stipulation and
22 proposed order and proposed Amended Final Order and Judgment by _____ which
23 includes the amount of distribution of unpaid cash Residue, and unclaimed or abandoned funds
24 to the non-party, the accrued interest on that sum. The stipulation shall be signed by counsel for
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1 the class and defense counsel in accord with the proposed Amended Final Order and Judgment.
2 If there are objections by any party or non-party, class counsel shall immediately notify the Court
3 and the matter will be set for further hearing. A non-appearance hearing for the lodging of the
4 stipulation and proposed order and separate amended judgment is scheduled for
5 _____ at _____.m. in Department 9.

6
7 12. Nothing in this Final Order and Judgment shall preclude any action to enforce the
8 Parties' obligations under the Settlement or hereunder, including the requirement that Defendant
9 deposit funds for distribution by the Settlement Administrator to Participating Class Members in
10 accordance with the Settlement.

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

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

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

17 16. The Settlement is not an admission by Defendant nor is this Final Order and
18 Judgment a finding of the validity of any claims in the Action or of any wrongdoing by
19 Defendant. Furthermore, the Settlement is not a concession by Defendant and shall not be used
20 as an admission of any fault, omission, or wrongdoing by Defendant. Neither this Final Order
21 and Judgment, the Settlement, any document referred to herein, any exhibit to any document
22 referred to herein, any action taken to carry out the Settlement, nor any negotiations or
23 proceedings related to the Settlement are to be construed as, or deemed to be evidence of, or an
24 admission or concession with regard to, the denials or defenses of Defendant, and shall not be
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1 offered in evidence in any proceeding against the Parties hereto in any Court, administrative
2 agency, or other tribunal for any purpose whatsoever other than to enforce the provisions of this
3 Final Order and Judgment. This Final Order and Judgment, the Settlement and exhibits thereto,
4 and any other papers and records on file in the Action may be filed in this Court or in any other
5 litigation as evidence of the settlement by Defendant to support a defense of res judicata,
6 collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to
7 the Released Claims.
8

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

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

12
13
14 DATED: _____

THE HONORABLE YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT

EXHIBIT 2



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

December 3, 2021

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

RE: *Luis Larraburu / AMS Retail Solutions*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Luis Larraburu (hereafter “Larraburu”) provides notice on behalf of himself and all individuals currently and formerly employed in California as hourly non-exempt employees, including but not limited to field marketing representative employees and employees in comparable positions (hereafter “Aggrieved Employees”) by American Merchandising Specialists, Inc., a North Carolina corporation doing business as AMS Retail Solutions, (hereafter referred to as “AMS”), of violations of California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 450, 510, 512, 1174, 1174.5, 1194, 1197, 1198, and 2802.

At all relevant times, AMS has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Larraburu and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 4-2001 (hereafter “the Wage Order”), paragraph 2.F, and “aggrieved employees” within the meaning of California Labor Code § 2699(c).

Statement of Facts

In or about October of 2019, AMS first employed Larraburu to work as a field marketing representative to drive major appliance sales by providing brand advocacy, training and product knowledge to personnel and managers. AMS also employed Larraburu to provide subject matter expertise for products as well as “in-depth of knowledge” of discounts and purchase programs. Larraburu’s duties included establishing relationships with store associates and management teams to increase sales. AMS expected him and others in comparable positions to visit its customers to promote vendor products, perform sales/support services and maintain product displays in assigned stores; provide new product information including receiving customer feedback regarding vendor products and services; facilitate sales, marketing and promotional campaigns by acquainting accounts with the latest sales techniques.; regularly conduct training sessions at both store and district levels; and to build, maintain, and update customer database as required. AMS compensated Larraburu at an hourly rate of pay of \$20.00. AMS at all times issued wages to Larraburu and the Aggrieved Employees on a biweekly basis. AMS employed Larraburu continuously in this capacity until his employment ended in January of 2020.

AMS required Larraburu and the Aggrieved Employees to perform work while clock-out and failed to compensate them for this time. At all relevant times, AMS required Larraburu and the Aggrieved Employees to work more than eight hours per day and 40 hours per week. Larraburu and the Aggrieved Employees often worked 5 days in a workweek, and an average of 12 hours a day. AMS prohibited Larraburu and the Aggrieved Employees from recording sufficient hours of daily work for payroll purposes to cover all of their worktime. AMS knew that Larraburu and the Aggrieved Employees could not complete all of their required tasks within the hours AMS allowed them to record. Although Larraburu and the Aggrieved Employees worked an average of 12 hours per workday, Plaintiff’s timecards from October 7, 2019, to November 17, 2019, produced by Defendant under mediation privilege, only demonstrate an average workday of 7.5 hours. This is due to AMS policy that prohibited Larraburu and the Aggrieved Employees from recording their travel time between assigned store locations. The locations of the stores (Monrovia, Burbank, North Hollywood, Van Nuys,

Lancaster) spanned long distances and Larraburu and the Aggrieved Employees could spend 4 hours on the road per workday. Larraburu and the Aggrieved Employees visited around 4 stores during a workday and spent an average of two hours in each store. It is obvious by Larraburu's average of 7.5 recorded hours per workday that his recorded hours only include hours in store and not those spent traveling between customers. Larraburu and the Aggrieved Employees could only clock-in through the geolocation work application "NI WorkTrak" once they were on store premises, or once they had been driving more than 30 minutes to their first location. AMS required them to clock-out before they left any customer's store and prohibited Larraburu and the Aggrieved Employees from recording any time spent driving between their assigned stores. Therefore, Larraburu and the Aggrieved Employees were only compensated for time spent in-store and not for travel time between the many locations they visited during the workday. Furthermore, AMS discouraged Larraburu and the Aggrieved Employees from recording more than 8 hours of work per day and more than 40 per week. AMS only allowed a minimal amount of overtime hours to be recorded per week even though Larraburu and the Aggrieved Employees worked considerably more overtime hours. AMS permitted Larraburu and the Aggrieved Employees to record a minimal amount of overtime hours for "office hours". AMS required Larraburu and the Aggrieved Employees to brief their days and create marketing reports at the end of their workdays. Although Larraburu and the Aggrieved Employees spent an average of 2 hours per day creating these reports, they were prohibited from recording more than 2 to 3 hours per week of "office hours."

At all relevant times, AMS required Larraburu and the Aggrieved Employees to travel in their personal automotive vehicles between customers locations each day, though it did not compensate them for their travel time and did not reimburse them for all of the mileage they incurred. AMS paid 50 cents per mile but only after Larraburu and the Aggrieved Employees had been driving for more than 30 minutes. Furthermore, AMS deducted the last 30 minutes of mileage at the end of a workday. Therefore, AMS failed to reimburse Larraburu and the Aggrieved Employees for all mileage expenses.

At relevant times within the applicable limitations period, AMS failed to provide Larraburu and the Aggrieved Employees with an off-duty, 30-minute meal period before the end of the fifth hour worked or with a second off-duty, 30-minute meal period before the end of the tenth hour worked. The work AMS expected Larraburu and the Aggrieved Employees to complete each day prevented them from taking such meal periods. AMS automatically deducted 30 minutes of daily work time from the time records of Larraburu and the Aggrieved Employees regardless of whether they were able to take a meal period.

AMS further failed to authorize and permit Larraburu and the Aggrieved Employees to take ten minute rest breaks every four hours or major fraction thereof. It was impossible for Larraburu and the Aggrieved Employees to take rest periods because AMS expected them to monitor their mobile communication devices at all times. Additionally, the work AMS expected Larraburu and the Aggrieved Employees to complete each day prevented them from taking such rest periods. AMS did not request an exemption from California's rest period law from the Division of Labor Standards Enforcement. Neither Larraburu nor any of the Aggrieved Employees entered into a written waiver of their second meal period with AMS. AMS also failed to pay Larraburu and the Aggrieved Employees premium wages for days on which it failed to provide them with all timely meal and rest periods.

Moreover, AMS failed to pay Larraburu and the Aggrieved Employees' overtime wages on bonuses that they earned at least in part during overtime hours. AMS compensated Larraburu and the Aggrieved Employees with a non-discretionary performance based and quarterly bonus. However, AMS failed to include the value of these bonuses in calculating Larraburu and the Aggrieved Employees' overtime wages.

At all relevant times, AMS failed to issue to Larraburu and the Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. AMS knowingly and intentionally failed to state on the wage statements they issued to Larraburu 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 hourly rates, and all hours worked at each rate of pay.

AMS also failed to timely pay Larraburu and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

AMS failed to maintain accurate employee records of Larraburu and all of the other Aggrieved Employees.

As set forth below, Larraburu alleges the following violations of the California Labor Code and the Wage Order on behalf of himself and Aggrieved Employees:

- a) AMS failed to pay Larraburu and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, regular, overtime, and double time pay due to off-the-clock work and time deducted from daily work hours for 30-minute off-duty meal periods that did not take place;
- b) AMS required Larraburu and Aggrieved Employees to take on-duty meal periods;
- c) AMS failed to provide Larraburu and Aggrieved Employees with off-duty meal periods;
- d) AMS failed to provide Larraburu and Aggrieved Employees with rest breaks periods as required by law;
- e) AMS failed to compensate Larraburu and Aggrieved Employees at one hour's pay on days when AMS failed to provide them with one or more meal periods in a workday;
- f) AMS failed to compensate Larraburu and Aggrieved Employees at one hour's pay on days when AMS failed to provide them with one or more rest periods in a workday;

- g) AMS failed to indemnify Larraburu and Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties including, but not limited to, travel expenses and mileage;
- h) AMS collected and/or received wages from the paychecks of Larraburu and Aggrieved Employees as a result of arbitrary 30-minute deductions from daily time records;
- i) AMS failed to provide Larraburu and Aggrieved Employees with accurate and complete wage statements;
- j) AMS failed to timely pay Larraburu and Aggrieved Employees all earned and unpaid wages during employment at SES; and
- k) AMS failed to timely pay Larraburu and Aggrieved Employees, who are former employees, all earned and unpaid wages at the time of separation from employment; and
- l) AMS failed to maintain accurate employment records pertaining to Larraburu and all of the other Aggrieved Employees.

Accordingly, Larraburu now seeks civil penalties on behalf of himself and Aggrieved Employees based on AMS's alleged violations of the California Labor Code and the Wage Order.

Wage Order 4

Wage Order 4 applies to "all persons employed in professional, technical, clerical, mechanical, and similar occupations whether paid on a time, piece rate, commission, or other basis." § 1. At all relevant times during the applicable limitations period, Larraburu was employed by AMS as a field marketing representative to provide technical training to the employees of AMS customers

about the sale of Samsung products. Accordingly, Larraburu and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure to Pay All Wages Earned for All Hours Worked
(Lab Code §§ 510, 1194, 1197, and 1198)

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

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

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

In relevant part, California Labor Code § 1194 states,

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

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

(A) Daily Overtime - General Provisions

- (1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in a workweek unless the employee receives one and

one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 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.

In relevant part, California Labor Code § 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.

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, non-discretionary bonuses and commissions. See, e.g., *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Commissions and 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.

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

Employers must compensate non-exempt employees for “off-the-clock” work (before punching in or after punching out on a time clock) if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

At all relevant times during the applicable limitations period, AMS knowingly failed to pay Larraburu and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all regular, overtime, and double time wages for the work they performed and deducted wages for 30-minute meal periods that never took place.

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

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));

3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
4. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code § 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalties set by California Labor Code § 1197.1).

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

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.

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

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest

period time shall be counted as hours worked for which there shall be no deduction from wages.

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

In relevant part, California Labor Code § 512 states:

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

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

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

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.

...

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

California Labor Code § 226.7 states:

- (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, 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.

AMS has intentionally failed to provide all rest breaks and/or meal periods free from any work duties to Larraburu and Aggrieved Employees as required by law. Additionally, AMS required Larraburu and Aggrieved Employees to take on duty meal periods. As a result, AMS violated California Labor Code §§ 226.7, 512 and 1198.

Accordingly, Larraburu seeks civil penalties on behalf of himself and Aggrieved Employees as follows:

1. \$100 for each aggrieved employee per pay period in which initial violations of California Labor Code § 226.7 occurred, and \$200 for each aggrieved employee per pay period in which subsequent violations of § 226.7 occurred (penalties set by California Labor Code § 2699(f)(2));

2. \$50 for each aggrieved employee per pay period in which initial violations of California Labor Code § 512 occurred in addition to an amount sufficient to recover underpaid wages, and \$100 for each aggrieved employee per pay period in which subsequent violations of § 512 occurred in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558); and
3. \$100 for each aggrieved employee per pay period in which initial violations of California Labor Code § 1198 occurred, and \$200 for each aggrieved employee per pay period in which subsequent violations of § 1198 occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure to Indemnify for Expenses
(Lab. Code § 2802)

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

Section 9 of the Wage Order:

(A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term “uniform” includes wearing apparel and accessories of distinctive design or color.

At all relevant times during the applicable limitations period, AMS required Larraburu and Aggrieved Employees to travel in personal vehicles without complete reimbursement for mileage and other travel expenses. AMS failed to fully indemnify Larraburu and Aggrieved Employees for these expenses both during and after their employment ended.

Accordingly, Larraburu seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$100 for each aggrieved employee pay period in which

initial violations of California Labor Code § 2802 occurred, and \$200 for each aggrieved employee per pay period in which subsequent violations of § 2802 occurred (penalties set by California Labor Code § 2699(f)(2)).

Unlawful Collection of Wages
(Lab. Code § 221)

In relevant part, California Labor Code § 221 states:

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.

At all relevant times during the applicable limitations period, AMS automatically deducted 30 minutes of work time from the time records of Larraburu even when they had not taken a duty-free 30-minute meal period. As a result, AMS collected and/or received part of its employees' wages in violation of California Labor Code § 221.

Accordingly, Larraburu seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of California Labor Code § 221 (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 (penalties set by California Labor Code § 225.5).

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

California Labor Code § 226 require employers to furnish employees with accurate itemized written wage statements 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 sex 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.

As alleged herein, AMS failed to provide Larraburu and Aggrieved Employees all wages owed including, but not limited to, all premium wages for all rest breaks and/or meal periods that were not provided and all wages that were unlawfully deducted from their paychecks. AMS failed to pay Larraburu and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, regular, overtime, and doubletime pay for unrecorded work and for 30-minute periods arbitrarily deducted from daily recorded work hours. With regard to such wages, unrecorded hours, and hours deducted from payroll, AMS failed to properly and accurately itemize each employees' gross wages earned, net wages earned, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. As a result, AMS has violated California Labor Code § 226.

Accordingly, Larraburu seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation

of California Labor Code § 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by California Labor Code § 226.3).

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

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) 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.

As alleged herein, AMS failed to provide Larraburu and Aggrieved Employees all wages owed including, but not limited to, all premium wages for all rest breaks and/or meal periods that were not provided and all wages that were unlawfully deducted from their paychecks. AMS failed to pay Larraburu and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, regular, overtime, and doubletime pay for unrecorded work and for 30-minute periods arbitrarily deducted from daily recorded work hours. As a result, AMS failed to pay Larraburu and Aggrieved Employees all wages within the time periods set by California Labor Code § 204. As a result, AMS has violated California Labor Code § 204.

Accordingly, Larraburu seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$100 for each aggrieved employee per pay period in which initial violations of California Labor Code § 204 occurred, and \$200 for each aggrieved employee, per pay period in which subsequent violations of § 204 occurred (penalties set by Labor Code § 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 202 and 203)

Under California Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under California Labor Code § 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 seventy-two (72) hours thereafter, unless the employee has given seventy-two (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 seventy-two (72) hour notice shall be entitled to receive payment by mail if he or she so requests at a designated mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within seventy-two (72) hours of the notice of quitting. *Id.*

Under California Labor Code § 203, if an employer willfully fails to timely pay in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

As alleged herein, AMS failed to provide Larraburu and Aggrieved Employees all wages owed including, but not limited to, all premium wages for all rest breaks and/or meal periods that were not provided and all wages that were unlawfully deducted from their paychecks. AMS failed to pay Larraburu and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, regular, overtime, and doubletime pay for unrecorded work and for 30-minute periods arbitrarily deducted from daily recorded work hours. As a result, AMS failed to pay Larraburu and Aggrieved Employees all wages within the time periods set by California Labor Code §§ 201, 202 and 203. As a result, AMS has violated California Labor Code §§ 201, 202 and 203.

Accordingly, Larraburu seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$100 for each aggrieved employee per pay period in which initial violations of California Labor Code §§ 201, 202 and 203 occurred, and \$200 for each aggrieved employee per pay period in which subsequent violations occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174, 1174.5, 1198)

Labor Code § 1174, which 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 § 1174.5 states:

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

Section 7 of Wage Order 4 states:

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

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

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

AMS failed to pay Larraburu and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, regular, overtime, and doubletime pay for unrecorded work and for 30-minute periods arbitrarily

deducted from daily recorded work hours. With regard to such wages, unrecorded hours worked, and deducted hours, AMS has willfully failed to maintain the records of them required by § 1174 and the Wage Order, including but not limited to, the total premium wages earned for missed meal and rest periods. Accordingly, Larraburu seeks civil penalties from AMS on behalf of himself and other Aggrieved Employees as follows:

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

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code section 2699, subdivision (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: Luis Larraburu
Walter Haines, Esq.

American Merchandising Specialists, Inc. dba AMS Retail Solutions
c/o John L. Barber, Esq.
Efthalia S. Rofos, Esq.
Lewis Brisbois Bisgaard & Smith LLP
650 Town Center Drive, Suite 1400
Costa Mesa, CA 9262
John.barber@lewisbrisbois.com
Thalia.rofos@lewisbrisbois.com

American Merchandising Specialists, Inc. dba AMS Retail Solutions
c/o Armine Antonyan, Esq.
Lewis Brisbois Bisgaard & Smith LLP
633 West 5th Street, Suite 4000
Los Angeles, CA 90071
Armine.antonyan@lewisbrisbois.com

EXHIBIT 3

DAVID G. SPIVAK (SBN 179684)

david@spivaklaw.com

THE SPIVAK LAW FIRM

16530 Ventura Blvd., Ste. 203

Encino, CA 91436

Telephone (213) 725-9094

Facsimile (213) 634-2485

WALTER HAINES (SBN 71075)

whaines@uelglaw.com

UNITED EMPLOYEES LAW GROUP

5500 Bolsa Ave, Suite 201

Huntington Beach, CA 92649

Telephone: (562) 256-1047

Facsimile: (562) 256-1006

Attorneys for Plaintiff,

LUIS LARRABURU, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

(UNLIMITED JURISDICTION)

LUIS LARRABURU, on behalf of himself
and all others similarly situated,

Plaintiff(s).

vs.

AMERICAN MERCHANDISING
SPECIALISTS, INC., a North Carolina
corporation doing business as AMS Retail
Solutions; and DOES 1 through 50,
inclusive,

Defendant(s).

Case No.:

21STCV17704

CLASS ACTION

COMPLAINT FOR:

1. Failure to Pay Employees for All Hours Worked at Correct Rates of Pay (Lab. Code §§ 221, 510, 1194, 1197, and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 226.7 and 1198);
3. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, and 1198);
4. Failure to Indemnify (Cal. Lab. Code §§ 1198 and 2802);
5. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*); and
6. Waiting Time Penalties (Lab. Code §§ 201-203)

JURY TRIAL DEMANDED



SPIVAK LAW

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

Larraburu v. American Merchandising Specialists, Inc., et al.

Class Action Complaint

1 Plaintiff Luis Larraburu (hereafter “Plaintiff”), on behalf of himself and all others
2 similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action based on alleged violations of the California
5 Labor Code, Industrial Welfare Commission Order No. 4-2001 (hereafter “the Wage Order”),
6 the Business and Professions Code against defendants AMERICAN MERCHANDISING
7 SPECIALISTS, INC., a North Carolina corporation, and DOES 1-50, inclusive (hereafter
8 collectively referred to as “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 him and other similarly situated current and former hourly, non-exempt employees in California
11 for unpaid wages and other related relief. These claims are based on Defendants’ alleged
12 failures to (1) pay all wages for all hours worked at the correct rates of pay, (2) provide all rest
13 breaks required by California law, (3) provide all meal periods required by California law, (4)
14 indemnify for business expenses, (5) fairly compete, and (6) timely pay final wages upon
15 termination of employment. Accordingly, Plaintiff now seeks to recover unpaid wages and
16 related relief through this class action.

17 **JURISDICTION AND VENUE**

18 3. This Court has subject matter jurisdiction because the aggregate claims of
19 Plaintiff and class members, inclusive of all relief, place more than \$25,000 in controversy.

20 4. There is no basis for federal question subject matter jurisdiction in this case.
21 Specifically, Plaintiff asserts claims on behalf of himself and class members that solely arise
22 under California law, rather than federal law.

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

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

29 **PARTIES**

30 7. Defendants employed Plaintiff as an hourly, non-exempt field marketing
representative from approximately October of 2019 to approximately January of 2020, at which



1 time his employment ended. Plaintiff worked for Defendants out of their offices in Los Angeles,
2 California and throughout the State of California. At all relevant times, Plaintiff was an
3 “employee” within the meaning of Title 8 California Code of Regulations Section 11050 and an
4 “aggrieved employee” within the meaning of Labor Code Section 2699(c).

5 8. Defendant AMERICAN MERCHANDISING SPECIALISTS, INC. is a
6 corporation organized and existing under the laws of North Carolina and also a citizen of
7 California based on Plaintiff’s information and belief. At all relevant times, it did business in
8 California as AMS Retails Solutions.

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

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

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

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

FACTUAL ALLEGATIONS

13. In or about October of 2019, Defendants first employed Plaintiff to work as an
hourly, nonexempt field marketing representative to drive major appliance sales by providing



1 brand advocacy, training and product knowledge to personnel and managers. Defendants
2 expected him and others in comparable positions to visit their customers to promote vendor
3 products, perform sales/support services and maintain product displays in assigned stores,
4 among other things. Defendants compensated Plaintiff at an hourly rate of pay of \$20.
5 Defendants employed Plaintiff continuously from his date of hire through January of 2020.
6 Defendants at all times issued wages to Plaintiff and the Class Members on a biweekly basis.
7 Defendants employed Plaintiff continuously in this capacity until his employment ended on
8 January of 2020.

9 14. At all relevant times, Defendants required Plaintiff and the Class Members to
10 work more than eight hours per day and 40 hours per week. However, they prohibited them
11 from recording sufficient hours of daily work for payroll purposes to cover all of his worktime.
12 Defendants knew that Plaintiff and the Class Members could not complete all of their required
13 tasks within the hours Defendant allowed them to record. At all relevant times, Defendants
14 required Plaintiff and the Class Members to travel in their personal automotive vehicles between
15 customers locations each day, though they did not compensate them for their travel time and did
16 not reimburse them for all of the mileage they incurred. At all relevant times, Defendants
17 required Plaintiff and the Class Members to remain “on-call” when they were not on work shifts
18 and to respond immediately to work-related calls and travel to customers as necessary in
19 response. However, they did not compensate them for such time on-call, even if such time
20 involved several phone calls with Defendants’ customers.

21 15. At relevant times within the applicable limitations period, Defendants failed to
22 provide Plaintiff and the Class Members with an off-duty, 30-minute meal period before the end
23 of the fifth hour worked or with a second off-duty, 30-minute meal period before the end of the
24 tenth hour worked. The work Defendants expected Plaintiff and the Class Members to complete
25 each day prevented them from taking such meal periods. Defendants automatically deducted 30
26 minutes of daily work time from the time records of Plaintiff and the Class Members regardless
27 of whether they were able to take a meal period.

28 16. Defendants further failed to authorize and permit Plaintiff and the Class
Members to take ten minute rest breaks every four hours or major fraction thereof. It was
impossible for Plaintiff and the Class Members to take rest periods because Defendants
expected them to monitor their mobile communication devices at all times. Additionally, the



1 work Defendants expected Plaintiff and the Class Members to complete each day prevented
2 them from taking such rest periods. Defendants did not request an exemption from California's
3 rest period law from the Division of Labor Standards Enforcement. Neither Plaintiff nor any of
4 the Class Members entered into a written waiver of their second meal period with Defendants.
5 Defendants also failed to pay Plaintiff and the Class Members premium wages for days on
6 which they failed to provide them with all timely meal and rest periods.

7 17. Plaintiff alleges that as a result of Defendants' systematic payroll policies and
8 practices, Plaintiff and other class members were:

9 A. Not compensated for all hours worked including all overtime hours
10 worked at the correct rates of pay;

11 B. Not provided with all rest breaks and timely meal periods;

12 C. Not paid one hour's pay for each workday in which Defendants failed to
13 provide them one or more rest breaks;

14 D. Not paid one hour's pay for each workday in which Defendants failed to
15 provide them with one or more timely meal periods; and

16 E. Not timely paid all earned and unpaid wages during their employment
17 with Defendants and at the time such employment ended.

18 **CLASS ACTION ALLEGATIONS**

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

24 19. **Class Definition:** The Class is defined as follows: All persons Defendants
25 employed in California as hourly, non-exempt employees, including field marketing
26 representatives and employees in comparable positions, at any time during the period beginning
27 four years prior to the filing of this action and ending on the date that final judgment is entered
28 in this action.

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



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

1 21. **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 law.

5 22. **Commonality and Predominance:** Common questions of law and fact exist as
6 to 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 to the class for all hours
9 worked including all overtime hours worked at the correct rates of pay?

10 B. Whether Defendants failed to provide the class with all rest breaks as
11 required by section 11 of the Wage Order?

12 C. Whether Defendants failed to provide the class with all meal periods as
13 required by section 10 of the Wage Order?

14 D. Whether Defendants failed to indemnify class members for expenses
15 incurred at Defendants' direction?

16 E. Whether Defendants engaged in unfair competition within the meaning of
17 Business and Professions Code §§ 17200, *et seq.*, with respect to the class?

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

20 G. Whether there is money or property that Defendants may have acquired
21 from class members through alleged Labor Code violations?

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 I. Whether class members are entitled to liquidated damages?

25 J. Whether class members are entitled to prejudgment interest?

26 K. Whether class members are entitled to attorneys' fees?

27 23. **Typicality:** Plaintiff's claims are typical of the other class members' claims.
28 Plaintiff is informed and believes and thereon alleges that Defendants have a policy, practice or
a lack of a policy which resulted in Defendants failing to comply with the California Labor
Code, and the Business and Professions Code as alleged herein.

 24. **Adequacy of Class Representative:** Plaintiff is an adequate class representative



1 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of
2 absent class members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of
3 class members. Plaintiff will fairly and adequately represent and protect the interests of class
4 members.

5 25. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in
6 that they have no known conflicts of interest with Plaintiff or absent class members, are
7 experienced in wage and hour class action litigation and are dedicated to vigorously prosecuting
8 this action on behalf of Plaintiff and absent class members.

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

20 **FIRST CAUSE OF ACTION**

21 **FAILURE TO PAY ALL WAGES FOR ALL HOURS WORKED AT THE CORRECT** 22 **RATES OF PAY**

23 **(Lab. Code §§ 221, 510, 1194, 1197, and 1198)**

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

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

26 28. At all relevant times, Plaintiff and the class have been employees of Defendants
27 and entitled to the benefits and protections of the California Labor Code §§ 221, 510, 1194,
28 1197, and 1198 and the Wage Order.

29. Section 2 of the applicable Wage Order defines "hours worked" as "the time
during which an employee is subject to the control of an employer, and includes all the time the



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

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

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

31. Section 3 of the applicable Wage Order states

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 1/2) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 1/2) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(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.

32. While the provisions of Sections 3 through 12 of Wage Order 4 do not apply to persons employed in administrative or executive positions, sections (1)(A)(1)(f) and (1)(A)(2)(g) of the Wage Order require that the employer pay such employees a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment. Full-time employment is defined in Labor Code Section 515(c) as 40 hours per week.



1 Additionally, an employee is paid on a “salary basis” if:

2 [T]he employee regularly receives each pay period on a weekly, or less frequent
3 basis, a predetermined amount constituting all or part of the employee’s
4 compensation, which amount is not subject to reduction because of variations in
5 the quality or quantity of the work performed. Subject to the exceptions provided
6 in paragraph (b) of this section, an exempt employee must receive the full salary
7 for any week in which the employee performs any work without regard to the
8 number of days or hours worked. Exempt employees need not be paid for any
9 workweek in which they perform no work. An employee is not paid on a salary
basis if deductions from the employee’s predetermined compensation are made
for absences occasioned by the employer or by the operating requirements of the
business. If the employee is ready, willing and able to work, deductions may not
be made for time when work is not available.

10 29 C.F.R. § 541.602(a); *Negri v. Koning & Associates* (2013) 216 Cal.App.4th 392, 398.
11 Moreover, deductions for less than a full day’s absence are not permitted unless such deductions
12 are made from an employee’s vacation leave bank. 29 C.F.R. § 541.602(a); *Conley v. Pacific*
13 *Gas and Elec. Co.* (2005) 131 Cal.App.4th 260, 267; see *Rhea v. General Atomics* (2014) 227
14 Cal.App.4th 1560, 1575.

15 33. Labor Code § 510 states

16 Eight hours of labor constitutes a day’s work. Any work in excess of eight
17 hours in one workday and any work in excess of 40 hours in any one
18 workweek and the first eight hours worked on the seventh day of work in
19 any one workweek shall be compensated at the rate of no less than one
20 and one-half times the regular rate of pay for an employee. Any work in
21 excess of 12 hours in one day shall be compensated at the rate of no less
22 than twice the regular rate of pay for an employee. In addition, any work
23 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.

24 34. Labor Code § 1194 invalidates any agreement between an employer and an
25 employee to work for less than the minimum or overtime wage required under the applicable
26 Wage Order.

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



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

3 37. Labor Code § 221 prohibits an employer from taking deductions from an
4 employee's wages without the employee's express written consent or other legal authority for
5 doing so.

6 38. Plaintiff is informed and believes that, at all relevant times, Defendants have
7 applied centrally devised policies and practices to him and class members with respect to
8 working conditions and compensation arrangements.

9 39. At all relevant times, Plaintiff and the other class members worked over eight (8)
10 hours in one workday and/or over 40 hours in a workweek. Defendants, however, failed to pay
11 them for such hours at the legally required rates for overtime work in California.

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

16 41. Pursuant to Labor Code § 1194, Plaintiff, on behalf of himself and class
17 members, seek to recover unpaid minimum and overtime wages, liquidated damages in amounts
18 equal to the amounts of unpaid wages, interest thereon, and awards of reasonable costs and
19 attorneys' fees, all in amounts subject to proof.

20 ///

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PROVIDE REST PERIODS**

23 **(Lab. Code §§ 226.7 and 1198)**

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

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

26 43. At all relevant times during the applicable limitations period, Plaintiff and the
27 class have been employees of Defendants and entitled to the benefits and protections of
28 California Labor Code §§ 226.7, 1198, and the Wage Order.

 44. 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



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

longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

45. 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.

46. Pursuant to the Wage Order, Plaintiff and the class members were entitled to net rest periods of at least ten minutes for each four hours worked, or major fraction thereof.

47. Defendants failed to provide Plaintiff with all required rest periods free from any work or duties to in accordance with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at 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 class with all rest periods required by California law.

48. Defendants failed to pay Plaintiff the additional wages required by California Labor Code § 226.7 for workdays in which one or more rest periods were not provided to him. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the class with additional wages for all workdays on which one or more rest periods were not provided to them as required by California Labor Code § 226.7.

49. As a result of Defendants’ unlawful conduct, Plaintiff and the class have suffered damages in amounts subject to proof to the extent they were not paid additional wages owed for all rest periods not provided to them.

50. By reason of the above, Plaintiff and the members of the class are entitled to



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

1 premium wages for workdays in which one or more rest breaks were not provided to them
2 pursuant to California Labor Code § 226.7.

3 **THIRD CAUSE OF ACTION**

4 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

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

8 52. At all relevant times during the applicable limitations period, Plaintiff and the
9 class have been employees of Defendants and entitled to the benefits and protections of
10 California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

11 53. Labor Code § 1198 states,

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

17 54. In relevant part, Labor Code Section 512 states

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

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

24 “Meal Periods

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



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

56. 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.

57. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the class members were entitled to be provided with uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours.

58. During the relevant time period, Defendants failed to provide Plaintiff with an uninterrupted thirty (30) minute meal period free from any work or duties to for each five (5) hour work period. Defendants thus failed to provide Plaintiff with all required meal periods in accordance with California Labor Code § 512 and the Wage Order. Defendants also arbitrarily deducted 30-minutes of worktime from Plaintiff's daily time records. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the class with all meal periods required by California Labor Code § 512 and the Wage Order, and for deducting daily 30 minutes of time spent on duty from time Plaintiff and the Class Members' time records.

59. Defendants failed to pay Plaintiff the additional wages required by California Labor Code § 226.7 for all workdays in which one or more meal periods were not provided to her. Plaintiff is informed and believes and thereon alleges that, at relevant times within the



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Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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1 applicable limitations period, Defendants have maintained a policy, practice, or a lack of a
2 policy which resulted in Defendants not providing the class with additional wages for all
3 workdays on which one or more meal periods were not provided to them as required by
4 California Labor Code § 226.7.

5 60. As a result of Defendants' unlawful conduct, Plaintiff and the class have suffered
6 damages in amounts subject to proof to the extent they were not paid additional wages owed for
7 all meal periods not provided to them.

8 61. By reason of the above, Plaintiff and the members of the class are entitled to
9 premium wages for workdays in which one or more meal periods were not provided to them
10 pursuant to California Labor Code § 226.7.

11 **FOURTH CAUSE OF ACTION**

12 **FAILURE TO INDEMNIFY**

13 **(Lab. Code §§ 1198 and 2802)**

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

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

16 63. At all relevant times, Plaintiff and the class have been employees of Defendants
17 and entitled to the benefits and protections of the California Labor Code §§ 1198, 2802 and the
18 Wage Order.

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

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

24 66. Defendants did not fully reimburse Plaintiff and the Class Members for all the
25 mileage and travel expenses they incurred in the performance of their job duties and necessary
26 for such performance.

27 67. By reason of the above, Plaintiff and the members of the class are entitled to
28 reimbursement for all necessary expenditures and losses and interest due and owing to within
four years (4) of the date of the filing of the Complaint until the date of entry of judgment
pursuant to California Labor Code § 2802(b). Further, Plaintiff, on behalf of himself and the
members of the Class seek reasonable attorney's fees pursuant to Labor Code § 2802(c).



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

1 **FIFTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

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

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

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

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

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

15 71. Labor Code § 221 prohibits an employer from taking deductions from an
16 employee's wages without the employee's express written consent or other legal authority for
17 doing so.

18 72. 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 wages for all rest and meal periods not provided to them, unlawful
21 deductions, and for all overtime hours worked for which they did not receive wages at the
22 correct rates of pay. Defendants also deprived the Plaintiff and the Class Members with full and
23 adequate reimbursement for all travel and mileage expenses they incurred.

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

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

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

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the class, 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 federal and California law;
- B. An order that Plaintiff be appointed class representative;
- C. An order that counsel for Plaintiff be appointed class counsel;
- D. Unpaid wages;
- E. Declaratory relief;
- F. Injunctive and equitable relief;
- G. Liquidated damages;
- H. Restitution;
- I. Statutory penalties;
- J. All actual, consequential and incidental financial losses, including but not limited to loss of earnings;
- K. Pre-judgment and post-judgment interest;
- L. Costs of suit;
- M. Expert witness fees;
- N. Reasonable attorney's fees; and
- O. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: May 11, 2021

By: 
DAVID SPIVAK
Attorney for Plaintiff, LUIS LARRABURU,
and all others similarly situated



SPIVAK LAW

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

EXHIBIT 4

LEWIS BRISBOIS BISGAARD & SMITH LLP

JOHN L. BARBER, SB# 160317

E-Mail: John.Barber@lewisbrisbois.com

EFTHALIA S. ROFOS, SB# 309065

E-Mail: Thalia.Rofos@lewisbrisbois.com

650 Town Center Drive, Suite 1400

Costa Mesa, California 92626

Telephone: 714.545.9200

Facsimile: 714.850.1030

LEWIS BRISBOIS BISGAARD & SMITH LLP

ARMINE ANTONYAN, SB# 327220

E-Mail: Armine.Antonyan@lewisbrisbois.com

633 West 5th Street, Suite 4000

Los Angeles, California 90071

Telephone: 213.250.1800

Facsimile: 213.250.7900

Attorneys for Defendant AMERICAN
MERCHANDISING SPECIALISTS,
INC., a North Carolina corporation doing
business as AMS Retail Solutions

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

LUIS LARRABURU, on behalf of
himself and all others similarly
situated,

Plaintiff,

vs.

AMERICAN MERCHANDISING
SPECIALISTS, INC., a North Carolina
corporation doing business as AMS
Retail Solutions; and DOES 1 through
50, inclusive,

Defendants.

Case No. 2:21-cv-06184-RGK-PD
(LASC Case No. 21STCV17704)

**DEFENDANT AMERICAN
MERCHANDISING SPECIALISTS,
INC.'S ANSWER TO PLAINTIFF'S
CLASS ACTION COMPLAINT**

Assigned for All Purposes to:
Hon. Christina A. Snyder, Judge

Action Filed: May 11, 2021
Trial Date: None Set

Defendant AMERICAN MERCHANDISING SPECIALISTS, INC.
("Defendant" or "AMS") answers Plaintiff LUIS LARRABURU's ("Plaintiff") Class
Action Complaint ("Complaint") as follows:

1. Responding to paragraph 1, AMS admits that plaintiff brought a class

1 action based on alleged violations of the California Labor Code, Industrial Welfare
2 Commission Order No. 4-2001, the Business and Professions Code against
3 Defendant. AMS denies that plaintiff's claims have merit. Except as expressly
4 admitted, AMS denies the remaining averments.

5 2. Responding to paragraph 2, AMS admits that plaintiff alleges that
6 Defendant is liable to him and other similarly situated current and former hourly,
7 non-exempt employees in California for unpaid wages and other related relief. AMS
8 denies that plaintiff's claims have merit. Except as expressly admitted, AMS denies
9 the remaining averments.

10 JURISDICTION AND VENUE

11 3. Responding to paragraph 3, AMS denies these averments.

12 4. Responding to paragraph 4, AMS admits that Plaintiff asserts claims on
13 behalf of himself and class members that solely arise under California law. AMS
14 denies that class action treatment is appropriate. Except as expressly admitted, AMS
15 denies the remaining averments.

16 5. Responding to paragraph 5, upon information and belief, AMS denies
17 these averments.

18 6. Responding to paragraph 6, upon information and belief, AMS denies
19 these averments.

20 PARTIES

21 7. Responding to paragraph 7, AMS admits that Plaintiff worked for AMS
22 as a Field Marketing Representative. Except as expressly admitted, AMS denies the
23 remaining averments.

24 8. Responding to paragraph 8, AMS admits that AMS is a corporation
25 organized and existing under the laws of North Carolina. Except as expressly
26 admitted, AMS denies the remaining averments.

27 9. Responding to paragraph 9, upon information and belief, AMS denies
28 these averments.

10. Responding to paragraph 10, upon information and belief, AMS denies these averments.

11. Responding to paragraph 11, upon information and belief, AMS denies these averments.

12. Responding to paragraph 12, upon information and belief, AMS denies these averments.

FACTUAL ALLEGATIONS

13. Responding to paragraph 13, AMS admits that Plaintiff worked for AMS as a Field Marketing Representative. Except as expressly admitted, AMS denies the remaining averments.

14. Responding to paragraph 14, upon information and belief, AMS denies these averments.

15. Responding to paragraph 15, upon information and belief, AMS denies these averments.

16. Responding to paragraph 16, upon information and belief, AMS denies these averments.

17. Responding to paragraph 17, upon information and belief, AMS denies these averments.

CLASS ACTION ALLEGATIONS

18. Responding to paragraph 18, AMS admits that Plaintiff brought a class action suit. AMS denies that class action treatment is appropriate. Except as expressly admitted, AMS denies the remaining averments.

19. Responding to paragraph 19, AMS admits that plaintiff purports to bring this action as a class action on behalf of himself and a Class as defined in paragraph 19. AMS denies that this action is appropriate for a class action. Except as expressly admitted, AMS denies the remaining averments.

20. Responding to paragraph 20, AMS admits that in paragraph 20 Plaintiff made a reservation of rights. Except as expressly admitted, AMS denies the

remaining averments.

21. Responding to paragraph 21, upon information and belief, AMS denies these averments.

22. Responding to paragraph 22, the purported “common questions of law or fact” are conclusions of law, ambiguous and argumentative as framed and state questions that would not be “common” to all purported class members. Except as expressly admitted, AMS denies the remaining averments.

23. Responding to paragraph 23, upon information and belief, AMS denies these averments.

24. Responding to paragraph 24, AMS has no information or belief sufficient to admit or deny that plaintiff will fairly and adequately represent the interests of the members of the purported class, and denies this averment on this basis. AMS has no information or belief sufficient to admit or deny that plaintiff's interests are the same as, and not in conflict with, the other members of the purported class, and denies this averment on this basis. Except as expressly admitted, AMS denies the remaining averments.

25. Responding to paragraph 25, AMS admits that at least some of plaintiffs several counsel are experienced in class action and complex litigation. Except as expressly admitted, AMS denies the remaining averments.

26. Responding to paragraph 26, AMS denies that this action is appropriate for a class action. Except as expressly admitted, AMS denies the remaining averments.

FIRST CAUSE OF ACTION

27. In answering Paragraph 27 of the Complaint, AMS states that this paragraph contains a recital of the allegations contained in each and every foregoing paragraph. Based on the foregoing, AMS incorporates by reference herein its response to each and every foregoing paragraph.

28. Responding to paragraph 28, AMS has no information or belief

1 sufficient to admit or deny that plaintiff and purported class members have been
2 employees of AMS during the applicable limitations period, and denies this averment
3 on this basis. Except as expressly admitted, AMS denies the remaining averments.

4 29. In answering Paragraph 29 of the Complaint, AMS states that this
5 paragraph is a conclusion of law to which no response is required. To the extent that
6 a response is required, Defendant denies each of the allegations contained therein.

7 30. In answering Paragraph 30 of the Complaint, AMS states that this
8 paragraph is a conclusion of law to which no response is required. To the extent that
9 a response is required, AMS denies each of the allegations contained therein.

10 31. In answering Paragraph 31 of the Complaint, AMS states that this
11 paragraph is a conclusion of law to which no response is required. To the extent that
12 a response is required, AMS denies each of the allegations contained therein.

13 32. In answering Paragraph 32 of the Complaint, AMS states that this
14 paragraph is a conclusion of law to which no response is required. To the extent that
15 a response is required, AMS denies each of the allegations contained therein.

16 33. In answering Paragraph 33 of the Complaint, AMS states that this
17 paragraph is a conclusion of law to which no response is required. To the extent that
18 a response is required, AMS denies each of the allegations contained therein.

19 34. In answering Paragraph 34 of the Complaint, AMS states that this
20 paragraph is a conclusion of law to which no response is required. To the extent that
21 a response is required, AMS denies each of the allegations contained therein.

22 35. In answering Paragraph 35 of the Complaint, AMS states that this
23 paragraph is a conclusion of law to which no response is required. To the extent that
24 a response is required, AMS denies each of the allegations contained therein.

25 36. In answering Paragraph 36 of the Complaint, AMS states that this
26 paragraph is a conclusion of law to which no response is required. To the extent that
27 a response is required, AMS denies each of the allegations contained therein.

28 37. In answering Paragraph 37 of the Complaint, AMS states that this

1 paragraph is a conclusion of law to which no response is required. To the extent that
2 a response is required, AMS denies each of the allegations contained therein.

3 38. Responding to paragraph 38, upon information and belief, AMS denies
4 these averments.

5 39. Responding to paragraph 39, upon information and belief, AMS denies
6 these averments.

7 40. Responding to paragraph 40, upon information and belief, AMS denies
8 these averments.

9 41. Responding to paragraph 41, AMS admits that plaintiff, on behalf of
10 himself and class members, seek to recover unpaid minimum and overtime wages,
11 liquidated damages in amounts equal to the amounts of unpaid wages, interest
12 thereon, and awards of reasonable costs and attorneys' fees. AMS denies that plaintiff
13 is entitled to those remedies. Except as expressly admitted, AMS denies the
14 remaining averments.

15 SECOND CAUSE OF ACTION

16 42. In answering Paragraph 42 of the Complaint, AMS states that this
17 paragraph contains a recital of the allegations contained in each and every foregoing
18 paragraph. Based on the foregoing, AMS incorporates by reference herein its
19 response to each and every foregoing paragraph.

20 43. Responding to paragraph 43, AMS has no information or belief
21 sufficient to admit or deny that plaintiff and purported class members have been
22 employees of AMS during the applicable limitations period, and denies this averment
23 on this basis. Except as expressly admitted, AMS denies the remaining averments.

24 44. In answering Paragraph 44 of the Complaint, AMS states that this
25 paragraph is a conclusion of law to which no response is required. To the extent that
26 a response is required, AMS denies each of the allegations contained therein.

27 45. In answering Paragraph 45 of the Complaint, AMS states that this
28 paragraph is a conclusion of law to which no response is required. To the extent that

1 a response is required, AMS denies each of the allegations contained therein.

2 46. Responding to paragraph 46, upon information and belief, AMS denies
3 these averments.

4 47. Responding to paragraph 47, upon information and belief, AMS denies
5 these averments.

6 48. Responding to paragraph 48, upon information and belief, AMS denies
7 these averments.

8 49. Responding to paragraph 49, upon information and belief, AMS denies
9 these averments.

10 50. Responding to paragraph 50, upon information and belief, AMS denies
11 these averments.

12 **THIRD CAUSE OF ACTION**

13 51. In answering Paragraph 51 of the Complaint, AMS states that this
14 paragraph contains a recital of the allegations contained in each and every foregoing
15 paragraph. Based on the foregoing, AMS incorporates by reference herein its
16 response to each and every foregoing paragraph.

17 52. Responding to paragraph 52, AMS has no information or belief
18 sufficient to admit or deny that plaintiff and purported class members have been
19 employees of AMS during the applicable limitations period, and denies this averment
20 on this basis. Except as expressly admitted, AMS denies the remaining averments.

21 53. In answering Paragraph 53 of the Complaint, AMS states that this
22 paragraph is a conclusion of law to which no response is required. To the extent that
23 a response is required, AMS denies each of the allegations contained therein.

24 54. In answering Paragraph 54 of the Complaint, AMS states that this
25 paragraph is a conclusion of law to which no response is required. To the extent that
26 a response is required, AMS denies each of the allegations contained therein.

27 55. In answering Paragraph 55 of the Complaint, AMS states that this
28 paragraph is a conclusion of law to which no response is required. To the extent that

1 a response is required, AMS denies each of the allegations contained therein.

2 56. In answering Paragraph 56 of the Complaint, AMS states that this
3 paragraph is a conclusion of law to which no response is required. To the extent that
4 a response is required, AMS denies each of the allegations contained therein.

5 57. Responding to paragraph 57, upon information and belief, AMS denies
6 these averments.

7 58. Responding to paragraph 58, upon information and belief, AMS denies
8 these averments.

9 59. Responding to paragraph 59, upon information and belief, AMS denies
10 these averments.

11 60. Responding to paragraph 60, upon information and belief, AMS denies
12 these averments.

13 61. Responding to paragraph 61, upon information and belief, AMS denies
14 these averments.

15 **FOURTH CAUSE OF ACTION**

16 62. In answering Paragraph 62 of the Complaint, AMS states that this
17 paragraph contains a recital of the allegations contained in each and every foregoing
18 paragraph. Based on the foregoing, AMS incorporates by reference herein its
19 response to each and every foregoing paragraph.

20 63. Responding to paragraph 52, AMS has no information or belief
21 sufficient to admit or deny that plaintiff and purported class members have been
22 employees of AMS during the applicable limitations period, and denies this averment
23 on this basis. Except as expressly admitted, AMS denies the remaining averments.

24 64. In answering Paragraph 64 of the Complaint, AMS states that this
25 paragraph is a conclusion of law to which no response is required. To the extent that
26 a response is required, AMS denies each of the allegations contained therein.

27 65. In answering Paragraph 65 of the Complaint, AMS states that this
28 paragraph is a conclusion of law to which no response is required. To the extent that

1 a response is required, AMS denies each of the allegations contained therein.

2 66. Responding to paragraph 66, upon information and belief, AMS denies
3 these averments.

4 67. Responding to paragraph 67, upon information and belief, AMS denies
5 these averments.

6 **FIFTH CAUSE OF ACTION**

7 68. In answering Paragraph 68 of the Complaint, AMS states that this
8 paragraph contains a recital of the allegations contained in each and every foregoing
9 paragraph. Based on the foregoing, AMS incorporates by reference herein its
10 response to each and every foregoing paragraph.

11 69. Responding to paragraph 69, AMS has no information or belief
12 sufficient to admit or deny that plaintiff and purported class members have been
13 employees of AMS during the applicable limitations period, and denies this averment
14 on this basis. Except as expressly admitted, AMS denies the remaining averments.

15 70. Responding to paragraph 70, upon information and belief, AMS denies
16 these averments.

17 71. In answering Paragraph 71 of the Complaint, AMS states that this
18 paragraph is a conclusion of law to which no response is required. To the extent that
19 a response is required, AMS denies each of the allegations contained therein.

20 72. Responding to paragraph 72, upon information and belief, AMS denies
21 these averments.

22 73. Responding to paragraph 73, upon information and belief, AMS denies
23 these averments.

24 74. Responding to paragraph 74, upon information and belief, AMS denies
25 these averments.

26 **SIXTH CAUSE OF ACTION**

27 75. In answering Paragraph 75 of the Complaint, AMS states that this
28 paragraph contains a recital of the allegations contained in each and every foregoing

1 paragraph. Based on the foregoing, AMS incorporates by reference herein its
2 response to each and every foregoing paragraph.

3 76. Responding to paragraph 76, AMS has no information or belief
4 sufficient to admit or deny that plaintiff and purported class members have been
5 employees of AMS during the applicable limitations period, and denies this averment
6 on this basis. Except as expressly admitted, AMS denies the remaining averments.

7 77. In answering Paragraph 77 of the Complaint, AMS states that this
8 paragraph is a conclusion of law to which no response is required. To the extent that
9 a response is required, AMS denies each of the allegations contained therein.

10 78. In answering Paragraph 78 of the Complaint, AMS states that this
11 paragraph is a conclusion of law to which no response is required. To the extent that
12 a response is required, AMS denies each of the allegations contained therein.

13 79. Responding to paragraph 79, upon information and belief, AMS denies
14 these averments.

15 80. In answering Paragraph 80 of the Complaint, AMS states that this
16 paragraph is a conclusion of law to which no response is required. To the extent that
17 a response is required, AMS denies each of the allegations contained therein.

18 81. Responding to paragraph 81, upon information and belief, AMS denies
19 these averments.

20 82. Responding to paragraph 82, AMS admits that plaintiff seeks waiting
21 time penalties on behalf of himself and the class members. AMS denies that plaintiff
22 is entitled to those remedies. Except as expressly admitted, AMS denies the
23 remaining averments.

24 **PRAYER FOR RELIEF**

25 Defendant need not address Plaintiff's prayer for relief. To the extent that any
26 averment in Plaintiff's prayer is deemed to require a response, Defendant denies each
27 and every allegation contained therein.

28 / / /

1 **AFFIRMATIVE DEFENSES**

2 Defendant has not completed its investigation of the facts of this case, has not
3 completed discovery in this matter, and has not completed its preparation for trial.
4 The defenses stated herein are based on Defendant's knowledge, information, and
5 belief at this time. Defendant specifically reserves the right to modify, amend, or
6 supplement any defense contained herein at any time. Without conceding that it bears
7 the burden of proof or persuasion as to any one of them, Defendant asserts the
8 following separate affirmative defenses to the Complaint.

9 **FIRST AFFIRMATIVE DEFENSE**

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

11 1. The Complaint fails to state facts sufficient to constitute a cause of
12 action against Defendant.

13 **SECOND AFFIRMATIVE DEFENSE**

14 **(Reasonableness and Good Faith)**

15 2. Defendant and its agents acted reasonably and in good faith at all times
16 material herein, based on all relevant facts and circumstances known by them at the
17 time they so acted. Accordingly, Plaintiff, and those of the putative class members,
18 are barred from any recovery in this action.

19 **THIRD AFFIRMATIVE DEFENSE**

20 **(Rest Period Law)**

21 3. Pursuant to the applicable Wage Order and California *Labor Code*
22 sections, Defendant "authorized and permitted" Plaintiff, and those of the putative
23 class members, to take all uninterrupted rest periods.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 **(Meal Period Law)**

26 4. Pursuant to the applicable Wage Order and California *Labor Code*
27 sections, Defendant "provided" Plaintiff, and those of the putative class members,
28 with the ability to take all uninterrupted meal periods.

1 **FIFTH AFFIRMATIVE DEFENSE**

2 **(Labor Code Section 226)**

3 5. Plaintiff and the putative class members did not suffer an actual injury
4 and therefore cannot recover damages or statutory penalties under California *Labor*
5 *Code* section 226.

6 **SIXTH AFFIRMATIVE DEFENSE**

7 **(No Overtime Wages Owed)**

8 6. Defendant alleges that Plaintiff's claims, and those of the putative class
9 members, for unpaid overtime or unpaid wages are barred because Defendant timely
10 paid all wages owed to its employees.

11 **SEVENTH AFFIRMATIVE DEFENSE**

12 **(No Waiting Time Penalties)**

13 7. Plaintiff's claims, and those of the putative class members, for "waiting
14 time penalties" under California *Labor Code* sections 201 and 202 for untimely
15 payment of wages are barred because Defendant did not intentionally or willfully
16 withhold payment of wages.

17 **EIGHTH AFFIRMATIVE DEFENSE**

18 **(Reimbursement)**

19 8. Plaintiff's claims, and those of the putative class members, for
20 reimbursement of business expenses are barred because Defendant lawfully
21 compensated Plaintiff for all work-related expenses.

22 **NINTH AFFIRMATIVE DEFENSE**

23 **(Inadequate Class Representative)**

24 9. Defendant alleges that Plaintiff's claims, and those of the putative class
25 members, are barred, in whole or in part, because Plaintiff is an inadequate class
26 representative to the claims asserted.

27 ///

28 ///

1 **TENTH AFFIRMATIVE DEFENSE**

2 **(Uncertifiable Putative Class)**

3 10. Defendant alleges that Plaintiff's claims, and those of the putative class
4 members, are barred because Defendant has not engaged in actions of the kind
5 alleged that are generally applicable to the putative class members, and as such, this
6 action is not properly maintainable and/or does not qualify for certification under the
7 requirements for a class action.

8 **ELEVENTH AFFIRMATIVE DEFENSE**

9 **(No Common Questions of Law and Fact)**

10 11. Defendant alleges that questions of law or fact common to the putative
11 class members do not predominate over questions affecting individual members of
12 the proposed class. Therefore, this action is not appropriate for certification as a
13 class action.

14 **TWELFTH AFFIRMATIVE DEFENSE**

15 **(No Typicality)**

16 12. Defendant alleges that Plaintiff's claims, and those of the putative class
17 members, are barred, in whole or in part, because Plaintiff cannot establish that their
18 claims are typical of those of the class and therefore the Complaint cannot proceed
19 as a class action.

20 **THIRTEENTH AFFIRMATIVE DEFENSE**

21 **(No Numerosity)**

22 13. Defendant alleges that Plaintiff's claims, and those of the putative class
23 members, are barred, in whole or in part, because Plaintiff cannot establish that
24 members of the class are so numerous that joinder is impracticable.

25 **FOURTEENTH AFFIRMATIVE DEFENSE**

26 **(No Community of Interest)**

27 14. Defendant alleges that the class allegations in the Complaint are
28 improper as a matter of law because there is no community of interest in the claims

1 asserted by Plaintiff and those of the putative class members.

2 **FIFTEENTH AFFIRMATIVE DEFENSE**

3 **(Actions Adverse to Class Members)**

4 15. Defendant alleges that Plaintiff's claims are barred and/or reduced by
5 virtue of Plaintiff and his attorneys having taken actions adverse and inimical to the
6 interests of the putative class members, and for their own benefit, and by purporting
7 to act when Plaintiff has and had an irreconcilable conflict of interest with the putative
8 class members, rendering any judgment, award or settlement void or voidable.

9 **SIXTEENTH AFFIRMATIVE DEFENSE**

10 **(Statute of Limitations)**

11 16. Plaintiff's claims, and those of the putative class members, are barred,
12 in whole or in part, to the extent that Plaintiff have failed to file this action within
13 the applicable statute of limitations, including but not limited to California *Labor*
14 *Code* sections 201, 218, 226.7, 233, 246, 510, 512, 1194, and 1198 and California
15 *Business and Professions Code* section 17200, et seq.

16 **SEVENTEENTH AFFIRMATIVE DEFENSE**

17 **(Unclean Hands)**

18 17. Defendant alleges that Plaintiff's claims, and those of the putative class
19 members, are barred, in whole or in part, because of Plaintiff's and the putative class
20 members' unclean hands with respect to the events upon which the Complaint and
21 purported causes of action allegedly are based.

22 **EIGHTEENTH AFFIRMATIVE DEFENSE**

23 **(Estoppel)**

24 18. Defendant alleges that Plaintiff's claims, and those of the putative class
25 members, are barred, in whole or in part, because Plaintiff and the putative class
26 members are estopped by their own conduct from asserting any and all claims they
27 may have or have had against Defendant arising from the facts alleged in the
28 Complaint.

1 **NINETEENTH AFFIRMATIVE DEFENSE**

2 **(Waiver)**

3 19. Defendant alleges that Plaintiff's claims, and those of the putative class
4 members, are barred, in whole or in part, because Plaintiff and the putative class
5 members have waived any and all claims that they may have had or have against
6 Defendant arising from the facts alleged in the Complaint.

7 **TWENTIETH AFFIRMATIVE DEFENSE**

8 **(Defendants' Good Faith Belief)**

9 20. Plaintiff's Complaint, and each purported cause of action alleged
10 therein is barred, in whole or in part, because actions taken with respect to Plaintiff's
11 employment, and that of the putative class, if any, were based on an honest,
12 reasonable, and good faith belief in the facts as known and understood at the time.

13 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

14 **(Attorneys' Fees)**

15 21. Defendant alleges that the Complaint fails to allege facts sufficient to
16 establish a claim for attorneys' fees.

17 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

18 **(Laches)**

19 22. Plaintiff and the putative class members are barred by the doctrine of
20 laches from pursuing the Complaint and each purported cause of action therein by
21 reason of their inexcusable and unreasonable delay in filing the Complaint.

22 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

23 **(Consent)**

24 23. Plaintiff and the putative class members, at all relevant times, gave their
25 consent, express or implied, to the alleged acts, omissions and conduct of Defendant.

26 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

27 **(Plaintiffs' Acts)**

28 24. Defendant alleges that Plaintiff's damages, and those of the putative

1 class members, if any, were caused by Plaintiff's and the putative class member's
2 own intentional or negligent acts, thus barring or limiting their right to recovery.

3 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

4 **(Penalties)**

5 25. Defendant alleges the Complaint fails to allege facts sufficient to
6 establish a claim for penalties.

7 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

8 **(No Willful Conduct)**

9 26. Even if Defendant engaged in the conduct alleged in the Complaint,
10 which allegations Defendant denies, such actions or failure to act were not willful.

11 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

12 **(Good Faith Dispute)**

13 27. Defendant alleges that Plaintiff's claims, and those of the putative class
14 members, are barred, in whole or in part, because actions taken with respect to the
15 employment of Plaintiff and the putative class members, if any, were based on an
16 honest, reasonable, and good faith belief in the facts as known and understood at the
17 time.

18 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

19 **(Payment)**

20 28. Defendant alleges that Plaintiff and the putative class members have
21 been paid all sums earned by them and that are due and owing to her by virtue of
22 their performance of work as alleged in the Complaint.

23 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

24 **(Satisfaction of Claim)**

25 29. Defendant alleges that Plaintiff and the putative class members are
26 entirely, or alternatively, partially, barred from recovery in this action to the extent
27 that she has received any consideration from Defendant or from anyone else in
28 satisfaction of any purported claim against Defendant.

1 **THIRTIETH AFFIRMATIVE DEFENSE**

2 **(No Unfair Business Practices)**

3 30. Without admitting the allegations of the Complaint, Defendant alleges
4 that Plaintiff's claims, and those of the putative class members, for Violation of
5 *Business & Professions Code* sections 17200, *et seq.* are barred in that Plaintiff and
6 the putative class members have failed to establish a regular business practice or
7 unlawful pattern of conduct, the public is not likely to be deceived by any alleged
8 practices, Defendant gained no competitive advantage by such practices, and the
9 benefits of the alleged practices outweigh any harm or other impact they may cause.

10 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

11 **(Labor Code Section 1194)**

12 31. Defendant alleges that Plaintiff's claims, and those of the putative class
13 members, for civil penalties pursuant to *Labor Code* section 1194 are barred because
14 Defendant paid Plaintiff and the putative class members the required minimum wage
15 and/or did not knowingly or intentionally fail to pay Plaintiff and the putative class
16 members the required minimum wage.

17 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

18 **(Speculative Damages)**

19 32. Defendant alleges that Plaintiff and the putative class members are
20 precluded from recovering the damages alleged in the Complaint because those
21 damages are too vague, uncertain and speculative to permit recovery.

22 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

23 **(Privileges)**

24 33. Defendant alleges that Plaintiff's claims, and those of the putative class
25 members, are barred, in whole or in part, because Defendant's conduct with regard to
26 Plaintiff and the putative class members was privileged, justified, and in good faith.

1 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

2 **(Standing)**

3 34. Defendant alleges that Plaintiff and the putative class members lack
4 standing to assert some or all of the claims alleged in his Complaint.

5 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

6 **(De Minimis Uncompensated Time)**

7 35. Defendant alleges that Plaintiff's claims, and those of the putative class
8 members, are barred, in whole or in part, because if, in fact, Defendant has failed to
9 pay Plaintiff and the putative class members for time worked, the uncompensated time
10 is de minimis.

11 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

12 **(Adequate Remedy at Law)**

13 36. Defendant alleges that the Complaint fails to state facts sufficient to
14 support any granting of extraordinary or equitable relief, and otherwise had adequate
15 remedies at law.

16 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

17 **(No Regular Business Practice)**

18 37. Defendant alleges that the Complaint fails to establish a regular business
19 practice or pattern conducted by Defendant.

20 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

21 **(Unconstitutionality)**

22 38. Defendant alleges that the Complaint seeks damages not constitutional
23 nor properly recoverable against Defendant.

24 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

25 **(Meal Period Waiver)**

26 39. Defendant alleges that Plaintiff's claims, and those of the putative class
27 members, are barred, in whole or in part, because Plaintiff, and the putative class
28 members, lawfully waived their right to a meal period when working no more than

1 six hours or when working no more than twelve hours, in accordance with *Labor Code*
 2 section 512.

3 **FORTIETH AFFIRMATIVE DEFENSE**

4 **(Rest Period Waiver)**

5 40. Defendant alleges that Plaintiff's claims, and those of the putative class
 6 members, are barred, in whole or in part, because Plaintiff, and the putative class
 7 members, waived their right to some or all of the rest periods implicated in the
 8 Complaint by voluntarily choosing not to take part in all the duty-free rest periods that
 9 were authorized and permitted by Defendant.

10 **FORTY-FIRST AFFIRMATIVE DEFENSE**

11 **(Investigation)**

12 41. Defendant alleges that it took all reasonable steps to investigate any and
 13 all complaints made by Plaintiff and the putative class members and acted reasonably
 14 thereupon.

15 **FORTY-SECOND AFFIRMATIVE DEFENSE**

16 **(Failure to Mitigate)**

17 42. Defendant alleges that Plaintiff and the putative class members have
 18 failed to act reasonably to mitigate any damages that they have alleged in this action.

19 **FORTY-THIRD AFFIRMATIVE DEFENSE**

20 **(Labor Code Section 2802)**

21 43. Defendant alleges that Plaintiff's claim, and those of the putative class
 22 members, for expenses under *Labor Code* section 2802 is barred because Defendant
 23 reimbursed Plaintiff and the putative class members for all reasonable costs and
 24 necessary expenditures she incurred in the discharge of their duties.

25 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

26 **(Immunity)**

27 44. Defendant alleges that the Complaint, and each and every cause of action
 28 set forth therein alleged against Defendant, are barred, in whole or in part, because

1 actions taken with respect to Plaintiff and the putative class members' employment,
 2 if any, were based on an honest, reasonable, and good faith belief in the facts as known
 3 and understood at the time and are therefore immune from any liability.

4 **FORTY-FIFTH AFFIRMATIVE DEFENSE**

5 **(No Notice of Violation)**

6 45. Defendant alleges that Plaintiff's claims, and those of the putative class
 7 members, for relief pursuant to the *Labor Code* are barred because Defendant had not
 8 notice of any alleged violation thereof.

9 **FORTY-SIXTH AFFIRMATIVE DEFENSE**

10 **(Rest and Meal Period Wage Orders)**

11 46. While the Complaint is vague as to the occupations at issue and which
 12 Wage Orders Plaintiff alleges are applicable, it appears that the Wage Order(s) to
 13 which the Complaint refers are ones which provide as to rest periods, in pertinent part,
 14 "Every employer shall authorize and permit all employees to take rest periods, which
 15 insofar as practicable shall be in the middle of each work period ..." and this
 16 obligation to "authorize and permit" rest periods does not impose an affirmative
 17 requirement that the employer force the employee to take the rest period. Similarly,
 18 the applicable Wage Order(s) provide as to meal periods, in pertinent part, "No
 19 employer shall employ any person for a work period of more than five (5) hours
 20 without a meal period of not less than 30 minutes, except when a work period of not
 21 more than six (6) hours will complete the day's work the meal period may be waived
 22 by mutual consent of the employer and the employee ..." and this requirement is
 23 satisfied where the employer authorizes and permits meal period and does nothing to
 24 interfere with the right to a meal period. The Wage Order(s) do not impose an
 25 affirmative obligation on the employer to force the employee to take an uninterrupted
 26 meal period. There can be no liability for any meal or rest period that an employer
 27 authorized and permitted an employee to take, but the employee chose not to take.

1 **FORTY-SEVENTH AFFIRMATIVE DEFENSE**

2 **(Substantial Compliance)**

3 47. Defendant alleges that Plaintiff's causes of action, and those of the
4 putative class members are barred because Defendant substantially complied with the
5 requirements of Labor Code sections 201, 218, 226, 226.7, 233, 246, 510, 512,
6 1182.12, 1194, 1194.2, 1197 and 1198 as well as the respective Industrial Welfare
7 Commission Wage Orders, by properly providing meal and rest periods, properly and
8 timely paying all wages due to Plaintiff providing wage statements compliant with
9 Labor Code § 226, maintaining proper payroll records of Plaintiff.

10 **FORTY-EIGHTH AFFIRMATIVE DEFENSE**

11 **(Secretion and Absention)**

12 48. Defendant alleges that they were unable to pay the wages due Plaintiff
13 and/or the putative class members, if any, because Plaintiff and/or the putative class
14 members secreted or absented themselves to avoid payment of the wages.

15 **FORTY-NINTH AFFIRMATIVE DEFENSE**

16 **(Business Justification)**

17 49. Defendant maintains that its activities undertaken with respect to
18 Plaintiff and the putative class members, if any, were justified as such activities were
19 proper, fair, and legitimate business activities and/or due to business-related reasons
20 which were neither arbitrary, capricious, nor unlawful.

21 **FIFTIETH AFFIRMATIVE DEFENSE**

22 **(Avoidable Consequences)**

23 50. Plaintiff and the putative class members had and have a duty to use such
24 means as are reasonable under the circumstances to avoid or minimize the damages
25 that result from statutory violations (if any). To the extent there was any statutory
26 violation (which is not admitted but considered solely for purposes of this affirmative
27 defense), Plaintiff and the putative class members unreasonably failed to avoid or
28 reduce harm. Plaintiff and the putative class members are therefore barred from any

1 recovery based on any harm that could have been reasonably avoided.

2 **FIFTY-FIRST AFFIRMATIVE DEFENSE**

3 **(Offset)**

4 51. Defendant alleges that Plaintiff's claims, and those of the putative class
5 members, are barred or must be offset by benefits received by Plaintiff and the
6 putative class members.

7 **FIFTY-SECOND AFFIRMATIVE DEFENSE**

8 **(Lack of Knowledge)**

9 52. Defendant alleges that Plaintiff's claims, and those of the putative class
10 members, are barred because Defendant had no knowledge or reason to know of off
11 the clock work, or that Plaintiff and the putative class members were not taking meal
12 and/or rest breaks in accordance with the law.

13 **FIFTY-THIRD AFFIRMATIVE DEFENSE**

14 **(Arbitration Agreement)**

15 53. Defendant alleges that the Complaint as a whole, and each purported
16 cause of action alleged therein, is barred in whole or in part to the extent that Plaintiff
17 and the putative class members signed a legally valid agreement to arbitrate any
18 dispute, claim or controversy arising out of their employment.

19 **FIFTY-FOURTH AFFIRMATIVE DEFENSE**

20 **(Unknown Defenses)**

21 54. Defendant alleges that it may have other separate and/or additional
22 defenses of which it is not aware, and hereby reserves their right to assert them by
23 amendment to this Answer as discovery continues.

24 **PRAYER FOR RELIEF**

25 1. That Plaintiff takes nothing by way of the Complaint of any of their
26 purported claims for relief;

27 2. That the Complaint be dismissed with prejudice in its entirety;

28 3. That Plaintiff is denied each and every demand and prayer for relief

1 contained in the Complaint;

2 4. That judgment is entered in favor of Defendant;

3 5. That Defendant be awarded its reasonable attorneys' fees and costs of
4 the suit incurred herein pursuant to section 218.5 of the California *Labor Code* or to
5 the extent otherwise permitted by law; and

6 6. That Defendant be awarded such other and further relief as the Court
7 may deem just and proper.

8 DATED: August 6, 2021

LEWIS BRISBOIS BISGAARD & SMITH LLP

11 By: /s/ Armine Antonyan

12 JOHN L. BARBER

13 EFTHALIA S. ROFOS

ARMINE ANTONYAN

14 Attorneys for Defendant AMERICAN
15 MERCHANDISING SPECIALISTS, INC.,
16 a North Carolina corporation doing
17 business as AMS Retail Solutions
18
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FEDERAL COURT PROOF OF SERVICE

Luis Larraburu v American Merchandising Specialists, Inc., et al.
USDC Case No. 2:21-cv-06184-RGK-PD (27350.2270)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to the action. My business address is 633 West 5th Street, Suite 4000, Los Angeles, CA 90071. I am employed in the office of a member of the bar of this Court at whose direction the service was made.

On August 6, 2021, I served the following document(s): **DEFENDANT AMERICAN MERCHANDISING SPECIALISTS, INC.'S ANSWER TO PLAINTIFF'S COMPLAINT**

I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

David G. Spivak
THE SPIVAK LAW FIRM
16530 Ventura Blvd, Ste 203
Encino, CA 91436-4535
Phone: 818-582-3086
Fax: 818-582-2561
Email: david@spivaklaw.com

Walter L. Haines
United Employees Law Group
5500 Bolsa Ave, Ste 201
Huntington Beach, CA 92649-1102
Phone: 562-256-1047
Fax: 562-256-1006
Email: whaines@uelglaw.com

Attorneys for Plaintiff LUIS
LARRABURU

The documents were served by the following means:

☒ (BY COURT'S CM/ECF SYSTEM) Pursuant to Local Rule, I electronically filed the documents with the Clerk of the Court using the CM/ECF system, which sent notification of that filing to the persons listed above.

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

Executed on August 6, 2021, at Los Angeles, California.

/s/ Armine Antonyan
Armine Antonyan

EXHIBIT 5

Confidential Settlement Communication

By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions

Case title:	Luis Larraburu v. American Merchandising Specialists, Inc.
Case no.:	21STCV17704
Court:	Los Angeles
Judge:	Yvette M. Palazuelos, Dept. 9
Page subject:	Data

Important Dates

Unfair Competition, Bus.&Prof. § 17200 ("UCL") period begins:	Friday, May 12, 2017
Lab.Code § 203 (waiting time penalties) period begins:	Saturday, May 12, 2018
Lab.Code § 2699 (civil penalties) period begins:	Wednesday, August 21, 2019
Lab.Code § 226 (pay stub penalties) period begins:	Monday, May 11, 2020
LWDA Notice:	Thursday, August 20, 2020
Lawsuit:	Tuesday, May 11, 2021
Sample begin:	Thursday, August 25, 2016
Sample end:	Monday, October 18, 2021
Sample calendar days:	1,880
Mediation:	Monday, November 15, 2021
Anticipated Settlement Period end date:	Tuesday, March 15, 2022
Settlement Period to Sample Period:	94.04%

Classes / Groups sizes

UCL Class Members:	115
UCL Workweeks:	5,796
UCL Wage Statements:	2,898
UCL Workdays:	28,169
UCL Calendar days:	1,648
UCL Months:	54.18
 Waiting Time Penalties Class Members:	 90
 PAGA Aggrieved Employees:	 70
PAGA Wage Statements:	1,478
 Wage Statement Class Members:	 70
Wage Statement Class Wage Statements:	1,471

Averages

Average Hourly Rate:	\$	19.97
Average Overtime Rate:	\$	29.96
Average Doubletime Rate:	\$	39.94
 Average Work Hours Per Day:		 6.70
Average Work Hours Per Week:		32.33
Average Workdays Per Week:		4.86

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Workdays to Calendar Days (%):	69.43%
Paycycle:	Biweekly
Paychecks Per Year:	26

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Case title:	Luis Larraburu v. American Merchandising Specialists, Inc.
Case no.:	21STCV17704
Court:	Los Angeles
Judge:	Yvette M. Palazuelos, Dept. 9
Page subject:	Unpaid wages
Authority:	Lab.Code §§ 510, 1194, 1194.2, and 1198

Average Hourly Rate:	\$	19.97
Unpaid hours per pay week (travel time):		0.5
Actionable workweeks:		2,898
Interest:		10%

Unpaid wages:	\$	31,830.18
Liquidated damages:	\$	31,830.18

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Case title: Luis Larraburu v. American Merchandising Specialists, Inc.
Case no.: 21STCV17704
Court: Los Angeles
Judge: Yvette M. Palazuelos, Dept. 9
Page subject: **Unpaid Overtime on Nondiscretionary compensation (bonuses, awards, commissions)**

Average Hourly Rate:	\$	19.97
Average Overtime Rate:	\$	29.96
Average Doubletime Rate:	\$	39.94
Average Work Hours Per Day:		6.7
Average Work Hours Per Week:		32.33
Average Workdays Per Week:		4.86
Monthly non-discretionary compensation:	\$	327.33
Weekly non-discretionary compensation:	\$	75.28
Workday non-discretionary compensation:	\$	67.35
Hourly non-discretionary compensation:	\$	2.08
Unpaid hourly non-discretionary overtime pay on nondiscretionary compensation:	\$	1.04
Average overtime hours per week:		4.43
UCL Workweeks:		5,796.00
Interest rate:		10%
Unpaid non-discretionary overtime pay on nondiscretionary compensation:	\$	29,419.73

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Case title:	Luis Larraburu v. American Merchandising Specialists, Inc.
Case no.:	21STCV17704
Court:	Los Angeles
Judge:	Yvette M. Palazuelos, Dept. 9
Page subject:	Unprovided Meal Periods
Authority:	Lab.Code §§ 226.7, 512, and 1198
Average Hourly Rate:	\$ 19.97
Actionable workdays:	28,169
>>Percentage qualifying for meal periods:	86%
Violation rate (%)	25%
Meal period premium wages:	\$ 120,943.12

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Case title:	Luis Larraburu v. American Merchandising Specialists, Inc.
Case no.:	21STCV17704
Court:	Los Angeles
Judge:	Yvette M. Palazuelos, Dept. 9
Page subject:	Unprovided Rest Periods
Authority:	Lab.Code §§ 226.7 and 1198
Average Hourly Rate:	\$ 19.97
Actionable workdays:	28,169
>>Percentage qualifying for rest periods:	95%
Violation rate (%)	25%
Rest period premium wages:	\$ 133,599.96

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Case title:	Luis Larraburu v. American Merchandising Specialists, Inc.
Case no.:	21STCV17704
Court:	Los Angeles
Judge:	Yvette M. Palazuelos, Dept. 9
Page subject:	Unreimbursed expenses
Authority:	Lab.Code § 2802

Mileage

IRS Mileage Rate:	\$	0.575
Miles Per Year:		12,636.00
Miles Per Month:		1,053.00
Miles Per Workweek:		243.00
Miles Per Workday:		50.00
Defendant's Mileage Rate:	\$	0.58
Unreimbursable regular yearly commute miles		5,054.40
Unreimbursable regular monthly commute miles		421.20
Unreimbursable regular weekly commute miles		97.20
Unreimbursable regular daily commute miles		20.00
UCL Workweeks:		5,796
Interest rate:		10%
Unreimbursed mileage	\$	564,075.41

Unreimbursed expenses:	\$	564,075.41
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Case title:	Luis Larraburu v. American Merchandising Specialists, Inc.
Case no.:	21STCV17704
Court:	Los Angeles
Judge:	Yvette M. Palazuelos, Dept. 9
Page subject:	Itemized Wage Statements
Authority:	Lab.Code § 226
Wage Statement Class Members:	70
Wage Statement Class Wage Statements:	1,471
Initial penalty:	\$ 50.00
Subsequent penalty:	\$ 100.00
Statutory wage statement penalties:	\$ 143,600.00

Confidential Settlement Communication

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Case title:	Luis Larraburu v. American Merchandising Specialists, Inc.
Case no.:	21STCV17704
Court:	Los Angeles
Judge:	Yvette M. Palazuelos, Dept. 9
Page subject:	Waiting Time / Final Wages
Authority:	Lab.Code § 203

Waiting Time Penalties Class Members:		90
Days waiting:		30
Average Hourly Rate:	\$	19.97
Average Overtime Rate:	\$	29.96
Average Doubletime Rate:	\$	39.94
Average Work Hours Per Day:		6.70
Regular Hours Per Day:		6.70
Overtime Hours Per Day:		-
Doubletime Hours Per Day:		-
Waiting time penalties:	\$	361,257.30

Confidential Settlement Communication

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Case title:	Luis Larraburu v. American Merchandising Specialists, Inc.
Case no.:	21STCV17704
Court:	Los Angeles
Judge:	Yvette M. Palazuelos, Dept. 9
Page subject:	PAGA Civil Penalties
Authority:	Lab.Code §§ 2698, <i>et seq.</i>

Labor Code violation	Labor Code Civil		Subsequent		Pay periods	Total
	Penalty Statute	Initial penalty	penalty			
Minimum wages (Lab.Code § 1197):	Lab.Code § 1197	\$ 100.00	\$ 250.00	1,478	\$	369,350.00
Overtime wages (Lab.Code § 510):	Lab.Code § 558	\$ 50.00	\$ 100.00	1,478	\$	147,750.00
Meal periods Lab.Code § 512):	Lab.Code § 558	\$ 50.00	\$ 100.00	1,478	\$	147,750.00
Rest periods (Lab.Code § 1198):	Lab.Code § 2699	\$ 100.00	\$ 200.00	1,478	\$	295,500.00
Business expenses (Lab.Code § 2802):	Lab.Code § 2699	\$ 100.00	\$ 200.00	1,478	\$	295,500.00
Improper pay stubs (Lab.Code § 226):	.Code § 226.3; 2699	\$ 100.00	\$ 200.00	1,478	\$	295,500.00
Untimely wages (Lab.Code §§ 201-204):	Lab.Code § 2699	\$ 100.00	\$ 200.00	1,478	\$	295,500.00
Total:					\$	1,846,850.00

Confidential Settlement Communication

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Case title:	Luis Larraburu v. American Merchandising Specialists, Inc.
Case no.:	21STCV17704
Court:	Los Angeles
Judge:	Yvette M. Palazuelos, Dept. 9
Page subject:	Totals
Authority:	Various

Restitution	Reduction to		Demand
Unpaid wages:	\$ 31,830.18	80%	\$ 25,464.15
Liquidated damages:	\$ 31,830.18	50%	\$ 15,915.09
Unpaid OT on nondiscretionary compensation:	\$ 29,419.73	100%	\$ 29,419.73
Meal period premium wages:	\$ 120,943.12	25%	\$ 30,235.78
Rest period premium wages:	\$ 133,599.96	25%	\$ 33,399.99
Unreimbursed expenses:	\$ 564,075.41	100%	\$ 564,075.41
Restitution subtotal:	\$ 911,698.59	\$	698,510.15
Penalties			
Statutory wage statement penalties:	\$ 143,600.00	10%	\$ 14,360.00
Waiting time penalties:	\$ 361,257.30	10%	\$ 36,125.73
Minimum wages (Lab.Code § 1197):civil penalties:	\$ 369,350.00	10%	\$ 36,935.00
Overtime wages (Lab.Code § 510):civil penalties:	\$ 147,750.00	10%	\$ 14,775.00
Meal periods Lab.Code § 512):civil penalties:	\$ 147,750.00	10%	\$ 14,775.00
Rest periods (Lab.Code § 1198):civil penalties:	\$ 295,500.00	10%	\$ 29,550.00
Business expenses (Lab.Code § 2802):civil penalties:	\$ 295,500.00	10%	\$ 29,550.00
Improper pay stubs (Lab.Code § 226):civil penalties:	\$ 295,500.00	10%	\$ 29,550.00
Untimely wages (Lab.Code §§ 201-204):civil penalties:	\$ 295,500.00	10%	\$ 29,550.00
Penalties subtotal:	\$ 2,351,707.30	\$	235,170.73
Grand total:	\$ 3,263,405.89	\$	933,680.88

EXHIBIT 6

1 DAVID G. SPIVAK, State Bar # 179684

2 THE SPIVAK LAW FIRM

3 9454 Wilshire Blvd.

4 Suite 303

5 Beverly Hills, CA 90212

6 Telephone (310) 499-4730

7 Facsimile (310) 499-4739

8 Email david@spivaklaw.com

9 Attorney for Plaintiffs,

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

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

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

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

16 *Plaintiffs,*

17 vs.

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

21 *Defendants.*

Case No.: BC430633

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

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

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

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

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

John A. Clarke, Executive Officer/Clerk
[Signature]
BY MARY GARCIA, Deputy

THE
SPIVAK
LAW FIRM

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

4 INTRODUCTION

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

12 PARTIES AND CONDUCT

13 A. Plaintiffs and Class Members

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

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

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

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

3 **B. Defendants**

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

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

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

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

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

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

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

8 CLASS ACTION ALLEGATIONS

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

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

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

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

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

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

1 date that final judgment is entered in this action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 O. Are class members entitled to prejudgment interest?

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

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

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

1 action cases.

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

12 **FIRST CLAIM FOR RELIEF**

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

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

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

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

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

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

1 226.7 and 512, and Wage order 11.

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

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

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

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

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

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

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

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

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

10 **THIRD CLAIM FOR RELIEF**

11 **FORFEITURE OF VACATION PAY**

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

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

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

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

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

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

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

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

7 **FOURTH CLAIM FOR RELIEF**

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

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

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

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

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

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

1 worked.

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

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

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

21 **FIFTH CAUSE OF ACTION**

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

23 **(Cal. Lab. Code §§ 201-203)**

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

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

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

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

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

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

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

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

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

9 **SIXTH CLAIM FOR RELIEF**

10 **UNAUTHORIZED DEDUCTIONS**

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

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

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

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

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

1 Procedure § 1021.5.

2 **SEVENTH CLAIM FOR RELIEF**

3 **FAILURE TO INDEMNIFY**

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

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

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

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

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

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

6 **EIGHTH CLAIM FOR RELIEF**

7 **UNFAIR COMPETITION**

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

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

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

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

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

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

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

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

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

20 **NINTH CLAIM FOR RELIEF**

21 **CIVIL PENALTIES**

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

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

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

27 74. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
behalf of himself and other current or former employees, to bring a civil action to recover civil

1 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

2 75. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiffs and the other
3 aggrieved employees of Defendants are entitled to recover civil penalties for Defendants'
4 violations of California Labor Code §§ 200, 201, 202, 203, 204, 224, 226(a), 226.7, 227.3, 510,
5 512, 1194 and 2802 during the applicable limitations period in the following amounts:

6 A. For violations of California Labor Code §§ 200, 201, 202, 203, 224,
7 226.7, 1194, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay
8 period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee
9 per pay period for each subsequent violation (penalty amounts established by California Labor
10 Code § 2699(f)(2));

11 B. For violations of California Labor Code § 204, one hundred dollars
12 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
13 (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount
14 unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional
15 violation (penalty amounts established by California Labor Code § 210);

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

20 D. For violations of California Labor Code §§ 510 and 512, fifty dollars
21 (\$50.00) for each aggrieved employee for each initial violation for pay period for which the
22 employee was underpaid in addition to an amount sufficient to recover unpaid wages and one
23 hundred dollars (\$100.00) for each underpaid employee for each pay period for which the
24 employee was underpaid in addition to an amount sufficient to recover unpaid wages (penalty
25 amounts established by California Labor Code § 558).

26 76. Plaintiffs have complied with the procedures for bringing suit specified in
27 California Labor Code § 2699.3. By letters dated January 8 and February 19, 2010, Plaintiffs
gave written notice by certified mail to the Labor and Workforce Development Agency

1 (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to
2 have been violated, including the facts and theories to support the alleged violations. Plaintiffs
3 anticipate that the LWDA will soon provide Plaintiffs with written notice that it does not intend
4 to investigate the violations of the California Labor Code alleged herein.

5 77. Pursuant to California Labor Code § 2699(g), Plaintiffs and the other members of
6 the **All-Inclusive Class** are entitled to an award of reasonable attorney’s fees and costs in
7 connection with their claims for civil penalties.

8 **PRAYER FOR RELIEF**

9 78. WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly
10 situated, prays for relief and judgment against Defendants as follows:

11 A. An order that the action be certified as a class action with respect to
12 Plaintiffs’ claims for violations of California law;

13 B. An order that Plaintiffs be appointed class representatives;

14 C. An order that counsel for Plaintiffs be appointed class counsel;

15 D. Declaratory relief;

16 E. Injunctive relief;

17 F. Actual damages;

18 G. Liquidated damages;

19 H. Restitution;

20 I. Civil penalties;

21 J. Statutory penalties;

22 K. Pre-judgment interest;

23 L. Costs of suit;

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Date: February 23, 2010

By:



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

THE
SPIVAK
LAW FIRM

EXHIBIT 7

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 WRANGLERED WITH THE QUESTIONERS DURING
17 TRIAL, AND SOME OF THAT WAS PROVOKED BY THE QUESTIONERS; SOME
18 OF IT WAS NOT. THAT BECOMES AN IMPORTANT FACTOR IN
19 EVALUATING RELATIVE CREDIBILITIES UNDER EVIDENCE CODE 780(A).
20 THOSE THREE PARTIES ALL HAVE AN INTEREST, BIAS, AND OTHER
21 MOTIVE FOR SLANTING THEIR TESTIMONY, OBVIOUSLY, AND THAT
22 BECOMES SIGNIFICANT UNDER EVIDENCE CODE 780(F) AND EVIDENCE
23 CODE 780(J).

24 MR. ABALKHAD HAS SUFFERED FELONY CONVICTIONS
25 ON HIS PLEA OF NOLO CONTENDERE AS TO PERJURY AND TAX EVASION
26 AND DID NOT OWN UP TO THAT COMPLETELY IN DISCOVERY. THAT'S
27 EVIDENCE -- THAT BECOMES PERTINENT UNDER EVIDENCE CODE 780(E)
28 AND EVIDENCE CODE 780(H), AND EVIDENCE CODE 780(I) AND IS

1 COMMENTED ON IN THE CASE OF RUSHEEN, R-U-S-H-E-E-N, VERSUS
2 DREWS, D-R-E-W-S, (2002) 99 CALIFORNIA APPELLATE 4TH 279 AT
3 PAGES 283 TO 284.

4 ASPECTS OF THE TESTIMONY OF THESE WITNESSES,
5 THESE THREE PEOPLE AS WITNESSES, WERE EXAGGERATED AND
6 OVERSTATED. THAT BECOMES PERTINENT UNDER EVIDENCE CODE
7 780(B).

8 FURTHERMORE, EVIDENCE CODE SECTION 412
9 PROVIDES THAT IF WEAKER AND LESS SATISFACTORY EVIDENCE IS
10 OFFERED WHEN IT WAS IN -- WHEN IT WAS WITHIN THE POWER OF THE
11 PARTY TO PRODUCE STRONGER AND MORE SATISFACTORY EVIDENCE, THE
12 EVIDENCE ACTUALLY OFFERED SHOULD BE VIEWED WITH DISTRUST.
13 THIS, OF COURSE, IS A PERMISSIBLE INFERENCE AND NOT A
14 MANDATORY ONE, BUT THIS COURT HAS, AS THE LAW INDICATES,
15 TAKEN THIS INTO CONSIDERATION.

16 BUT ALL THAT HAVING BEEN SAID, THE COURT DOES
17 NOT ACCEPT MR. SABZEVAR'S INVITATION TO REJECT THE ENTIRETY
18 OF THE PLAINTIFFS'S TESTIMONY. INSTEAD, THIS COURT HAS HAD
19 TO ACCEPT THE PART OF THE TESTIMONY OF THE WITNESSES WHICH
20 THIS COURT FOUND -- HAS FOUND TO BELIEVE TRUE AND -- AND WILL
21 REJECT THE REST. THIS IS PRECISELY WHAT THE COURT -- PARDON
22 ME -- IS AUTHORIZED TO DO OR ANY FINDER OF FACT WOULD BE
23 AUTHORIZED TO DO. ONE MODEL FOR THAT IS CACI INSTRUCTION
24 107, FOURTH PARAGRAPH.

25 THE DATES INVOLVED IN THIS CASE -- AND THE
26 DATES BECOME SIGNIFICANT -- ARE AS FOLLOWS. MS. SULTANIAN
27 WAS HIRED ON -- IN NOVEMBER, 2007, AND WAS FIRED ON NOVEMBER
28 19, 2009. MS. GHRDILYAN WAS HIRED IN AUGUST, 2008, AND WAS

1 FIRED ON DECEMBER 3, 2009. ONE OF THE QUESTIONS WHICH I HAVE
2 BEEN CALLED UPON TO ANSWER IS WHETHER MR. ABALKHAD AS AN
3 INDIVIDUAL WAS AN EMPLOYER OF PLAINTIFFS AND -- UNDER WAGE
4 ORDER 7. I FIND THAT HE WAS NOT. BUT I FIND THAT THE
5 THEORIES OF LIABILITY UNDER -- I SHOULD BACK OFF. BUT I FIND
6 THAT THE OTHER BASES FOR ASSERTING LIABILITY ON THE PART OF
7 MR. ABALKHAD DO HAVE MERIT, AND LIABILITY DOES ATTACH TO HIM
8 UNDER THOSE THEORIES.

9 THE THEORIES I'M REFERRING TO ARE LABOR CODE
10 558 TO WHICH LABOR CODE 510 AND 512 ARE APPENDED OR INCLUDED
11 SUBSTANTIVE PROVISIONS AND LABOR CODE 1197.1 TO WHICH THE
12 SUBSTANTIVE PROVISIONS OF LABOR CODE 1198 AND THE WAGE ORDER
13 ARE ASSOCIATED THEORIES OF LIABILITY.

14 IN OTHER WORDS, I AM FINDING THAT UNDER 558
15 LABOR CODE AND 1197.1 LABOR CODE FOR THE SUBSTANTIVE REASONS
16 REFERRED TO IN THE OTHER TWO SOURCES AS TO EACH OF THOSE
17 SECTIONS, THAT IS 510 AND 512 LABOR CODE, AND 1193 AND WAGE
18 ORDER, LIABILITY CAN ATTACH TO MR. ABALKHAD AND UNDER THE
19 CIRCUMSTANCES OF THIS CASE, WILL ATTACH.

20 I'M GOING TO MAKE A FINDING ON THAT, AS YOU
21 WILL SEE, IN FAVOR OF -- PARDON ME -- OF THE PLAINTIFFS'S
22 POSITION.

23 NOW, I SAY IN FAVOR OF THE PLAINTIFFS'S
24 POSITION BECAUSE THAT MEANS NOT JUST IN FAVOR OF THE
25 PLAINTIFFS BUT SINCE WE HAVE A PAGA ACTION, I AM REFERRING TO
26 THE PLAINTIFFS'S POSITION.

27 NOW -- PARDON ME. I WILL SAY THIS.

28 AS YOU CAN TELL, I AM AT SOME PAINS TO GO

1 THROUGH THE LEGAL REASONING AND STEPS PREPARATORY TO REACHING
2 A DECISION IN THIS CASE WITH SOME CARE BECAUSE IT MAY VERY
3 WELL BE THAT THIS CASE WILL REACH ITS WAY INTO THE APPELLATE
4 COURTS AND THAT IT IS ALSO POSSIBLE THAT THE APPELLATE COURTS
5 MAY DECIDE THIS CASE IN A PUBLISHED OPINION, AND I WILL SAY
6 THAT THE DETERMINATION I HAVE MADE ABOUT ABALKHAD AS AN
7 EMPLOYER -- I SAID THAT HE'S NOT -- OR ABALKHAD AS A
8 POTENTIALLY LIABLE PARTY UNDER LIABILITY-ENHANCING STATUTES
9 OTHER THAN LABOR CODE 558 AND LABOR CODE 1197.1, THAT IS, THE
10 ABALKHAD-FAVORING DETERMINATIONS I HAVE MADE ON THOSE POINTS,
11 ARE NOT BEYOND REASONABLE ARGUMENT.

12 MY DECISION IS, AS I HAVE EXPRESSED IT, AND I
13 BELIEVE THAT I AM CORRECT -- BUT I -- BUT I DO RECOGNIZE THAT
14 THERE ARE ARGUMENTS THAT CAN BE MADE -- AND THEY HAVE BEEN
15 MADE HERE IN THIS COURTROOM -- ON THOSE POINTS.

16 I HAVE COMPARED THE EMPLOYEE HANDBOOKS,
17 EXHIBIT 3 AND EXHIBIT D. IT APPEARS TO ME THAT EXHIBIT D
18 FROM THE EVIDENCE IN THIS CASE WAS NOT SUPPLIED BY ABALKHAD
19 DURING THE DISCOVERY PHASE OF THIS CASE. THE PARTICULAR
20 PROVISIONS THAT I AM DEALING WITH ARE THOSE HAVING TO DO WITH
21 OVERTIME AND LUNCH AND EXHIBIT 3 IS COMMENTED ON BY THE
22 PLAINTIFFS AS BEING DEFICIENT BECAUSE THEY SAY THAT A LUNCH
23 PERIOD MUST BE PROVIDED AFTER FIVE HOURS OF WORK, NOT SIX
24 HOURS OF WORK, AND THE PLAINTIFFS'S POSITION IS THAT THAT WAS
25 THE ONLY PERTINENT EMPLOYEE HANDBOOK.

26 I THINK THE PLAINTIFFS ARE RIGHT AS TO BOTH
27 THOSE CONTENTIONS. EXHIBIT 3 BEARS THE DATE OF JANUARY,
28 2003. PLAINTIFFS ADMIT THAT THIS IS THE CORRECT DATE. THAT

1 IS, IT SEEMS TO ME, THE OPERATIVE EMPLOYEE HANDBOOK. EXHIBIT
2 D WHICH HAS DIFFERENT PROVISIONS IN IT CONCERNING THE SAME
3 TOPICS WAS, IN MY VIEW, FIRST NOT PRODUCED DURING DISCOVERY;
4 SECOND, A WRITING THAT CAME INTO EXISTENCE IN AUGUST, 2010,
5 SUBSTANTIAL PERIOD OF TIME AFTER THE PLAINTIFFS HAD ALREADY
6 HAD THEIR EMPLOYMENT TERMINATED AND INDEED AUGUST, 2010, IS
7 EVEN AFTER THE PRESENT SUIT WAS FILED. THIS CAN BE SEEN FROM
8 EXHIBIT D PAGE 17, SECOND FULL PARAGRAPH.

9 AS I HAVE SAID, THIS SUIT WAS FILED ON THE
10 28TH OF JANUARY, 2010.

11 ONE OF THE COMPLICATING FACTORS IN THIS
12 CASE -- AND THE LAWYERS HAVE RECOGNIZED IT, AND IT'S OBVIOUS
13 TO ANYONE WITH ANY LEGAL EXPERIENCE -- IS THAT ALTHOUGH THE
14 LAWSUIT ORIGINALLY NAMED RJ FINANCIAL, INC., THAT DEFENDANT
15 IS A DEBTOR IN A CHAPTER 11 BANKRUPTCY. AS I HAVE SAID, THE
16 CASE IS OBVIOUSLY STAYED AS TO THAT PARTY, BUT THE PLAINTIFFS
17 HAVE HAD TO REORGANIZE THEIR CASE TO PRESS IT AGAINST
18 MR. ABALKHAD WHO IS NOT IN BANKRUPTCY AND IT SEEMS TO ME THEY
19 HAVE DONE SO SUCCESSFULLY.

20 THERE IS NO SERIOUS QUESTION BETWEEN THE SIDES
21 CONCERNING THE FOLLOWING PROPOSITIONS OF LAW. AN EMPLOYEE IS
22 ENTITLED TO OVERTIME COMPENSATION FOR WORK IN EXCESS OF EIGHT
23 HOURS IN ONE WORKDAY, FOR WORKING IN EXCESS OF 40 HOURS IN
24 ONE WORKWEEK, AND FOR WORK ON THE SEVENTH DAY IN ONE WORK
25 WEEK. THE OVERTIME COMPENSATION DIFFERS, BUT THOSE ARE
26 OVERTIME ITEMS.

27 IT IS ALSO TRUE -- BY THE WAY, THIS IS
28 PROVIDED FOR UNDER LABOR CODE 510(A). IT'S ALSO TRUE THAT

1 EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EMPLOYEES WHO ARE
2 SPECIFICALLY EXEMPTED BY THE CALIFORNIA INDUSTRIAL WELFARE
3 AND COMMISSION ARE EXEMPT FROM THE HOURS WORKED AND DAYS
4 WORKED PER WEEK LIMITATIONS AS PROVIDED FOR IN LABOR CODE 515
5 BUT -- PARDON ME -- THE PLAINTIFFS IN THIS CASE DO NOT FALL
6 INTO THAT EXEMPTED CATEGORY AND INDEED THE DEFENDANT DOES NOT
7 CLAIM THAT THEY DO.

8 FOR THE REASONS THAT I HAVE MENTIONED EARLIER
9 ABOUT THE RESERVATIONS WITH WHICH THE TESTIMONY OF THE
10 WITNESSES HAVE TO BE INTERPRETED WITH, I DO NOT ATTEMPT TO
11 SUMMARIZE ALL THE TESTIMONY OF ALL THE WITNESSES.

12 IT IS ALSO TRUE THAT SUCCESSFUL EMPLOYEE
13 PLAINTIFFS WHO ARE AWARDED UNPAID OVERTIME ARE ENTITLED TO
14 INTEREST ACCRUING FROM THE DATE ON WHICH THE RIGHT TO RECOVER
15 THEIR OVERTIME VESTS. THIS WOULD BE ON THE MODEL INDICATED
16 IN CIVIL CODE 3287(A) COMPUTED TO THE DATE OF ENTRY OF
17 JUDGMENT. THIS IS LABOR CODE 1194(A), AND IT'S ALSO
18 DISCUSSED IN ESPINOSA VERSUS CLASSIC PIZZA, WHICH IS A CASE
19 THAT APPEARS IN 114 CALIFORNIA APPELLATE 4TH. THE PARTICULAR
20 PASSAGE THAT I'M MAKING REFERENCE TO IS AT PAGE 975.

21 THE TERM "WILLFUL" UNDER THE LABOR CODE --
22 THIS APPEARS IN LABOR CODE 203 -- IT MEANS ONLY THAT AN
23 EMPLOYER INTENTIONALLY FAILED OR REFUSED TO PERFORM AN ACT
24 THAT WAS REQUIRED TO BE DONE. THAT POINT IS MADE IN BARNHILL
25 VERSUS ROBERT SAUNDERS & COMPANY, (1981) 125 CALIFORNIA
26 APPELLATE 3D 1 AT PAGES 7 AND 8.

27 OBVIOUSLY, IN THE CURRENT CASE, UNLIKE THE
28 SITUATION IN BARNHILL, THERE'S NO EVIDENCE OF OFFSET. I'M

1 CITING BARNHILL JUST FOR THE PURPOSE OF THE DEFINITION OF THE
2 WORD "WILLFUL."

3 I WILL MAKE A COUPLE OF OTHER POINTS.

4 I RECOGNIZE THE INTENSITY WITH WHICH THE
5 DEFENSE HAS MAINTAINED THAT THIS IS A CASE DRIVEN BY
6 ATTORNEYS AND ATTORNEY'S FEES ON THE PLAINTIFFS'S SIDE. FOR
7 THE REASONS THAT I HAVE MENTIONED PREVIOUSLY, THAT IS, THAT
8 ONE OF THE PURPOSES OF PAGA IS PRECISELY TO INCENTIVIZE
9 ATTORNEYS TO -- TO FILE AND TO PROSECUTE SUCH CASES -- THAT
10 ARGUMENT EXISTS AND IT DOES HAVE A CERTAIN AMOUNT OF
11 OCCURRENCE, BUT I DO NOT REGARD IT AS BEING A STRONG
12 ARGUMENT. IT IS THE PURPOSE OF THE LAW PRECISELY TO PROVIDE
13 AN INCENTIVE FOR ATTORNEYS WHO MIGHT OTHERWISE BE UNABLE TO
14 HANDLE CASES OF THIS TYPE TO BE ABLE TO HANDLE CASES OF THIS
15 TYPE.

16 I WILL SAY THAT APPLICATIONS FOR ATTORNEYS'S
17 FEES, IF ANYBODY CLAIMS ENTITLEMENT TO ANY, CAN BE MADE BY
18 POST-JUDGMENT MOTION FOR ALLOWANCE OF ATTORNEY'S FEES AS
19 PARTS OF COSTS UNDER CIVIL CODE 1717(A), IF THAT'S WHAT
20 APPLIES, OR UNDER THE CORRESPONDING STATUTE IN THE LABOR
21 CODE. AND THE METHOD OF MAKING A POST-JUDGMENT MOTION FOR
22 ALLOWANCE IS REFERRED TO IN SUCH CASES AS ALLSTATE INSURANCE
23 VERSUS LEW, (1996) 46 CALIFORNIA APPELLATE 4TH 174 -- 1794 AT
24 1797, AND BANKES VERSUS LUCAS -- BANKES IS SPELLED
25 B-A-N-K-E-S, VERSUS LUCAS -- (1992) 9 CALIFORNIA --
26 9 CALIFORNIA APPELLATE 4TH, 365 AT 370.

27 I CITE THOSE TWO CASES NOT FOR THE PROPOSITION
28 THAT THEY APPLY IN LABOR CASES OR THAT THEY ARE DISPOSITIVE

1 ON THE ISSUE OF THE AMOUNT OF LEGAL FEES BUT JUST TO SHOW
2 THAT THAT IS AN APPROPRIATE TIME TO MAKE APPLICATIONS FOR
3 FEES.

4 IN THE PREMISES OF THIS CASE, THOUGH, FOR
5 REASONS THAT I WILL EXPLAIN IN JUST A SECOND, THE APPLICATION
6 FOR ATTORNEY'S FEES, IF THERE IS GOING TO BE ONE ON THE PART
7 OF THE PLAINTIFFS'S ATTORNEY, SHOULD BE, IT SEEMS TO ME, MADE
8 AFTER DISTRIBUTION OF ALL THE FUNDS THAT WILL BE DISTRIBUTED
9 UNDER MY AWARD WHICH I'M GOING TO MAKE UNDER PAGA SO THAT WE
10 DON'T HAVE THE SITUATION WHERE THE ATTORNEY IS PAID,
11 PLAINTIFFS'S ATTORNEY IS PAID FIRST OR SEEKS PAYMENT FIRST
12 WITHOUT ALSO DOING ALL THE, IT SEEMS TO ME, RATHER LABORIOUS
13 WORK THAT'S GOING TO BE REQUIRED UNDER PAGA, AND IT'S 25
14 PERCENT, 75 PERCENT SHARING ARRANGEMENT WITH THE PLAINTIFFS
15 TO GET 25 PERCENT AND WITH THE STATE OF CALIFORNIA TO GET THE
16 75 PERCENT.

17 SO I'M GOING TO TREAT THAT ASPECT OF THIS CASE
18 AS CALLING FOR ATTORNEY FEE MOTIONS, IF ANY ARE TO BE MADE,
19 AT A TIME AFTER THAT STEP OF CONCURSUS OF CLAIMS AND
20 DISTRIBUTION OF FUNDS HAS EITHER BEEN COMPLETELY FINISHED OR
21 HAS BEEN FINISHED WITH THE EXCEPTION OF A FEW SMALL
22 MINISTERIAL ACTS.

23 PARDON ME.

24 WITH RESPECT TO THE -- TO THE REMEDIES, IT
25 SEEMS TO ME THAT THE EVIDENCE STRONGLY SUPPORTS THE
26 PLAINTIFFS'S ARGUMENTS AS TO WHAT I WILL CALL THE 558-510-512
27 THEORY AND THE 1197.1-1198-WORK ORDER THEORY.

28 I THINK THAT THE EVIDENCE ESTABLISHES

1 VIOLATIONS OF THOSE SUBSTANTIVE PROVISIONS AND THAT THE
2 EVIDENCE ESTABLISHES A RIGHT TO RECOVER ON BEHALF OF THE
3 PAGA-AGGRIEVED EMPLOYEES AND ON BEHALF OF THE PLAINTIFFS BUT
4 IN AMOUNTS THAT ARE DIFFERENT FROM THOSE -- THE THEORIES ARE
5 THOSE ADVOCATED BY MR. SPIVAK AND HIS CLIENTS. THE AMOUNTS
6 ARE AMOUNTS THAT I AM GOING TO ALTER, THOUGH, AS WILL BE
7 CLEAR.

8 WITH RESPECT TO THE GHRDILYAN 558-510-512
9 LABOR CODE RECOVERY, I AM GOING TO AWARD \$7,654.60 -- THAT'S
10 EXACTLY AS CALCULATED BY MR. SPIVAK AND THOSE ARE -- THAT'S
11 IN FAVOR OF MS. GHRDILYAN AND AGAINST MR. ABALKHAD.

12 WITH RESPECT TO THE 1197.1 THEORY, WITH 1198
13 AND WORK ORDER BEING THE SUBSTANTIVE BASES, I AGREE WITH
14 MR. SPIVAK THAT MS. GHRDILYAN'S RECOVERY SHOULD BE \$14,218
15 AND THAT COMES OUT TO A TOTAL OF 21,872.60 FOR GHRDILYAN.

16 WITH RESPECT TO SULTANIAN, MY DETERMINATION IS
17 THAT REGARDING THE LABOR CODE 558-510-512 THEORY,
18 MS. SULTANIAN IS ENTITLED TO RECOVERY AGAINST MR. ABALKHAD OF
19 \$5,264.19, AND WITH RESPECT TO HER THEORY UNDER 1197.1 LABOR
20 CODE, MS. SULTANIAN IS ENTITLED TO RECOVER AGAINST
21 MR. ABALKHAD \$13,936.50. TOTAL IS \$19,200.69, AND THAT'S THE
22 AMOUNT THAT SULTANIAN IS ENTITLED TO RECOVER ON HER ACCOUNT
23 AGAINST MR. ABALKHAD.

24 THIS NOW BRINGS US TO THE AWARD IN FAVOR OF
25 THE SO-CALLED AGGRIEVED EMPLOYEES.

26 MY DETERMINATION IS THAT THE AGGRIEVED
27 EMPLOYEES'S CLAIMS ARE VALID AND MERITORIOUS CLAIMS; THAT
28 THEY CAN BE AND HAVE BEEN VALIDLY ASSERTED BY, PROSECUTED BY

1 THE TWO PLAINTIFFS IN OUR CASE.

2 I AM GOING, HOWEVER, NOT TO ACCEPT THE DOLLAR
3 FIGURES IN THE ULTIMATE SENSE THAT MR. SPIVAK AND HIS CLIENTS
4 HAVE ADVOCATED. IN DOING THIS, I AM GOING TO SPECIFICALLY
5 EXERCISE MY POWERS, WHICH IT SEEMS TO ME ARE IN THE NATURE OF
6 JUDICIAL DISCRETION, TO REDUCE THE AMOUNT OF RECOVERY FROM
7 THE AMOUNTS ADVOCATED BY MR. SPIVAK AND HIS CLIENTS.

8 WITH RESPECT TO THE LABOR CODE 558, 510, AND
9 512 THEORIES, AS TO THE AGGRIEVED EMPLOYEES, MY DETERMINATION
10 IS THAT THE AMOUNT WHICH MR. ABALKHAD MUST PAY IS NOT THE
11 \$2,164,278 AMOUNT THAT MR. SPIVAK ARGUED FOR BUT RATHER
12 \$125,000.

13 WITH RESPECT TO THE 1197.1-1198-WAGE-ORDER
14 CLAIM, MY DETERMINATION IS THAT THE AMOUNT THAT MR. ABALKHAD
15 WILL BE REQUIRED TO PAY IS NOT \$3,269,490, WHICH WAS THE
16 AMOUNT ADVOCATED BY MR. SPIVAK ON BEHALF OF HIS CLIENTS BUT
17 RATHER \$200,000.

18 NOW, THAT COMES OUT TO A TOTAL THEN OF
19 \$325,000.

20 NOW, IN DOING THIS, I HAVE EXERCISED MY
21 DISCRETION TAKING INTO CONSIDERATION THE FOLLOWING POINTS. I
22 AGREE WITH MR. SPIVAK'S CHARACTERIZATION OF MR. ABALKHAD AS A
23 PERSON WHO WAS INADEQUATELY OBSERVANT OF CALIFORNIA LAW.
24 MR. SPIVAK REFERS TO HIM AS A "SCOFFLAW." THAT'S A
25 JOURNALISTIC RATHER THAN A -- A LEGAL TERM. BUT I THINK HE
26 DID HAVE THE INTENTION SIMPLY OF TRYING TO RUN THINGS THROUGH
27 AND GET OFF AS CHEAPLY AS HE COULD WHILE HE WAS RUNNING HIS
28 BUSINESSES.

1 BUT I ALSO FIND THAT ONE OF THE PROBLEMS IN
2 THE OPERATION OF HIS BUSINESS WAS THAT HE GOT IN WAY OVER HIS
3 HEAD. HE SIMPLY EXPANDED BEYOND HIS OR HIS CORPORATION'S
4 CAPACITY PROPERLY TO RUN THESE BUSINESSES. HE RAN THEM AS
5 THOUGH HE WERE RUNNING A KIND OF SMALL OPERATIONS OUT OF HIS
6 HIP POCKET, AND I RECOGNIZE THAT THAT IS NOT A PRAISEWORTHY
7 BEHAVIOR, BUT IT SEEMS TO ME THAT IT IS NOT BEHAVIOR OF A
8 HIGHLY BLAMEWORTHY SENSE AND THAT IT IS BEHAVIOR WHICH MERITS
9 A REDUCTION OR SOFTENING OF THE PENALTIES.

10 NOW, I WILL ALSO SAY THE FOLLOWING. IF ON
11 APPEAL, THE APPELLATE COURT DETERMINES THAT I AM MISTAKEN
12 CONCERNING THE POTENTIAL OTHER THEORIES OF LIABILITY ASSERTED
13 BY MR. SPIVAK AND HIS CLIENTS AGAINST MR. ABALKHAD, I WILL
14 TELL YOU WHAT I WOULD HAVE AWARDED ON THOSE THEORIES SO THAT
15 IT MAY BE THAT THE APPELLATE COURT CAN SIMPLY TAKE WHAT I
16 HAVE SAID HERE AND RATHER THAN MAKING A DISPOSITION WHICH
17 REMANDS THE CASE FOR FURTHER CALCULATION OF DAMAGES, THE
18 APPELLATE COURT CAN SIMPLY INSERT THE MONETARY REMEDY THAT I
19 WOULD HAVE INSERTED MYSELF HAD I NOT BEEN PERSUADED THAT
20 MR. ABALKHAD WAS NOT LIABLE EXCEPT UNDER THE THEORIES THAT I
21 HAVE MADE REFERENCE TO.

22 HAD THAT BEEN DONE, I WOULD HAVE AWARDED AN
23 ADDITIONAL \$200,000 AS TO THE AGGRIEVED EMPLOYEES.

24 NOW, I WILL SAY THAT THESE AMOUNTS ARE, I
25 RECOGNIZE, EXTREMELY LENIENT AND PERMISSIVE TO MR. ABALKHAD.
26 IN OTHER WORDS, THIS IS NOT A CASE WHERE THE COURT HAS TRIED
27 TO SOCK IT TO HIM. IT IS, RATHER, A CASE IN WHICH I HAVE
28 TREATED IT AS A SERIES OF OFFENSES BUT ONE AS TO WHICH

1 MR. ABALKHAD SHOULD BE GIVEN AT LEAST SOME LENIENCY IN THE
2 FASHIONING OF A REMEDY. I THINK THAT'S IT. LET ME ASK THE
3 LAWYERS.

4 FIRST OF ALL, PLAINTIFFS'S LAWYER. ARE THERE
5 OTHER MATTERS AS TO WHICH YOUR CLIENTS CONTEND I SHOULD MAKE
6 A STATEMENT OF SOME KIND OR A FINDING OF SOME KIND?

7 MR. SPIVAK: WAS THERE SOME FINDING AS TO THE
8 ADDITIONAL \$200,000 WITH RESPECT TO THE INDIVIDUAL
9 PLAINTIFFS, YOUR HONOR?

10 YOU SPOKE TO THE OTHER CLAIMS WHICH PERHAPS
11 WOULD AFFECT THE APPELLATE COURT SHOULD IT SEND BACK FOR
12 CALCULATION.

13 THE COURT: YEAH.

14 MR. SPIVAK: I KNOW YOU GAVE AN AGGRIEVED EMPLOYEE
15 NUMBER BUT NOT FOR THE TWO PLAINTIFFS.

16 THE COURT: SHOW ME -- JUST A SECOND. COULD YOU,
17 PLEASE, TURN BACK TO -- OH, I GUESS I OUGHT TO SAY THAT. LET
18 ME DO THAT NOW.

19 THE PLAINTIFFS CONTEND THAT THERE WERE THESE
20 WRONGS AS TO BOTH THEMSELVES AND AS TO THE AGGRIEVED
21 EMPLOYEES, AND I WILL JUST REFER TO THEM IN SHORT, COMPRESSED
22 TERMS. AND ESSENTIALLY IT BOILS DOWN TO I THINK NINE
23 THEORIES AND I WILL ENUMERATE THEM NOW: OVERTIME, REST AND
24 MEAL PERIODS, WAGE STATEMENT, IN OTHER WORDS, LABOR CODE 226,
25 UNPAID TRAVEL EXPENSES AND MILEAGE -- THAT'S FOUR --
26 OFF-THE-CLOCK WORK, UNTIMELY PAYMENT OF WAGES, VACATION PAY
27 AT TERMINATION, AND FAILURE FAIRLY TO ADVISE THE EMPLOYEES OF
28 CHANGE IN THE COMMISSION STRUCTURE SO THAT WHAT HAPPENED WAS

1 THAT THEY WERE MADE TO DO WORK WITHOUT KNOWING -- WITHOUT, AS
2 IT TURNED OUT, WHAT THE ULTIMATE PAYMENT FOR IT WAS GOING TO
3 BE.

4 EACH OF THOSE CONTENTIONS -- EACH OF THOSE
5 THEORIES IS A THEORY THAT WOULD BE DECIDED IN FAVOR OF THE
6 PLAINTIFFS AND AGAINST THE -- AND AGAINST THE DEFENDANT
7 ABALKHAD EXCEPT FOR MY DETERMINATION THAT HE INDIVIDUALLY IS
8 NOT LIABLE. BUT IF HE IS LIABLE, THAT IS, IF THE APPELLATE
9 COURT DECIDES THAT I HAVE MADE AN ERROR REGARDING EXCESSIVELY
10 NARROW INTERPRETATION OF THE LABOR CODE PROVISIONS, I WOULD
11 AWARD EACH OF THE PLAINTIFFS AS PENALTIES \$60,000 EACH; 60
12 PLUS 60 IS 120.

13 NOW, I WILL SAY, AGAIN, I RECOGNIZE THAT THIS
14 IS WAY BELOW THE PLAINTIFFS'S TARGET NUMBER, BUT IT IS A
15 NUMBER THAT I THINK IS APPROPRIATE.

16 NOW, I WANT TO SAY SOMETHING ELSE ABOUT THIS,
17 AND THIS IS A COMPLICATION CREATED BY FACTORS THAT I HAD
18 REFERRED TO PREVIOUSLY. THIS IS THE BANKRUPTCY OF THE
19 CORPORATION.

20 WHAT I AM SAYING CONCERNING THESE OTHER
21 PENALTIES AND OTHER AMOUNTS, THAT IS, AMOUNTS I AM NOT
22 ACTUALLY AWARDING ARE FOR THE BENEFIT OF THE APPELLATE COURT
23 IN ASSISTING IT TO FRAME A DISPOSITIONAL ORDER IF THE CASE IS
24 SENT BACK TO THE SUPERIOR COURT UPON A REVERSAL IN PART OR IN
25 WHOLE.

26 I WANT TO PUT THESE PEOPLE IN A POSITION SO
27 THEY WILL HAVE A REMEDY ON BOTH SIDES WITHOUT THE NECESSITY
28 OF THE SUPERIOR COURT HAVING TO REVISIT THIS AND BY THE

1 SUPERIOR COURT TELLING THE APPELLATE COURT WHAT THE SUPERIOR
2 COURT WOULD HAVE DONE HAD THE SUPERIOR COURT'S REASONING NOT
3 FORECLOSED IT.

4 I AM EXTREMELY CONCERNED TO STATE THIS IN THAT
5 WAY SO THAT THE BANKRUPTCY PROCEEDINGS ARE NOT IN SOME WAY
6 SPOILED OR IMPROPERLY AFFECTED BY THE WORK DONE HERE IN THE
7 -- IN THE TRIAL COURT. AND I AM TRYING TO SUPPLY ALL OF THE
8 INFORMATION THAT I CAN WHILE STILL BEING TRUE TO AND
9 OBSERVANT OF THE NECESSITY FOR TRYING TO ACHIEVE AS MUCH
10 FINALITY AS I CAN WHILE STILL ASSISTING IN THE LITIGATION
11 PROCESS AS MUCH AS THIS COURT CAN.

12 NOW, I HAVE PREVIOUSLY DISCUSSED AND I WILL
13 MAKE A PART OF MY STATEMENT OF DECISION HERE THE SET OF DATES
14 THAT PIVOT AROUND THE APPEAL. AS I HAVE SAID PREVIOUSLY, THE
15 CASE THAT I HAVE BEEN TRYING, THIS CASE, WAS FILED ON THE
16 26TH OF JANUARY, 2010. THE DEFENDANT WAS AT THAT TIME ONLY
17 RJ FINANCIAL, AND THE CASE WAS DENOMINATED A CLASS ACTION. A
18 LITTLE LESS THAN MONTH AFTER THAT, ON THE 24TH OF FEBRUARY,
19 2010, THE PLAINTIFFS FILED A FIRST AMENDED COMPLAINT. THEY
20 ADDED MR. ABALKHAD AS A NAMED DEFENDANT. THEY CONTINUED WITH
21 THE DESIGNATION OF THIS CASE AS A CLASS ACTION.

22 ON THE 8TH OF MARCH, 2010, THE PLAINTIFFS
23 FILED A 170.6 AS TO JUDGE WILLIAM FAHEY OF THIS COURT.

24 ON THE 22ND OF MARCH, 2010, THE LAWYER WHO THE
25 TESTIMONY HAS IDENTIFIED AS MR. SANFORD FREY, F-R-E-Y -- THAT
26 NAME ALSO APPEARS ON THE DOCUMENT I'M GOING TO DESCRIBE --
27 FILED A NOTICE OF STAY AS TO THE CORPORATE DEFENDANT,
28 REFERRING TO THE CHAPTER 11 BANKRUPTCY. THAT BANKRUPTCY

1 PETITION APPEARS TO HAVE BEEN FILED ON THE 7TH OF JANUARY,
2 2010, THAT IS, BEFORE THE CASE WAS EVER FILED.

3 THAT ACCOUNTS FOR THE MODIFICATION OF THE NAME
4 OF THE PARTIES TO INCLUDE ABALKHAD AS AN INDIVIDUAL. I THINK
5 IT IS THAT OBVIOUS THAT -- BUT I WANT TO MAKE IT VERY, VERY
6 CLEAR THAT THIS IS NOT ONLY OBVIOUS, BUT IT IS A FACT THAT --
7 THIS CASE IS STAYED AS TO THE RJ FINANCIAL CORPORATION UNDER
8 THE STATUTORY CITATION I HAVE GIVEN, 11 U.S.C. 362.

9 MR. ABALKHAD'S DEFAULT WAS TAKEN IN THIS CASE
10 AND IN AUGUST OF 2010, HE MOVED TO SET ASIDE THE DEFAULT. IN
11 THAT SET OF PAPERS, THERE WAS THE CLAIM MADE THAT PLAINTIFFS
12 ADDED ABALKHAD ON THE 26TH OF MARCH, 2010. AS I HAVE
13 INDICATED, THAT WAS NOT TRUE. IT WAS ON THE 26TH -- 24TH OF
14 FEBRUARY, 2010, BUT THAT WAS NOT A SIGNIFICANT INACCURACY
15 BECAUSE IN THE COURT'S VIEW, ABALKHAD WAS ENTITLED TO HAVE
16 THE DEFAULT SET ASIDE.

17 NOW IS THERE ANYTHING THAT I AM SUPPOSED TO
18 SAY?

19 MR. SPIVAK: I DON'T THINK SO, YOUR HONOR.

20 THE COURT: OKAY. HOW ABOUT YOU, MR. SABZEVAR?

21 MR. SABZEVAR: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT. HERE'S WHAT I'M GOING TO DO
23 THEN.

24 I'M GOING TO SET A HEARING OUT IN THE FUTURE.
25 FIRST OF ALL, THE STATEMENT OF DECISION IS SUFFICIENT IF IT
26 STATES ALL THE FACTS. IT NEED NOT STATE EVIDENTIARY FACTS.
27 I THINK THE STATEMENT OF DECISION I HAVE MADE DOES THAT.

28 SECONDLY, I'M GOING TO ORDER THE PLAINTIFFS

1 THROUGH COUNSEL TO PREPARE, SERVE, OBTAIN APPROVAL AS TO FORM
2 FROM DEFENDANT ABALKHAD. THIS MAY REQUIRE A MEET AND CONFER
3 AND COURT EXPECTS COUNSEL TO BE ATTENTIVE AND COOPERATIVE IN
4 THIS REGARD. SO SUBMIT THAT TO DEFENSE COUNSEL AND LODGE
5 WITH THE COURT A JUDGMENT SUITABLE FOR COURT'S SIGNATURE IN
6 CONFORMITY WITH THE FOREGOING.

7 I AM GOING TO ORDER ALSO THAT THE PARTIES
8 AND/OR COUNSEL PICK UP ALL EXHIBITS LODGED WITH THE CLERK AND
9 ALL EXHIBITS MARKED AND/OR RECEIVED IN EVIDENCE, EACH SIDE TO
10 PICK UP THE ITEM PROFFERED BY THAT SIDE FOR RECEIPT INTO
11 EVIDENCE WITHIN FIVE DAYS FROM THE COURT'S SIGNING OF THE
12 JUDGMENT.

13 NOW, TODAY IS THE 23RD OF APRIL, 2010 -- 2012,
14 I SHOULD SAY. I WANT TO HAVE A HEARING AT WHICH THE JUDGMENT
15 IS PRESENTED TO ME FOR SIGNATURE AND I WANT TO DO THESE
16 THINGS AT THAT HEARING. I WANT TO SETTLE THE FORM AND
17 SUBSTANCE OF THE DECISION -- OF THE JUDGMENT. IF THERE'S ANY
18 OTHER WORK THAT NEEDS TO BE DONE, I WANT TO DO THAT AT THIS
19 HEARING. I WANT TO DETERMINE WHAT, IF ANYTHING, REMAINS TO
20 BE DONE REGARDING FUTURE PROCEEDINGS IN THIS CASE, AND I WANT
21 TO DETERMINE WHAT THE STATUS OF THIS CASE IS AND I WANT TO
22 HAVE THE LAWYERS FOR THE PARTIES PERSONALLY PRESENT.

23 MY IDEA WOULD BE THE JUDGMENT SHOULD BE
24 SUBMITTED BEFORE THE HEARING BUT THAT PLAINTIFFS'S COUNSEL
25 SHOULD BRING WITH HIM A DUPLICATE ORIGINAL OF THE JUDGMENT IN
26 CASE THE PAPERWORK HANDLING PRODUCES A SITUATION WHERE I
27 CAN'T LAY MY HANDS ON THE JUDGMENT THAT I AM SUPPOSED TO SIGN
28 IMMEDIATELY. I LOOK TO THE ATTORNEYS NOW FOR SOME

1 SUGGESTIONS AS TO THE DATE WHEN THAT HEARING SHOULD BE
2 SCHEDULED.

3 MR. SABZEVAR, DO YOU HAVE ANY IDEAS ABOUT WHEN
4 I SHOULD SCHEDULE IT?

5 MR. SABZEVAR: FORTY-FIVE DAYS, YOUR HONOR?

6 THE COURT: FORTY-FIVE DAYS.

7 MR. SPIVAK: THAT'S FINE FOR PLAINTIFFS.

8 THE COURT: SO TODAY IS THE 23RD. LET'S SET IT FOR
9 HEARING ON THE -- LET'S GO OUT MORE THAN 45 DAYS.

10 AS YOU CAN SEE, FROM THE 4TH TO THE 8TH, I
11 WON'T BE ABLE TO WORK WITH YOU -- OF JUNE. I WON'T BE ABLE
12 TO WORK WITH YOU. SO WOULD IT ALL RIGHT WITH YOU LAWYERS IF
13 I PICK THE 21ST OF JUNE, 2012, 8:30, THIS DEPARTMENT?

14 MR. SABZEVAR: THAT'S FINE, YOUR HONOR.

15 THE COURT: ARE YOU GOING TO BE AVAILABLE ON THOSE
16 DATES?

17 MR. SPIVAK: YES, YOUR HONOR.

18 THE COURT: ARE YOU GOING TO BE ABLE TO DO THE
19 THINGS I TALKED ABOUT, SETTLING THE FORM AND SUBSTANCE OF THE
20 JUDGMENT?

21 MR. SPIVAK: YES, YOUR HONOR.

22 MR. SABZEVAR: THAT'S FINE.

23 THE COURT: THANK YOU VERY MUCH. I APPRECIATE YOUR
24 PARTICIPATION AND -- AND YOUR ADVOCACY, AND I WILL SEE YOU
25 WHEN WE NEXT HAVE TO WORK ON THE CASE.

26 NOW, I WILL TELL YOU SOMETHING ELSE. PLEASE
27 STAY ALERT AND PLEASE LOOK IN ADVISES TO ATTORNEYS, OR
28 NOTICES, OR WHATEVER WE ARE GOING TO DO IN THE NEXT THREE OR

1 FOUR WEEKS. HERE'S OUR SITUATION.

2 AS OF 15TH OF MAY, WE WON'T HAVE REPORTERS IN
3 THESE DEPARTMENTS ANYMORE FOR TRIAL MATTERS -- THEY WILL HAVE
4 TO BE SUPPLIED BY THE PARTIES -- AND WE WON'T HAVE THE
5 REPORTERS EXCEPT TWO LAW AND MOTION SESSIONS A WEEK. THE
6 IDEA IS IT WILL BE ONE MORNING AND ONE AFTERNOON. THAT WILL
7 BE ALL THE REPORTERS WE ARE GOING TO HAVE SUPPLIED BY THE
8 COURT.

9 MOREOVER, THEY ARE GOING TO, AS I MENTIONED TO
10 YOU PREVIOUSLY, THEY ARE GOING TO REDUCE THE STAFF.

11 SO I HAD GIVEN YOU DATE, BUT I AM NOT ONE
12 HUNDRED PERCENT CERTAIN ABOUT HOW THAT DATE IS GOING TO WORK.
13 PLEASE KEEP YOUR EYES AND EARS OPEN. IF THERE'S SOME FOUL UP
14 OR SOMETHING, DO WHATEVER YOU NEED TO DO TO MAKE IT RIGHT. I
15 MEAN, WE ARE -- I WISH I COULD SAY SOMETHING THAT SOUNDED
16 MORE EMPHATIC AND MORE DEFINITIVE, BUT I CAN'T. I JUST DON'T
17 KNOW WHAT'S GOING TO HAPPEN.

18 WHAT I WANT TO DO IS TO FINISH UP YOUR CASE
19 AND GET YOU ALONG FOR THE NEXT STEP FOR OBVIOUS REASONS. AND
20 I DON'T WANT THE COLLAPSE OF THE SYSTEM'S ABILITY TO HANDLE
21 MATTERS TIMELY TO REDOUND TO YOUR DISADVANTAGE OR TO
22 ADDITIONAL EXPENSE ON THE PART OF EITHER SIDE THAT MIGHT
23 OTHERWISE BE AVOIDED IF YOU LAWYERS KEPT YOUR EYES PEELED FOR
24 WHAT'S HAPPENING IN THE COURTS AND IF I WERE ABLE TO PREDICT
25 A LITTLE BIT, I JUST CAN'T PREDICT THAT. I DON'T EVEN KNOW.
26 BUT KEEP YOUR EYES OPEN. TRY TO DO WHAT'S RIGHT, AND I WILL
27 TRY TO DO WHAT'S RIGHT. IT'S ABOUT THE BEST I CAN DO FOR
28 YOU.

1 ALL RIGHT. THANK YOU ALL VERY MUCH.

2 MR. SPIVAK: THANK YOU, YOUR HONOR.

3 MR. SABZEVAR: THANK YOU, YOUR HONOR.

4 THE COURT: SEE YOU WHEN WE NEXT HAVE TO WORK ON

5 THE CASE.

6 (PROCEEDINGS CONCLUDED.)

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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 8



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

CASE ASSUMPTIONS

Class Members	115
Opt Out Rate	1%
Opt Outs Received	1
Total Class Claimants	114
Subtotal Admin Only	\$8,199.59

Not-to-Exceed Total \$6,000.00

For 115 Class Members

Pricing Good for Scope of Estimate Only

Includes all Aspects of Escheating to the State of CA

December 7, 2021

Case: Larraburu v. AMS, Opt-Out Administration

Phoenix Contact: Michael E. Moore
Contact Number: 949.331.0131
Email: mike@phoenixclassaction.com

Requesting Attorney: Emily Houny Ly
Firm: Spivak Law Firm
Contact Number: (818) 205-9033
Email: emily@spivaklaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly. Estimate is based on **115** Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	2		\$200.00
Programming Database & Setup	\$100.00	2		\$200.00
Toll Free Setup*	\$150.00	1		\$150.00
Call Center & Long Distance	\$2.00	31		\$62.00
NCOA (USPS)	\$60.00	1		\$60.00
Total				\$672.00

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Website/ Reporting

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	2		\$200.00
Data Merge & Duplication Scrub	\$0.10	115		\$11.50
Notice Packet & Opt-Out Form	\$1.30	115		\$149.50
Estimated Postage (up to 2 oz.)*	\$0.53	115		\$60.95
Static Website	\$100.00	1		Included
Check Cashing Reminder Postcard	\$0.60	24		\$14.36
Postage Included				
Total				\$436.31

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	4		\$220.00
Skip Tracing Undeliverables	\$0.85	29		\$24.44
Remail Notice Packets	\$0.75	26		\$19.31
Estimated Postage	\$0.53	26		\$13.65
Programming Undeliverables	\$50.00	1		\$50.00
Total				\$327.40

Database Programming / Processing Opt-Outs, Deficiencies or Disputes				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Claims Database	\$150.00	2		\$300.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	4		\$220.00
Opt-Outs/Deficiency/Dispute Letters	\$10.00	7		\$70.00
Case Manager	\$85.00	3		\$255.00
Total				\$1,045.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	2		\$270.00
Disbursement Review	\$135.00	1		\$135.00
Programming Manager	\$95.00	1		\$95.00
QSF Bank Account & EIN	\$135.00	2		\$270.00
Check Run Setup & Printing	\$135.00	6		\$810.00
Mail Class Checks *	\$1.10	114		\$125.40
Estimated Postage	\$0.55	114		\$62.70
Total				\$1,768.10

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	4		\$460.00
Remail Undeliverable Checks (Postage Included)	\$1.35	23		\$30.78
Case Associate	\$55.00	4		\$220.00
Reconcile Uncashed Checks	\$85.00	8		\$680.00
Conclusion Reports	\$115.00	4		\$460.00
Case Manager Conclusion	\$85.00	4		\$340.00
Final Reporting & Declarations	\$115.00	4		\$460.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting Included)	\$1,000.00	1		\$1,000.00
Check to Cy-Pres	\$150.00	1		Included
Uncashed Checks to the State of California Controllers Office	\$300.00	1		\$300.00
Estimated <u>19</u> Total Class Members				
Total				\$3,950.78

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$8,199.59



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT 9

Case Name: Larraburu v. AMS

Tuesday, December 7, 2021

Requesting Law Firm

Contact

E-Mail

ILYM Contact

E-Mail

Contact Number

The Spivak Law Firm

Emily HOUNG Ly

emily@spivaklaw.com

Sean Hartranft

Sean@ilymgroupclassaction.com

949.690.2564

ESTIMATE FOR ADMINISTRATION SOLUTIONS

Opt-Out

ASSUMPTIONS

Total Number of Class Members	115
Estimated Percentage of Undeliverable Mail	20%
NCOA	Yes
One-Page Notice Posted to ILYM Group Website	Yes
Certified Spanish Translations	No

Activity

Rate Type

Unit Cost

Volume

Amount

CASE STARTUP

Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	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	4	\$480.00
Staff Hours for Processing Opt-Outs, Disputes & Objections	Hourly	\$70.00	1	\$70.00
Staff Hours for Processing Returned Mailed	Hourly	\$70.00	0	\$0.00
Report Processing	Hourly	\$70.00	3	\$210.00
NCOA	Per Piece	\$25.00	1	Waived
Toll-Free Call Center	Flat Fee	\$42.50	1	\$42.50
ILYM Group Static Website, Includes Hosting	Flat Fee	\$750.00	1	\$750.00
Weekly Reports	Flat Fee	\$500.00	1	Waived

Subtotal

\$1,552.50

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity	Rate Type	Unit Cost	Volume	Amount
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NOTIFICATION/MAILING				
Fulfillment Notice	Per Piece	\$2.00	115	\$230.00
USPS First Class Postage	Per Piece	\$0.55	115	\$63.25
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.50	23	\$57.50
Storage, Photocopies, Deliveries	Flat Fee	\$300.00	1	\$300.00

Subtotal \$650.75

DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	2	\$300.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	2	\$250.00
Check, Print & Mail (Including W2/1099 Stub & Release)**	Per Check	\$1.50	115	\$172.50
USPS First Class Postage	Per Piece	\$0.55	115	\$63.25
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.00	23	\$46.00
Preparation of Taxes	Hourly	\$120.00	10	\$1,200.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

***Additional Bank fees may apply*

Subtotal \$3,531.75

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	2	\$200.00
Project Manager Final Reporting	Hourly	\$120.00	2	\$240.00
Process Unclaimed Funds to State Controller's Office	Flat Fee	\$750.00	1	\$750.00
Declaration	Hourly	\$125.00	2	\$250.00

Subtotal \$1,440.00

Total Case Estimate: \$7,500.00

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 10



Class Action Administrators

www.cptgroup.com

Contact Name: Timothy N. Phillips, Jr.

Randi Martz

Corporate Headquarters

50 Corporate Park, Irvine CA 92606

Tim@cptgroup.com

Main Number: (800) 542-0900

Direct Number: (818) 415-2703

Fax Number: (949) 428-1074

Case Name: Larraburu v. AMS

Date: December 8, 2021

All-In Settlement

Requesting Attorney: **Emily Houng**

* Class Members: **115**

Plaintiff or Defense: **Plaintiff**

** Opt-Out Rate: **1.5%**

Firm Name: **The Spivak Law Firm**

Opt-Outs Received: **2**

Telephone: **(818) 582-3086**

Postage Total: **\$162.87**

Email: emily@spivaklaw.com

Grand Total: **\$12,277.22**

***** DISCOUNTED FLAT FEE: \$8,500.00**

* This number is an estimate provided by counsel. If the actual number is different, our cost estimate will change accordingly.

** For ease of comparison, in the event competing estimates use an alternate filing rate to calculate estimated cost, please advise us so that we may modify the estimate accordingly.

*** This price is valid for administration of a maximum of 2 opt-out's filed. Any additional opt-out's filed above 2 will be billed at the rate of \$8.00 per member.

Case Setup

Case Setup / Data Management / Create a Unified Mailing List / TFN Establish & Setup / Static Website

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Project Manager	\$95.00	1	\$95.00
System Programming/Data Base Setup	\$150.00	1	\$150.00
Toll-Free Number Establish/Setup*	\$150.00	2	\$300.00
Static Website	\$1,200.00	1	\$1,200.00
Total			\$1,745.00

* Up to 120 days after disbursement

Notification Procedures

National Change of Address (NCOA) / Notice & Opt-Out Form / Postage (up to 1 oz.)

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
NCOA	\$150.00	1	\$150.00
Project Manager-Opt-Out/Notice Format	\$95.00	2	\$190.00
Merged Data	\$0.35	115	\$40.25
Mailing of Notice Pack	\$1.00	115	\$115.00
Estimated Postage (up to 1 oz.)*	\$0.58	115	\$66.70
Total			\$561.95

*Additional charges will apply if the postage exceeds 1 oz. The final rate will be determined at the time of mailing.

Returned Mail

Notices Returned as Undeliverable / Skip Traces / Remail Notice Packets / Postage

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Update Undeliverable	\$0.50	12	\$6.00
Skip Traces	\$1.25	10	\$12.50
Remail Packs	\$1.35	9	\$12.15
Estimated Postage (up to 1 oz.)	\$0.58	9	\$5.22
Clerical Staff	\$60.00	1	\$60.00
Total			\$95.87

Opt-Out Processing

Process Opt-Outs, Deficiencies & Other Requests from Class Members / Call Center Support

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming of Opt-Out Data Base	\$150.00	4	\$600.00
Opt-Out Processing	\$10.00	2	\$20.00
Clerical Staff	\$60.00	1	\$60.00
Deficiency/Dispute Letters	\$20.00	1	\$20.00
Estimated Postage (up to 1 oz.)	\$0.58	1	\$0.58
Project Manager	\$95.00	1	\$95.00
Call Center Support	\$3.00	23	\$69.00
Total			\$864.58

SSN Verification

Verify SSN for Validity with IRS / IRS Backup Withholdings

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming for SSN Selection	\$150.00	1	\$150.00
Project Manager	\$95.00	3	\$285.00
SSN Verification	\$0.20	113	\$22.60
Total			\$457.60

Disbursement

Calculations / Data Management / Create & Manage QSF / Print & Mail Checks, 1099/W-2

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming Database-Calculate Totals	\$150.00	3	\$450.00
Project Supervisor Review of Distribution	\$150.00	3	\$450.00
Project Manager-Correspond w/ Attorney	\$95.00	2	\$190.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Programming/Setup & Printing of Checks	\$150.00	3	\$450.00
Print Mail Checks, W-2/1099 (8x10 sheet)	\$2.50	113	\$282.50
Estimated Postage (up to 1 oz.)	\$0.58	113	\$65.54
Total			\$2,338.04

Post-Disbursement & Tax Reporting

Account Recons / Skip Trace / Reissue Checks / Annual Tax Reporting / Final Reporting & Declaration

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Re-Issue Checks as Required	\$5.00	2	\$10.00
Project Supervisor -Account Recons	\$150.00	6	\$900.00
Skip Trace	\$1.25	9	\$11.25
Remail Undeliverable Checks	\$2.50	9	\$22.50
Estimated Postage (up to 1 oz.)	\$0.58	11	\$6.38
Project Supervisor-Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming- Final Reports	\$150.00	2	\$300.00
Project Manager - Acnt Files Sent to Atty	\$150.00	2	\$300.00
Project Supervisor - Final Declaration	\$150.00	2	\$300.00
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			\$4,100.13

*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.

Escheat 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	24	\$3.60
Project Manager - Fall Reporting	\$95.00	2	\$190.00
Project Supervisor-Fall Reporting	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Check Reissues - Winter/Spring QTR	\$5.00	2	\$12.00
Estimated Postage (up to 1 oz.) for Reissue	\$0.58	2	\$1.39
Project Manager - June Remittance	\$95.00	2	\$190.00
Project Supervisor- June Remittance	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Add'l Account Recons	\$150.00	6	\$900.00
Add'l QSF Annual Tax Reporting	\$500.00	1	\$500.00
Total			\$2,114.05
Grand Total:			\$12,277.22

TERMS AND CONDITIONS

These Terms and Conditions are made a part of and incorporated by reference into the CPT Group, Inc. Terms and Conditions Agreement by and between Client and CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606 ("CPT").

1. Definitions.

- a) **"Affiliate"** means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with, another party.
- b) **"Approved Bank"** means a financial institution insured by the Federal Deposit Insurance Corporation with capital exceeding \$1 billion.
- c) **"Case"** means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.
- d) **"Claims Administrator"** means CPT Group, Inc. a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
- e) **"Client"** means collectively Plaintiff Counsel and Defense Counsel.
- f) **"Client Content"** means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, objections, and the like 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 product 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 11