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8 Attorneys for Plaintiff(s),
9 MARTHA P. BRIANO MARTINEZ, and all others similarly situated

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

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

17 *Plaintiff(s),*
18

19 vs.

20 NOR CAL FOODS, LLC, a California
21 corporation; and DOES 1–50, inclusive,

22 *Defendant(s).*
23
24

Case No. SCV-270596

**DECLARATION OF DAVID SPIVAK
IN SUPPORT OF PLAINTIFF
MARTHA P. BRIANO MARTINEZ’S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing Dept.: 16, The Hon. Patrick
Broderick

Action filed: April 13, 2022



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

3 I, DAVID SPIVAK, declare as follows:

4 1. I am an attorney duly licensed to practice law in the State of California and am an
5 attorney of record for Plaintiff Martha P. Briano Martinez (“Plaintiff”) in her lawsuit against
6 Defendant Nor Cal Foods, LLC (“Defendant”). Plaintiff and Defendant are collectively referred
7 to as the “Parties.”

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

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

12 ***Factual and Procedural Background***

13 4. Defendant is an owner and operator of a Denny's restaurant. Defendant employed
14 Plaintiff as a hourly, non-exempt cook from about October 2, 2020 until July 5, 2021.

15 5. On March 22, 2022, 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
19 dated March 22, 2022 is attached hereto as **Exhibit 2**.

20 6. On April 13, 2022, Plaintiff filed a Class Action Complaint in the Sonoma County
21 Superior Court, Case No. SCV-270596 , against Defendant on behalf of herself and others
22 similarly situated, alleging causes of action on a class-wide basis for: (1) Failure to Pay All
23 Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198); (2) Failure to
24 Provide Rest Breaks (Lab. Code §§226.7 and 1198); (3) Failure to Provide Meal Periods (Lab.
25 Code §§226.7, 512 and 1198); (4) Failure to Indemnify (Lab. Code §§ 1198 and 2802); (5) Wage
26 Statement Penalties (Lab. Code §§ 226 and 226.2); (6) Waiting Time Penalties (Lab. Code §§
27 201-203); and (7) Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*). On May 27, 2022,
28 Plaintiff filed her First Amended Complaint adding a claim under the Labor Code Private
Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* (“PAGA”). On July 18, 2022,
Defendant filed an answer to Plaintiff’s First Amended Complaint. Defendant denies all of
Plaintiff’s allegations and strongly contends that its wage and hour policies, practices and



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1 procedures are fully compliant with all applicable laws. A true and correct copy of the complaint
2 is attached hereto as **Exhibit 3**. A true and correct copy of Plaintiff's First Amended Complaint
3 is attached hereto as **Exhibit 4**. A true and correct copy of Defendant's Answer is attached hereto
4 as **Exhibit 5**.

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 she 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 January 10, 2023, following much of the foregoing informal discovery and
13 exchange of information, the Parties participated in a mediation session presided over by
14 Mediator Scott Radovich, 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 her/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 9. At the mediation, it became clear that that Defendant had insufficient resources to
21 cover the full extent of liability. Plaintiff entered into a separate settlement of her sexual
22 harassment and retaliation claims against Defendant and a coworker. Plaintiff will provide it to
23 the Court on request.

24 ***Ascertainable and Numerous Class***

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

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



Supreme Court has upheld a class of as few as 10 individuals. Defendant estimates that there are approximately 131 Class Members. Plaintiff maintains that it would be impractical and economically inefficient to require each Settlement Class Member to separately maintain an individual action or be joined as a named plaintiff in this action. In light of these considerations, the Settlement Class' membership is sufficiently numerous.

Predominant Common Questions

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

Typicality

13. Plaintiff contends that her claims are typical for the purposes of certifying the Settlement Class. Plaintiff asserts that she, like absent Class Members was subject to the same relevant policies and procedures governing her compensation, hours of work and meal and rest periods. Because Plaintiff contends that she was subject to the same general course of conduct as absent Class Members, resolving the common questions as they apply to Plaintiff will determine



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1 Defendant's *prima facie* liability to all Class Members. Moreover, Plaintiff's claims could
2 potentially be subject to the same primary affirmative defenses as those of absent Class Members.
3 Accordingly, Plaintiff's claims are typical of the Class.

4 ***Adequacy***

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

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

21 ***Background of Class Counsel***

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

25 17. In December of 1995, the Supreme Court for the State of California admitted me
26 as an Attorney and Counselor at Law and licensed me to practice law in all the Courts of this
27 State. On May 11, 2012, I also became admitted to the District of Columbia Bar. In February
28 2013, I became admitted to the New York State Bar.

18. My law practice has always focused on representation of private and public
employees with claims of unpaid wages, wrongful termination, harassment, family and medical



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1 leave, whistleblowing, discrimination, benefits, and civil rights violations. One of my websites,
2 FightWrongfulTermination.com, provides a further description of my practice.

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

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

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

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
awarded compensatory and punitive damages. See "Activist Says Criticism of Rail Plan Cost His
Job" by Dan Weikel, Los Angeles Times, September 28, 2000; "Punitive Damages Awarded to
Fired Social Worker" by Dan Weikel, Los Angeles Times, June 10, 2000; "A Whistleblower's
Revenge" by Susan Goldsmith, New Times Los Angeles, June 8, 2000.



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

8 e. *Rick Pierce v. Department of Treasury*, Merit Systems Protection Board
9 (1999). Administrative Judge awarded compensatory damages to wrongfully terminated
10 Customs Agent, followed by an award of Attorneys' fees and costs.

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

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

24 21. Since 2007, I have prosecuted several traditional wage & hour class actions as the
25 sole or primary attorney for the plaintiffs, including *Pudelwitts v. Regent Parking, Inc.*, *Singery*
26 *v. Quality Vessel Engineering*, *Tesillo v. LA Executive Towing Service, Inc.*, and *Madison v. The*
27 *Limousine Connection*. One such case is *Jose Tapia v. Mangen Group, Inc.*, LASC case no.
28 BC377114, a garden-variety wage & hour class action with many of the same claims at issue in
this case. The Honorable Jane Johnson of the Los Angeles Superior Court, presiding over the
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.



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

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

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

9 b. *Cuellar v. Lovin Oven*, Orange County Superior Court, Case No. 30-2010-
10 000382146 (appointed Class Counsel and granted final approval of class action settlement by the
11 court on behalf of nonexempt employees).

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

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

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

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

25 g. *Huynh v. Carefusion Resources, LLC, et al.*, San Diego Sup.Ct., Case No.
26 37-2009-00103277-CU-OE-CTL (appointed Class Counsel and granted final approval of class
27 action settlement on behalf of medical devices employees).

28 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).



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

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

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

10 l. *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-
11 1500-CV-282679 (appointed Class Counsel and granted final approval of class action settlement
12 on behalf of dairy and agricultural laborers).

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

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

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

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

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



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

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

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

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

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

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

20 ***Class Action Treatment Is Superior***

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



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The Settlement is Presumptively Fair

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

Exposure & Risk Analysis

26. On April 13, 2022, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, failure to pay all wages at separation, that Defendant engaged in unfair competition, and related claims. On May 27, 2022, Plaintiff filed a First Amended Complaint alleging causes of action against Defendant for failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, failure to pay all wages at separation, that Defendant engaged in unfair competition, that Defendant owes civil penalties under the Private Attorney General Act ("PAGA"), and related allegations. The First Amended Complaint is the operative complaint in the Action (the "Operative Complaint."). Settlement, para. 2.1. Plaintiff prepared "damages" estimates in advance of the mediation. Ex. 8. In advance of the mediation, Plaintiff determined Defendant's maximum exposure for restitution and penalties to be approximately \$3,118,708.95 (consisting of \$60,760.34 in unpaid wages, \$71,139.72 in missed meal period premium wages, \$112,881.32 in missed rest break premium wages, \$39,350.00 for wage statement penalties, \$242,797.23 for



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1 waiting time penalties, and \$2,529,850.00 for civil penalties). True and correct copies of the
2 spreadsheets I prepared for mediation of this Action are collectively attached to this declaration
3 as **Exhibit 6**. The estimates are in essence “home run” projections that omit data points that will
4 undoubtedly reduce the maximum possible damages award and do not factor in any of the risks
5 involved in litigating this Action. Plaintiff calculated the damages based on the number of
6 workweeks and pay periods provided by Defendant, Plaintiff’s reports, and the sample data. *Id.*
7 Plaintiff also considered the possibility that Defendant could launch a *Pick Up Stix* campaign and
8 pursue individual release agreements from the Class Members. Defendant also represented that
9 it had interviewed all of Defendant’s current employees regarding Plaintiff’s claims, all of whom
10 would provide declarations, under penalty of perjury, that were favorable to Defendant with
11 respect to the relevant factual issues at issue in Plaintiff’s action. Plaintiff’s Counsel applied
12 discounts to the maximum exposure to account for all other risks discussed below. While it is
13 difficult to assign anything but crudely-determined percentages of risk to any of the claims, it is
14 safe to say that the risk that a *Pick Up Stix* campaign would preclude recovery for such employees
15 is substantial and alone justifies a significant discount because Defendant would likely by trial
16 have gathered releases from the majority of the Class Members. A settlement for approximately
17 3.85% of the potential recovery is a proportion substantially in excess of recovery proportions
18 sanctioned by existing case law.⁶

19 27. My initial estimates do not realistically account for the risks outlined below or the
20 risk that a class will not be certified. Therefore, I believe a class settlement for \$120,000.00 is
21 fair and reasonable.

22 28. **Risks Associated with the Arbitration Agreements.** The arbitration agreements
23 entered into between Defendant on the one hand, and many employees who are not Class
24 Members, on the other, present a significant risk to the success of Plaintiff’s class action

25 ⁶ See, e.g., *In re Newbridge Networks Sec. Litig.*, 1998 WL 765724 at *2 (D.D.C. Oct. 23, 1998)
26 (“[A]n agreement that secures roughly six to twelve percent of a total trial recovery . . . seems to
27 be within the targeted range of reasonableness.”); *Wise v. Ulta Salon, Cosmetics & Fragrance,*
28 *Inc.* 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the
proposed allocation to settle class claims was at least 9.53 percent); *Bravo v. Gale Triangle, Inc.*,
2017 WL 708766 at * 10 (C.D. Cal. Feb 16, 2017) (“a settlement for fourteen percent recovery
of Plaintiffs’ maximum recovery is reasonable”); *In re Omnivision Techs., Inc.*, 559 F.Supp.2d
1036, 1042 (N.D. Cal. 2008) (approving settlement amount that “is just over 9% of the maximum
potential recovery asserted by either party.”).



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litigation. Defendant will no doubt enter into such agreements with the Class Members if the case does not settle. According to Defendant, the majority of its employees entered into arbitration agreements with Defendant. As the arbitration agreements in question restrict potential litigants from bringing class actions against Defendant, Plaintiff would be effectively barred from pursuing claims on behalf of the Class in Court. Thus, there is a significant risk the Court could determine that those Class Members who ultimately will not have entered into arbitration agreements with Defendant may not constitute a sufficiently numerous class to justify class action treatment. As such, by continuing to trial on class-wide claims, Plaintiff would run the high risk of suffering defeat due to the existence of the arbitration agreement. Moreover, the arbitration agreements would pose danger to any class certification motion brought by Plaintiff. Because different defenses would apply to some Class Members and not others – i.e., the existence of signed arbitration agreements – there is a risk that the Court could determine that Plaintiff’s claims present too many individualized inquiries to justify class certification.

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

30. The difficulty inherent in proving that off-the-clock work occurred poses a significant hurdle to Plaintiff. Plaintiff will rely on declarations and witness statements to prove



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

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

19 32. Defendant contends it did not impede or discourage Plaintiff, or any other
20 employees, from taking their meal or rest periods. Defendant’s policies mandate that employees
21 take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time
22 of their meal breaks each day on their time records. The time records that comprise the random
23 sample Defendant produced to Plaintiff for purposes of mediation show that meal periods were
24 taken the vast majority of the time. Of the time records that show a late, short or no lunch,
individualized evidence may be necessary to determine whether they occurred due to conduct of
the Defendant or each of the employees concerned. Accordingly, there is a significant risk that
the value of Plaintiff’s meal period claim would be substantially reduced at trial.

25 33. **Risks Associated with the Rest Break Claims.** There are risks to Plaintiff’s rest
26 period claim. Employers are not required to record rest periods and such periods are paid.
27 Defendant contends it provided non-exempt employees the opportunity to take rest periods in
28 accordance with California law. Further, Defendant’s written policies on meal and rest periods



are consistent with the Wage Order. Thus, unlike meal periods, where there are often records showing whether an employee clocked out or not, there is no such evidence to prove a missed rest period or that the employer refused to authorize and permit one. *Id.* Managing such claims at trial has become exceedingly difficult. Plaintiff will depend on sample witness testimony and surveys to prove the claims. While a victory with such evidence is certainly possible, relevant caselaw makes such claims risky from a trial management and due process perspective. *See Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1, 31 (explaining “[I]f sufficient common questions exist to support class certification, it may be possible to manage individual issues through the use of surveys and statistical sampling.”); *Tyson Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382; *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426.

34. **Risks Associated with the Failure to Indemnify Claim.** There is a risk that the Court may consider Plaintiff’s claims as to Defendant’s alleged failure to indemnify for business expenses to be individual in nature and thus decline to certify the class. 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 expense reimbursement policy. As such, there is a risk that the Court may consider Plaintiff’s claims to be individual in nature and unfit for class wide resolution.

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

36. **Risks Associated with the Statutory “Wage Statement” Penalty Claims.** Without proof of willful behavior, Plaintiff will be unable to recover these penalties.

37. **Risks Associated With the PAGA Claim.** Regarding PAGA, a court has discretion to award a lesser amount than the maximum penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA



award). As set forth above, Defendant has posed valid defenses to the Labor Code claims underlying Plaintiff's PAGA allegations. Thus, the PAGA claims likewise face significant uncertainty. There is a risk that the Court would consider the maximum civil penalty available to be confiscatory. Moreover, the current COVID-19 pandemic could motivate the Court to further reduce the penalty award to avoid what it may consider a confiscatory taking.

38. This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and required a significant discount for settlement purposes. For mediation purposes, Plaintiff's counsel estimated a maximum exposure of approximately \$2,529,850.00 in civil penalties. This estimate did not take into account any of the risks discussed above and assumed a violation for every single pay period. *Id.* Plaintiff's counsel also assessed multiple penalties for the same pay period for the same alleged violations of different Labor Code provisions and derivative violations. Although two federal district court decisions held that "stacking" PAGA penalties in this fashion may be appropriate to determine the amount in controversy for purposes of removal jurisdiction, Plaintiff's counsel is not aware of any California state courts awarding plaintiffs multiple PAGA penalties for the same violation for the same pay period under different Labor Code provisions. This may be because the PAGA does not provide for what many employers characterize as claim splitting and not merely stacking.

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

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

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

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

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

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

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



1 41. The United States Supreme Court announced on December 15, 2021 that, in the
2 near future, it will hear the matter of *Viking River Cruises, Inc. v. Moriana*, No. 20-1573, and
3 decide (likely no later than the end of summer 2022) whether or not to overrule the California
4 Supreme Court’s decision in *Iskanian v. CLS Transportation* (2014) 59 Cal.4th 348 that a private
5 arbitration agreement cannot deprive an employee of his right to sue under PAGA in a court of
6 law. If the Supreme Court sides with the Petitioner, Plaintiff’s PAGA claim may be subject to an
7 arbitration agreement allowing only bilateral arbitration and, consequently, inhibiting the claim
8 altogether. While such an outcome would conflict squarely with *EEOC v. Waffle House* (2002)
9 534 US 279 (private settlement agreements do not preclude government prosecutions on behalf
of employee signatories to such agreements), this potential outcome is a risk.

10 42. **Risks Associated With A Pick-Up Stix Campaign.** An employer enjoys the
11 right to settle a putative class member’s disputed wage claims individually, without the consent
12 or involvement of class counsel. (See *Chindarah v. Pick Up Stix, Inc.* 171 Cal. App. 4th 796
13 (2009). As discussed above, Defendant may launch a “pick off” settlement campaign to pursue
14 individual release agreements from the Class Members, thereby potentially narrowing the size of
15 the Settlement Class – 131 members - until it is no longer numerous enough for class certification.
16 *Id.* Plaintiff, then, may not have sufficient number of employees to represent. This led to a
significant reduction of claim value in settlement negotiations.

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



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Allocation of the PAGA Payment

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

Attorneys' Fees and Costs

45. I intend to request Class Counsel Attorneys' Fees of \$40,000.00 (one-third of the GSF) and Class Counsel's litigation costs incurred in prosecuting this Action, which I currently estimate to be approximately \$15,000.00 and will be no more than \$15,000.00 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



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No. VCU-245496 (one-third of fund); *Nardone v. Sequoia Beverage Company, LP*, Tulare Sup.Ct., Case No. VCU-248370 (one-third of fund); *Rosen v. Image Transfer*, Los Angeles Sup.Ct., Case No. BC511702 (one-third of fund); *Tucker v. Maly's West, Inc.*, Los Angeles Sup.Ct., Case No. BC483920 (one-third of fund); *King v. Build.com*, Butte Sup.Ct., Case No. 159985 (one-third of fund); *Clifford v. Anderson Hay & Grain*, Los Angeles Sup.Ct., Case No. BC517625 (one-third of fund); *Nichols, et al. v. Vitamin Shoppe*, Contra Costa Sup.Ct., Case No. CIVMSC13-01136 (one-third of fund); *Clarke v. Insight Global*, U.S. District Court, Southern District of California, Case No. 13-CV-0357 (one-third of fund); *Fischer, et al. v. National Distribution Centers LP, et al.*, Riverside Sup.Ct., Case No. RIC1114952 (one-third of fund); *Shaw, et al. v. Interthinx, Inc.*, United States District Court for the District of Colorado, Case No. 13-CV-01229-REB-BNB (one-third of fund); *Ogbuehi v. Comcast of California/ Colorado/ Florida/ Oregon, Inc.*, United States District Court, Eastern District of California, Case No. EDCV13-00672-KJM-KJN (one-third of fund); *Lynch, et al. v. American Guard Services*, Los Angeles Superior Court, Case No. BC462681 (one-third of fund); *Volney-Parris v. Southern California Edison Company*, Los Angeles Superior Court, Case No. BC493038 (one-third of fund); *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior Court, Case No. BC480808 (one-third of fund); *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-1500-CV-282679 (one-third of fund); *Linder, et al. v. Warehouse Services, Inc.*, San Bernardino Superior Court, Case No. CIVDS1500146 (one-third of fund).

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

47. Class Counsel have borne all the risks and costs of litigation and will receive no compensation until recovery is obtained. Class Counsel are well-experienced in wage-and-hour class action litigation and used that experience to obtain a fair result for the Class. Considering



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1 the amount of the attorney fees requested, the work performed, and the risks incurred, the
2 requested fees and costs are reasonable and should be awarded.

3 ***Class Representative Service Payment***

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

17 ***Individual Class Payment and Individual PAGA Payment***

18 49. The Individual Class Payment and Individual PAGA Payment will be paid to each
19 Class Member based on his or her eligible Work Weeks compared to the total Work Weeks.
20 Settlement § 1.23. Because this method compensates Class Members based on the extent of their
21 potential injuries, in that Class Members who worked for Defendant longer would have been
22 subject to more alleged violations, it is fair, adequate, and reasonable.

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

24 50. The Settlement requires distribution of the Notice by First Class U.S. mail only.
25 Settlement, § 1.11. Although there are current employee Class Members, it is uncertain whether
26 Defendant's records of their contact information include email addresses and Class Members,
27 who perform all of their work away from a desk, are not in a position to check their emails. As
28 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



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1 about; (2) who is a Settlement Class Member; (3) how Class Counsel will be paid; (4) how to
2 submit an exclusion request not to be bound by the Settlement; (5) how to object to the
3 Settlement; (6) how the Settlement will be allocated; (7) how payments to Class Members will
4 be calculated; (8) how the disputes will be resolved; and (9) the estimated Individual Settlement
5 Payment for each Class Member. Additionally, the Notice will include the number of Eligible
6 Workweeks a Class Member had during the Class Period. Accordingly, the Notice should be
7 approved because it describes the Settlement with sufficient clarity and specificity to explain to
8 Class Members what this action is about, their rights under the Settlement, and how to exercise
9 those rights. As such, the parties' proposed Notice fully complies with California Rules of Court
10 3.766(d) and 3.769(f) and will allow Class Members to make informed responses to the proposed
11 settlement.

12 ***Settlement Administration Duties***

13 51. The duties of the Settlement Administrator are spelled out in section III(C) of the
14 Settlement and in the bid provided by ILYM Group, Inc. a true and correct copy of which is
15 attached hereto as **Exhibit 9**.

16 ***Settlement Administration Costs***

17 52. With regard to the settlement administration costs provision (Settlement §3.2.3),
18 it is reasonable. Before agreeing to ILYM Group, Inc. the Parties sought and reviewed bids from
19 other reputable third-party administrators: (A) ILYM Group = \$7,150.00; (B) Simpluris Inc. =
20 \$9,500.00; and (C) CPT Group, Inc. = \$8,250.00. A true and correct copy of the bid from
21 Simpluris Inc. is attached hereto as **Exhibit 10**. A true and correct copy of the bid from CPT
22 Group, Inc. is attached hereto as **Exhibit 11**. The bid provided by ILYM Group, Inc. was
23 comparable. Thus, settlement administration costs provision should be given preliminary
24 approval.

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Notice of Settlement to the LWDA

53. Pursuant to Labor Code § 2699(1)(2), Plaintiff submitted a copy of the Settlement with the Labor and Workforce Development Agency (“LWDA”) at the same time Plaintiff’s Motion is being filed with the Court. A true and correct copy of Plaintiff’s submission with the LWDA and a confirmation email is attached hereto as **Exhibit 12**.

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

Executed on Friday, September 01, 2023 at Los Angeles, California.



DAVID SPIVAK,
Declarant



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EXHIBIT 1

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2 MAYA CHEAITANI (SBN 335777)

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3 THE SPIVAK LAW FIRM

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7 Attorneys for Plaintiff(s),

8 MARTHA P. BRIANO MARTINEZ, and all others similarly situated

9 (Additional attorneys for parties on following page)

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SONOMA**

12 **(UNLIMITED JURISDICTION)**

13 MARTHA P. BRIANO MARTINEZ, on behalf
14 of herself and all others similarly situated, and as
15 an “aggrieved employee” on behalf of other
16 “aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 NOR CAL FOODS, LLC, a California
20 corporation; and DOES 1–50, inclusive,

21 *Defendant(s).*

Case No. SCV-270596

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

Action filed: April 13, 2022

Dept: 16, The Honorable Patrick
M. Broderick

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1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and
2 between plaintiff Martha P. Briano Martinez (“Plaintiff”) and defendant Nor Cal Foods, LLC
3 (“Nor Cal Foods, LLC”). The Agreement refers to Plaintiff and Defendant collectively as
4 “Parties,” or individually as “Party.”

5 **1. DEFINITIONS.**

6 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against
7 Nor Cal Foods, LLC captioned “Martha P. Briano Martinez, on behalf of herself, and all others
8 similarly situated, and as an ‘aggrieved employee’ on behalf of other ‘aggrieved employees’ under
9 the Labor Code Private Attorneys General Act of 2004, *Plaintiff(s)*, vs. Nor Cal Foods, LLC, a
10 California corporation; and DOES 1 through 50, inclusive, *Defendant(s)*,” Case No. SCV-270596
11 initiated on April 13, 2022 and pending in Superior Court of the State of California, County of
12 Sonoma.

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

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

19 1.4. “Aggrieved Employee” means a person employed by Defendant in California and
20 classified as a hourly, non-exempt employees who worked for Defendant during the PAGA Period
21 and did not execute a release of his/her/their claims.

22 1.5. “Class” means all persons employed by Defendant in California and classified as
23 hourly, non-exempt employees who worked for Defendant during the Class Period and did not
24 execute a release of his/her/their claims.

25 1.6. “Class Counsel” means David G. Spivak of The Spivak Law Firm and Walter L.
26 Haines of United Employees Law Group.

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

1.8. “Class Data” means Class Member identifying information in Defendant’s
possession including the Class Member’s name, last-known mailing address, Social Security

number, and number of Class Period Work Weeks and PAGA Pay Periods.

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

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

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

1.12. “Class Period” means the period from April 13, 2018 to the date of preliminary approval of this Settlement.

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

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

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

1.16. “Defendant” means named Defendant Nor Cal Foods, LLC.

1.17. “Defense Counsel” means Ian B. Wieland of Sagaser, Watkins & Wieland PC.

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

1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.

1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final

Approval of the Settlement.

1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

1.22. “Gross Settlement Amount” means \$120,000.00 which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses.

1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Work Weeks worked during the Class Period.

1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Work Weeks worked during the PAGA Period.

1.25. “Judgment” means the judgment entered by the Court based upon the Final Approval.

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

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

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

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

1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.

1.31. “PAGA Period” means the period from March 22, 2021 to the date of preliminary approval of this Settlement.

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

1.33. "PAGA Notice" means Plaintiff's March 22, 2022 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

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

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

1.36. "Plaintiff" means Martha P. Briano Martinez, the named plaintiff in the Action.

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

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

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

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

1.41. "Released Parties" means: Defendant and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns subsidiaries, and affiliates.

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

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

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

1.45. "Workweek" means any week during which a Class Member worked for

Defendant for at least one day, during the Class Period.

2. RECITALS.

2.1. On April 13, 2022, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, failure to pay all wages at separation, that Defendant engaged in unfair competition, and related claims. On May 27, 2022, Plaintiff filed a First Amended Complaint alleging causes of action against Defendant for failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, failure to pay all wages at separation, that Defendant engaged in unfair competition, that Defendant owes civil penalties under the Private Attorney General Act (“PAGA”), and related allegations. The First Amended Complaint is the operative complaint in the Action (the “Operative Complaint.”) Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.

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

2.3. On January 10, 2023, the Parties participated in an all-day mediation presided over by Scott Radovich which led to this Agreement to settle the Action (describe alternative means of negotiation.

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

2.5. The Court has not granted class certification.

1 2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware
2 of any other pending matter or action asserting claims that will be extinguished or affected by the
3 Settlement.

4 **3. MONETARY TERMS.**

5 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below,
6 Defendant promises to pay \$120,000.00 and no more as the Gross Settlement Amount and to
7 separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual
8 Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll
9 taxes) prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will
10 disburse the entire Gross Settlement Amount without asking or requiring Participating Class
11 Members or Aggrieved Employees to submit any claim as a condition of payment. None of the
12 Gross Settlement Amount will revert to Defendant.

13 3.2. Payments from the Gross Settlement Amount. The Administrator will make and
14 deduct the following payments from the Gross Settlement Amount, in the amounts specified by
15 the Court in the Final Approval:

16 3.2.1. To Plaintiff: Class Representative Service Payment to the Class
17 Representative of not more than \$5,000.00 (in addition to any Individual Class Payment and any
18 Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class
19 Member). Defendant will not oppose Plaintiff's request for a Class Representative Service
20 Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment
21 and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class
22 Representative Service Payments no later than 16 court days prior to the Final Approval Hearing.
23 If the Court approves a Class Representative Service Payment less than the amount requested, the
24 Administrator will retain the remainder in the Net Settlement Amount. The Administrator will
25 pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full
26 responsibility and liability for employee taxes owed on the Class Representative Service Payment.

27 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than
28 33.33%, which is currently estimated to be \$40,000.00 and a Class Counsel Litigation Expenses
Payment of not more than \$15,000.00. Defendant will not oppose requests for these payments
provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for

1 Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days
2 prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or
3 a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator
4 will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability
5 to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class
6 Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator
7 will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more
8 IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the
9 Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds
10 Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any
division or sharing of any of these Payments.

11 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
12 \$12,500.00 except for a showing of good cause and as approved by the Court. To the extent the
13 Administration Expenses are less or the Court approves payment less than \$12,500.00, the
14 Administrator will retain the remainder in the Net Settlement Amount.

15 3.2.4. To Each Participating Class Member: An Individual Class Payment
16 calculated by (a) dividing the Net Settlement Amount by the total number of Work Weeks worked
17 by all Participating Class Members during the Class Period and (b) multiplying the result by each
Participating Class Member's Work Weeks.

18 3.2.4.1. Tax Allocation of Individual Class Payments. 33.33% of
19 each Participating Class Member's Individual Class Payment will be allocated to settlement of
20 wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be
21 reported on an IRS W-2 Form. The 66.67% of each Participating Class Member's Individual
22 Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage
23 Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on
24 IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any
employee taxes owed on their Individual Class Payment.

25 3.2.4.2. Effect of Non-Participating Class Members on Calculation
26 of Individual Class Payments. Non-Participating Class Members will not receive any Individual
27 Class Payments. The Administrator will retain amounts equal to their Individual Class Payments
28 in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

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

5 3.2.5.1. The Administrator will calculate each Individual PAGA Payment
6 by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$1,000.00
7 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the
8 PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay
9 Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their
10 Individual PAGA Payment.

11 3.2.5.2. If the Court approves PAGA Penalties of less than the amount
12 requested, the Administrator will allocate the remainder to the Net Settlement Amount. The
13 Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

14 **4. SETTLEMENT FUNDING AND PAYMENTS.**

15 4.1. Class Work Weeks and Aggrieved Employee Pay Periods. Based on a review of
16 its records to date, Defendant estimates there are 131 Class Members who collectively worked a
17 total of 7,561 Work Weeks at the time of the mediation, and approximately 62 Aggrieved
18 Employees who worked a total 1,298 of PAGA Pay Periods at the time of the mediation.

19 4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval
20 of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in
21 the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the
22 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
23 of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator
24 employees who need access to the Class Data to effect and perform under this Agreement.
25 Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class
26 Data omitted class member identifying information and to provide corrected or updated Class
27 Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant
28 must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use
best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or
omitted Class Data.

1 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross
2 Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll
3 taxes by transmitting the funds to the Administrator no later than 30 days after the Effective Date.

4 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant
5 funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class
6 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
7 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
8 Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees
9 Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service
10 Payment shall not precede disbursement of Individual Class Payments and Individual PAGA
11 Payments.

12 4.4.1. The Administrator will issue checks for the Individual Class Payments
13 and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail,
14 postage prepaid. The face of each check shall prominently state the date (not less than 180 days
15 after the date of mailing) when the check will be voided. The Administrator will cancel all checks
16 not cashed by the void date. The Administrator will send checks for Individual Settlement
17 Payments to all Participating Class Members (including those for whom Class Notice was
18 returned undelivered). The Administrator will send checks for Individual PAGA Payments to all
19 Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved
20 Employees (including those for whom Class Notice was returned undelivered). The
21 Administrator may send Participating Class Members a single check combining the Individual
22 Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator
23 must update the recipients' mailing addresses using the National Change of Address Database.

24 4.4.2. The Administrator must conduct a Class Member Address Search for all
25 other Class Members whose checks are returned undelivered without USPS forwarding address.
26 Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS
27 forwarding address provided or to an address ascertained through the Class Member Address
28 Search. The Administrator need not take further steps to deliver checks to Class Members whose
re-mailed checks are returned as undelivered. The Administrator shall promptly send a
replacement check to any Class Member whose original check was lost or misplaced, requested
by the Class Member prior to the void date.

1 4.4.3. For any Class Member whose Individual Class Payment check or
2 Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator
3 shall transmit the funds represented by such checks to the California Controller's Unclaimed
4 Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to
5 the requirements of California Code of Civil Procedure Section 384, subd. (b).

6 4.4.4. The payment of Individual Class Payments and Individual PAGA
7 Payments shall not obligate Defendant to confer any additional benefits or make any additional
8 payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in
9 this Agreement.

10 **5. [OMITTED]**

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

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

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

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

5 Plaintiff understands and acknowledges that the significance and consequence of this waiver of
6 California Civil Code Section 1542 is that she will not be able to make any claim for alleged
7 damages that exists as of the date of her signature on this Agreement.

8 6.2 Release by Participating Class Members Who Are Not Aggrieved Employees:

9 All Participating Class Members, on behalf of themselves and their respective former and present
10 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released
11 Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the
12 Class Period facts stated in the Operative Complaint and ascertained in the course of the Action
13 including, failure to pay wages, unauthorized and unlawful wage deductions, failure to provide
14 meal periods, failure to authorize and permit rest periods, failure to indemnify for business
15 expenses, failure to issue proper wage statements, failure to timely pay wages during employment,
16 and at the separation of employment, failure to maintain required payroll records, unfair
17 competition, Civil Penalties under PAGA, and related allegations. Except as set forth in Section
18 6.3 of this Agreement, Participating Class Members do not release any other claims, including
19 claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing
20 Act, unemployment insurance, disability, social security, workers' compensation, or claims based
on facts occurring outside the Class Period.

21 6.3 Release by Non-Participating Class Members Who Are Aggrieved Employees:

22 All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on
23 behalf of themselves and their respective former and present representatives, agents, attorneys,
24 heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA
25 penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period
26 facts stated in the Operative Complaint and the PAGA Notice and ascertained in the course of the
27 Action including, failure to pay wages, unauthorized and unlawful wage deductions, failure to
28 provide meal periods, failure to authorize and permit rest periods, failure to indemnify for
business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to

maintain required payroll records, and related claims.

7. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary Approvals.

7.1 Defendant’s Declaration in Support of Preliminary Approval. Within 30 days of the full execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed Declaration from Defendant and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator and Cy Pres Recipient. In their Declarations, Defense Counsel and Defendant shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

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

1 In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware
2 of any other pending matter or action asserting claims that will be extinguished or adversely
3 affected by the Settlement.

4 7.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly
5 responsible for expeditiously finalizing and filing the Motion for Preliminary Approval; obtaining
6 a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to
7 advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for
8 delivering the Court's Preliminary Approval to the Administrator.

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

16 **8. SETTLEMENT ADMINISTRATION.**

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

23 8.2 Employer Identification Number. The Administrator shall have and use its own
24 Employer Identification Number for purposes of calculating payroll tax withholdings and
25 providing reports state and federal tax authorities.

26 8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund
27 that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury
28 Regulation section 468B-1.

8.4 Notice to Class Members.

1 8.4.1 No later than three (3) business days after receipt of the Class Data, the
2 Administrator shall notify Class Counsel that the list has been received and state the number of
3 Class Members, PAGA Members, Work Weeks, and Pay Periods in the Class Data.

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

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

20 8.4.4 The deadlines for Class Members’ written objections, Challenges to Work
21 Weeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days
22 beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is
23 re-mailed. The Administrator will inform the Class Member of the extended deadline with the
24 re-mailed Class Notice.

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

of Class Notice, or the deadline dates in the Class Notice, which ever are later.

8.5 Requests for Exclusion (Opt-Outs).

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

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

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

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

8.6 Challenges to Calculation of Work Weeks. Each Class Member shall have 60

1 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members
2 whose Class Notice is re-mailed) to challenge the number of Class Work Weeks and PAGA Pay
3 Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may
4 challenge the allocation by communicating with the Administrator via fax, email or mail. The
5 Administrator must encourage the challenging Class Member to submit supporting
6 documentation. In the absence of any contrary documentation, the Administrator is entitled to
7 presume that the Work Weeks contained in the Class Notice are correct so long as they are
8 consistent with the Class Data. The Administrator's determination of each Class Member's
9 allocation of Work Weeks and/or Pay Periods shall be final and not appealable or otherwise
10 susceptible to challenge. The Administrator shall promptly provide copies of all challenges to
11 calculation of Work Weeks and/or Pay Periods to Defense Counsel and Class Counsel and the
12 Administrator's determination the challenges.

12 8.7 Objections to Settlement.

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

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

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

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

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

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

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

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

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

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

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

4 8.8.6 Final Report by Administrator. Within 10 days after the Administrator
5 disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel
6 and Defense Counsel with a final report detailing its disbursements by employee identification
7 number only of all payments made under this Agreement. At least 15 days before any deadline
8 set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense
9 Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all
10 payments required under this Agreement. Class Counsel is responsible for filing the
11 Administrator's declaration in Court.

12 **9. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on its records,
13 Defendant estimates that, as of the date of the mediation, (1) there are 131 Class Members and
14 7,561 Total Work Weeks during the Class period and (2) there were 62 Aggrieved Employees
15 who worked 1,298 Pay Periods during the PAGA Period as of the date of mediation. If the
16 referenced 7,561 Work Weeks at the time the mediation occurred increases by more than 10.00%
17 at the time the mediation occurred, the Gross Settlement Amount, including the Class Counsel
18 Fees Payment, the Class Representative Payment, and the LWDA payment, will increase
19 proportionally according to the number of additional Work Weeks over 7,561 at the time the
20 mediation occurred.

21 **10. DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests for
22 Exclusion identified in the Exclusion List exceeds 5.00% of the total of all Class Members,
23 Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties agree
24 that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect
25 whatsoever, and that neither Party will have any further obligation to perform under this
26 Agreement; provided, however, Defendant will remain responsible for paying all Settlement
27 Administration Expenses incurred to that point. Defendant must notify Class Counsel and the
28 Court of its election to withdraw not later than 7 days after the Administrator sends the final
Exclusion List to Defense Counsel; late elections will have no effect.

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

9 11.1 Response to Objections. Each Party retains the right to respond to any objection
10 raised by a Participating Class Member, including the right to file responsive documents in Court
11 no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted
12 by the Court.

13 11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
14 Approval on any material change to the Settlement (including, but not limited to, the scope of
15 release to be granted by Class Members), the Parties will expeditiously work together in good
16 faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final
17 Approval. The Court’s decision to award less than the amounts requested for the Class
18 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation
19 Expenses Payment and/or Administrator Expenses Payment shall not constitute a material
modification to the Agreement within the meaning of this paragraph.

20 11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of
21 Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for
22 purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
23 administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

24 11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms
25 and conditions of this Agreement, specifically including the Class Counsel Fees Payment and
26 Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their
27 respective counsel, and all Participating Class Members who did not object to the Settlement as
28 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to
post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions

1 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver
2 of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the
3 Parties' obligations to perform under this Agreement will be suspended until such time as the
4 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect
the amount of the Net Settlement Amount.

5 11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If
6 the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a
7 material modification of this Agreement (including, but not limited to, the scope of release to be
8 granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless
9 expeditiously work together in good faith to address the appellate court's concerns and to obtain
10 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration
11 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify
12 the Court's award of the Class Representative Service Payment or any payments to Class Counsel
13 shall not constitute a material modification of the Judgment within the meaning of this paragraph,
14 as long as the Gross Settlement Amount remains unchanged.

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

18
19 **13. ADDITIONAL PROVISIONS.**

20 13.1 No Admission of Liability, Class Certification or Representative Manageability
21 for Other Purposes. This Agreement represents a compromise and settlement of highly disputed
22 claims. Nothing in this Agreement is intended or should be construed as an admission by
23 Defendant that any of the allegations in the Operative Complaint have merit or that Defendant
24 has any liability for any claims asserted; nor should it be intended or construed as an admission
25 by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class
26 certification and representative treatment is for purposes of this Settlement only. If, for any reason
27 the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendant
28 reserves the right to contest certification of any class for any reasons, and Defendant reserves all
available defenses to the claims in the Action, and Plaintiff reserves the right to move for class

1 certification on any grounds available and to contest Defendant's defenses. The Settlement, this
2 Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be
3 admissible in connection with, any litigation (except for proceedings to enforce or effectuate the
4 Settlement and this Agreement).

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

15 Each Party agrees to immediately notify each other Party of any judicial or agency
16 order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and
17 Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other
18 communication, before the filing of the Motion for Preliminary Approval, any with third party
19 regarding this Agreement or the matters giving rise to this Agreement except to respond only that
20 "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's
21 communications with Class Members in accordance with Class Counsel's ethical obligations
22 owed to Class Members.

23 13.3 No Solicitation. The Parties separately agree that they and their respective
24 counsel and employees will not solicit any Class Member to opt out of or object to the Settlement,
25 or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class
26 Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical
27 obligations owed to Class Members.

28 13.4 Integrated Agreement. Upon execution by all Parties and their counsel, this
Agreement together with its attached exhibits shall constitute the entire agreement between the
Parties relating to the Settlement, superseding any and all oral representations, warranties,
covenants, or inducements made to or by any Party.

1 13.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant
2 and represent that they are authorized by Plaintiff and Defendant, respectively, to take all
3 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
4 to effectuate its terms, and to execute any other documents reasonably required to effectuate the
5 terms of this Agreement including any amendments to this Agreement.

6 13.6 Cooperation. The Parties and their counsel will cooperate with each other and
7 use their best efforts, in good faith, to implement the Settlement by, among other things,
8 modifying the Settlement Agreement, submitting supplemental evidence and supplementing
9 points and authorities as requested by the Court. In the event the Parties are unable to agree upon
10 the form or content of any document necessary to implement the Settlement, or on any
11 modification of the Agreement that may become necessary to implement the Settlement, the
12 Parties will seek the assistance of a mediator and/or the Court for resolution.

13 13.7 No Prior Assignments. The Parties separately represent and warrant that they
14 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
15 or encumber to any person or entity and portion of any liability, claim, demand, action, cause of
16 action, or right released and discharged by the Party in this Settlement.

17 13.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense
18 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
19 Settlement be relied upon as such within the meaning of United States Treasury Department
20 Circular 230 (31 CFR Part 10, as amended) or otherwise.

21 13.9 Modification of Agreement. This Agreement, and all parts of it, may be
22 amended, modified, changed, or waived only by an express written instrument signed by all
23 Parties or their representatives, and approved by the Court.

24 13.10 Agreement Binding on Successors. This Agreement will be binding upon, and
25 inure to the benefit of, the successors of each of the Parties.

26 13.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will
27 be governed by and interpreted according to the internal laws of the state of California, without
28 regard to conflict of law principles.

 13.12 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.

1 13.13 Confidentiality. To the extent permitted by law, all agreements made, and orders
2 entered during Action and in this Agreement relating to the confidentiality of information shall
3 survive the execution of this Agreement.

4 13.14 Use and Return of Class Data. Information provided to Class Counsel pursuant
5 to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class
6 Counsel by Defendant in connection with the mediation, other settlement negotiations, or in
7 connection with the Settlement, may be used only with respect to this Settlement, and no other
8 purpose, and may not be used in any way that violates any existing contractual agreement, statute,
9 or rule of court. Not later than 90 days after the date when the Court discharges the
10 Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement
11 funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from
12 Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant
13 makes a written request to Class Counsel for the return, rather than the destructions, of Class
14 Data.

15 13.15 Headings. The descriptive heading of any section or paragraph of this Agreement
16 is inserted for convenience of reference only and does not constitute a part of this Agreement.

17 13.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement
18 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
19 weekend or federal legal holiday, such date or deadline shall be on the first business day
20 thereafter.

21 13.17 Notice. All notices, demands or other communications between the Parties in
22 connection with this Agreement will be in writing and deemed to have been duly given as of the
23 third business day after mailing by United States mail, or the day sent by email or messenger,
24 addressed as follows:

25 To Plaintiff:
26 David G. Spivak, Esq.
27 The Spivak Law Firm
28 8605 Santa Monica Bl
 PMB 42554
 West Hollywood, CA 90069
 david@spivaklaw.com

To Defendant:
Ian B. Wieland, Esq.
Sagaser, Watkins & Wieland PC
5260 N. Palm Ave.
Ste. 400
Fresno, CA 93704
ian@sw2law.com

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

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

Dated: 03 / 06 / 2023

By:

MARTHA P. BRIANO MARTINEZ

Dated: 05/02/23

By:

DAVINDER K. CHAWLA
Owner and CEO
NOR CAL FOODS, LLC

THE SPIVAK LAW FIRM

Dated: 03 / 09 / 2023

By:

DAVID G. SPIVAK, Attorneys for
Plaintiff, MARTHA P. BRIANO
MARTINEZ, and all others similarly
situated

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UNITED EMPLOYEES LAW GROUP

Dated: March 6, 2023By: Walter L. HainesWALTER L. HAINES, Attorneys for
Plaintiff, MARTHA P. BRIANO
MARTINEZ, and all others similarly
situated

SAGASER, WATKINS & WIELAND PC

Dated: 5/18/23By: Ian B. WielandIAN B. WIELAND, CHARLES P.
HAMAMJIAN, Attorneys for
Defendant, NOR CAL FOODS, LLC

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EXHIBIT A

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If you worked for Defendant during the Class Period and did not execute a release of his/her/their claims, and/or the PAGA Period, you have two basic options under the Settlement:

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

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

Defendant will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendant that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is —	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by —	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.

You Can Participate in the ____ Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on _____. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Work Week / Pay Periods Written Challenges Must be Submitted by ____	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many Work Weeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Work Weeks and number of PAGA Period Pay Periods you worked according to Defendant’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

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

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

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

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

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

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

6 1. Defendant Will Pay \$120,000.00 as the Gross Settlement Amount (Gross
7 Settlement). Defendant has agreed to deposit the Gross Settlement into an account controlled by
8 the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the
9 Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment,
10 Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be
11 paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the
Court grants Final Approval, Defendant will fund the Gross Settlement not more than 14 days
after the Judgment entered by the Court become final. The Judgment will be final on the date the
Court enters Judgment, or a later date if Participating Class Members object to the proposed
Settlement or the Judgment is appealed.

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

15 A. Up to \$40,000.00 (33.33% of the Gross Settlement) to Class Counsel for
16 attorneys' fees and up to \$15,000.00 for their litigation expenses. To date, Class Counsel have
worked and incurred expenses on the Action without payment.

17 B. Up to \$5,000.00 as a Class Representative Award for filing the Action,
18 working with Class Counsel and representing the Class. A Class Representative Award will be
19 the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any
Individual PAGA Payment.

20 C. Up to \$12,500.00 to the Administrator for services administering the
21 Settlement.

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

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

26 If the Work Weeks and/or Class Members as of the date of mediation exceeds the
27 referenced 7,561 Work Weeks by more than 10.00%, the Gross Settlement Amount, including

1 the Class Counsel Fees Payment, the Class Representative Payment, and the LWDA payment,
2 will increase proportionally according to the number of additional Work Weeks.

3 3. Net Settlement Distributed to Class Members. After making the above deductions
4 in amounts approved by the Court, the Administrator will distribute the rest of the Gross
5 Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class
6 Members based on their Class Period Work Weeks.

7 4. Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking
8 the Court to approve an allocation of 33.33% of each Individual Class Payment to taxable wages
9 (“Wage Portion”) and 66.67% to interest and penalties (“Non-Wage Portion.”). The Wage Portion
10 is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay
11 employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted
12 as penalties rather than wages for tax purposes. The Administrator will report the Individual
13 PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099
14 Forms.

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

20 5. Need to Promptly Cash Payment Checks. The front of every check issued for
21 Individual Class Payments and Individual PAGA Payments will show the date when the check
22 expires (the void date). If you don’t cash it by the void date, your check will be automatically
23 cancelled, and the monies will be deposited with the California Controller’s Unclaimed Property
24 Fund in your name.

25 If the monies represented by your check is sent to the Controller’s Unclaimed Property,
26 you should consult the rules of the Fund for instructions on how to retrieve your money.

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

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

1
2 7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is
3 possible the Court will decline to grant Final Approval of the Settlement or decline enter a
4 Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs
and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not
pay any money and Class Members will not release any claims against Defendant.

5 8. Administrator. The Court has appointed a neutral company, CPT Group, Inc. (the
6 “Administrator”) to send this Notice, calculate and make payments, and process Class Members’
7 Requests for Exclusion. The Administrator will also decide Class Member Challenges over Work
8 Weeks, mail and re- mail settlement checks and tax forms, and perform other tasks necessary to
administer the Settlement. The Administrator’s contact information is contained in Section 9 of
this Notice.

9 9. Participating Class Members’ Release. After the Judgment is final and Defendant
10 has fully funded the Gross Settlement (and separately paid all employer payroll taxes),
11 Participating Class Members will be legally barred from asserting any of the claims released under
12 the Settlement. This means that unless you opted out by validly excluding yourself from the Class
13 Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or
14 related entities for wages based on the Class Period facts and PAGA penalties based on PAGA
15 Period facts, as alleged in the Action and resolved by this Settlement.

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

17 All Participating Class Members, on behalf of themselves and their respective former and
18 present representatives, agents, attorneys, heirs, administrators, successors, and assigns,
19 release Released Parties from (i) all claims that were alleged, or reasonably could have
20 been alleged, based on the Class Period facts stated in the Operative Complaint and
21 ascertained in the course of the Action including failure to pay wages, unauthorized and
22 unlawful wage deductions, failure to provide meal periods, failure to authorize and permit
rest periods, failure to indemnify for business expenses, failure to issue proper wage
statements, failure to timely pay wages, failure to maintain required payroll records, and
related allegations. Except as set forth in Section 6.3 of the Settlement Agreement,
Participating Class Members do not release any other claims, including claims for vested
benefits, wrongful termination, violation of the Fair Employment and Housing Act,
unemployment insurance, disability, social security, workers’ compensation, or claims
based on facts occurring outside the Class Period.

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

1
2 The Aggrieved Employees' Releases for Participating and Non-Participating Class
Members are as follows:

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

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

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

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

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

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

25 **5. HOW WILL I GET PAID?**

26 1. Participating Class Members. The Administrator will send, by U.S. mail, a single
27 check to every Participating Class Member (i.e., every Class Member who doesn't opt-out)

1 including those who also qualify as Aggrieved Employees. The single check will combine the
2 Individual Class Payment and the Individual PAGA Payment.

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

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

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

9 Submit a written and signed letter with your name, present address, telephone number,
10 and a simple statement that you do not want to participate in the Settlement. The Administrator
11 will exclude you based on any writing communicating your request be excluded. Be sure to
12 personally sign your request, identify the Action as *Martha P. Briano Martinez vs. Nor Cal Foods,*
13 *LLC*, Case No. SCV-270596, and include your identifying information (full name, address,
telephone number, approximate dates of employment, and social security number for verification
purposes). You must make the request yourself. If someone else makes the request for you, it
will not be valid. **The Administrator must be sent your request to be excluded by ___, or it**
will be invalid. Section 9 of the Notice has the Administrator's contact information.

14 **7. HOW DO I OBJECT TO THE SETTLEMENT?**

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

21 A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for
22 Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to
23 object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class
Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the**
24 **Administrator is ___.** Be sure to tell the Administrator what you object to, why you object, and
25 any facts that support your objection. Make sure you identify the Action, *Martha P. Briano*
Martinez vs. Nor Cal Foods, LLC, case no. SCV-270596, and include your name, current address,
26 telephone number, and approximate dates of employment for Defendant and sign the objection.
Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on ____ at (time) in Department 19 of the Sonoma County Superior Court, located at Hall of Justice, 600 Administration Avenue, Room 107J, Santa Rosa, CA 95403-2878. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via ____ ([https://www. ____](https://www.____)). Check the Court's website for the most current information.

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

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendant and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to (specify entity)'s website at (url). You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to ([http://www. ____ .aspx](http://www.____.aspx)) and entering the Case Number for the Action, Case No. SCV-270596. You can also make an appointment to personally review court documents in the Clerk's Office at the Sonoma County Superior Court by calling ____.

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

Class Counsel:

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

Defense Counsel:

Name of Attorney: Ian B. Wieland, Charles P. Hamamjian
Email Address: Ian@sw2law.com, Charles@sw2law.com
Name of Firm: Sagaser, Watkins, & Wieland, PC
Mailing Address: 5260 N. Palm, Suite 400
Fresno, CA 93704
Telephone: (559) 421-7000
Administrator:

Name of Company: CPT Group, Inc.
Email Address: _____
Mailing Address: _____
Telephone: _____
Fax Number: _____

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void

☐ you should consult the Unclaimed Property Fund _____ for instructions on how to retrieve the funds

☐ you will have no way to recover the money.

11. WHAT IF I CHANGE MY ADDRESS?

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

EXHIBIT 2



THE SPIVAK LAW FIRM
EMPLOYEE RIGHTS

8605 Santa Monica Bl PMB 42554 West Hollywood CA 90069 Mail
15303 Ventura Bl Ste 900 Sherman Oaks CA 91403 Office
(213) 725-9094 Tel
(213) 634-2485 Fax
spivaklaw.com Web

****SENT BY CERTIFIED MAIL****

April 20, 2022

Nor Cal Foods, LLC
c/o Raymond A. Greene, Esq.
BURNHAM BROWN
2125 Oak Grove Road, Suite 105
Walnut Creek, CA 94598
rgreene@burnhambrown.com

Re: *Martha P. Briano Martinez / Nor Cal Foods, LLC*

Dear Counsel:

Please find enclosed a copy of the notice sent to the Labor and Workforce Department Agency dated March 22, 2022 that we had previously sent to Nor Cal Foods, LLC, c/o Raymond A. Greene, Esq., Burnham Brown, 1901 Harrison Street, 13th Floor, Oakland, CA 94612.

Sincerely,

Emily Houngh Ly
Paralegal
(818) 205-9033
emily@spivaklaw.com
Encl. as stated.



SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

March 22, 2022

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

Re: Martha P. Briano Martinez / Nor Cal Foods, LLC

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Martha P. Briano Martinez (hereafter “Briano” or “Complainant”) provides notice that Nor Cal Foods, LLC, a California limited liability company, and related entities (collectively “the NCF Employers” or “the Employers”) violated her rights and those of all other individuals the NCF Employers have employed or otherwise contracted with in California as all hourly, non-exempt employees, including, but not limited to, cooks, servers, food preparers, cashiers, busboys, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802. On behalf of herself and all other Aggrieved Employees, Briano hereby provides this notice to the Labor & Workforce Development Agency and the NCF Employers and their agents and representatives.

At all relevant times, the NCF Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Briano and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

///

Statement of Facts

On approximately October 2, 2020, the NCF Employers began to employ Briano in Santa Rosa in the position of hourly, non-exempt cook. The NCF Employers continuously employed her in that capacity until on or about July 5, 2021, when her employment ended.

At all relevant times, the NCF Employers issued wages to Briano and all of the other Aggrieved Employees on a bi-weekly basis and paid them by the hour. At all relevant times, the NCF Employers classified Briano and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The NCF Employers failed to compensate Briano and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The NCF Employers failed to pay Briano and the other Aggrieved Employees for all hours worked by altering time records to artificially reduce the time Briano and the Aggrieved Employees purportedly worked. The NCF Employers compensated Briano and the other Aggrieved Employees based on these artificially reduced hours. The NCF Employers also failed to pay Briano and the other Aggrieved Employees for all hours worked because The NCF Employers did not pay Briano and the other Aggrieved Employees for the work they performed during their first week of employment.

The NCF Employers failed to compensate Briano and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The NCF Employers failed to pay Briano and the other Aggrieved Employees for all overtime hours worked by altering time records to artificially reduce the time Briano and the other Aggrieved Employees purportedly worked. The NCF Employers compensated Briano and the other Aggrieved Employees based on these artificially reduced hours. Moreover, whenever Briano and the other Aggrieved Employees worked overtime hours, the NCF employers altered the time records to make these overtime hours appear as if they were hours worked for an entirely different shift.

At all relevant times, the NCF Employers failed to provide Briano and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. Employer required Briano and the other Aggrieved Employees to remain on duty during their

meal periods. On the few occasions Briano and the other Aggrieved Employees received uninterrupted meal periods, these meal periods were often after the five hours worked. Moreover, the NCF Employers failed to pay premium wages for days on which they failed to provide Briano and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the NCF Employers failed to authorize and permit Briano and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. Employer required Briano and the other Aggrieved Employees to remain on duty during their rest periods. On the few occasions Briano and the other Aggrieved Employees received uninterrupted rest periods, these rest periods did not occur for every four hours worked or substantial portion thereof. Moreover, the NCF Employers also failed to pay premium wages for days on which they failed to authorize and permit Briano and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the NCF Employers required Briano and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The NCF Employers required Briano and all of the other Aggrieved Employees to supply aprons and hair nets to perform their job duties. Briano and the other Aggrieved Employees purchased these items. However, the NCF Employers did not provide these items and did not reimburse Briano and the other Aggrieved Employees for these items.

At all relevant times, the NCF Employers failed to issue to Briano and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The NCF Employers knowingly and intentionally failed to state on the wage statements they issued to Briano and all of the other Aggrieved Employees the unpaid wages discussed above. The NCF Employers artificially reduced the number of hours recorded on Briano and the other Aggrieved Employees' timesheets. As a result, The NCF Employers compensated Briano and the other Aggrieved Employees based on these artificially reduced amount of hours. The wage statements failed to state all minimum wages earned, all overtime wages earned, all regular wages earned, all meal period premium wages earned, all rest break premium wages earned, all hours worked at each rate of pay. Moreover, The NCF Employers also required Briano and the other Aggrieved Employees to sign acknowledgments agreeing to these artificially reduced hours. Briano and the other Aggrieved Employees had to sign these acknowledgements to receive their paychecks.

The NCF Employers also failed to timely pay Briano and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment. Although, Briano and the other Aggrieved Employees signed acknowledgments agreeing to the artificially reduced hours, Briano and the other Aggrieved Employees had no alternative choice because NCF required Briano and the Aggrieved Employees to sign these agreements to receive their paychecks.

The NCF Employers failed to maintain accurate employee records of Briano and all of the other Aggrieved Employees.

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

- (a) The NCF Employers failed to pay Briano and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, and overtime wages;
- (b) The NCF Employers failed to provide Briano and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The NCF Employers failed to authorize and permit Briano and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The NCF Employers failed to compensate Briano and all of the other Aggrieved Employees at one hour's pay for each day in which the NCF Employers failed to provide them with one or more meal periods as required by law;
- (e) The NCF Employers failed to compensate Briano and all of the other Aggrieved Employees at one hour's pay for each day in which the NCF Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The NCF Employers failed to indemnify Briano and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;

- (g) The NCF Employers knowingly and intentionally failed to provide Briano and all of the other Aggrieved Employees with accurate wage statements;
- (h) The NCF Employers willfully failed to timely pay Briano and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the NCF Employers and when their employment ended; and
- (i) The NCF Employers failed to maintain accurate employment records pertaining to Briano and all of the other Aggrieved Employees.

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

The Wage Order

The Wage Order applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Public Housekeeping Industry" to mean

any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to the following:

- (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either sold or liquid form is prepared and served to be consumed on the premises;
- (2) Catering, banquet, box lunch service, and similar establishments which prepare food for consumption on or off the premises;
- (3) Hotels, motels, apartment houses, rooming houses, camps, clubs, trailer parks, office or loft buildings, and similar establishments offering rental of living, business, or commercial quarters;

- (4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;
- (5) Private schools, colleges, or universities, and similar establishments which provide board or lodging in addition to educational facilities;
- (6) Establishments contracting for development, maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units; and
- (7) Establishments providing veterinary or other animal care services.

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the NCF Employers, Briano, and all of the Aggrieved Employees were covered by the Wage Order because the NCF Employers operated, and Briano, and all of the Aggrieved Employees, worked for one or more restaurants. Accordingly, Briano and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

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

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

In relevant part, section 2(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, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to

recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

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

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

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek; and

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

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

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

NCF Employers failed to pay Briano and the other Aggrieved Employees at the applicable minimum or regular wage rate for all hours worked by altering time records to artificially reduce the time Briano and the Aggrieved Employees purportedly worked. The NCF Employers also failed to pay Briano and the other Aggrieved Employees for all overtime hours worked because of these altered time records. The NCF Employers would only compensate Briano and the other Aggrieved Employees based on these artificially reduced hours. Moreover, The NCF Employers failed to pay Briano and the other Aggrieved Employees for all hours worked because The NCF Employers did not pay Briano and the other Aggrieved Employees for at least the first week of work.

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

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

3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

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

In relevant part, section 2(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, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

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

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

Meal Periods:

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

In addition, Labor Code section 226.7 states:

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

At all relevant times, the NCF Employers failed to provide Briano and all of the other Aggrieved Employees with all timely meal periods. The NCF Employers denied Briano

and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The NCF Employers required Briano and the other Aggrieved Employees to remain on duty during their meal periods. On the few occasions Briano and the other Aggrieved Employees received uninterrupted meal periods, these meal periods were often beyond the fifth hour worked. Furthermore, the NCF Employers failed to pay premium wages for days on which they failed to provide Briano and all of the other Aggrieved Employees with timely meal periods. Accordingly, Briano now seeks civil penalties for these Labor Code violations that the NCF Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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

Section 2(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, Labor Code section 1198 states,

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

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

Rest Periods:

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

In addition, Labor Code section 226.7 states:

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

The NCF Employers failed to authorize and permit Briano and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The NCF Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The NCF Employers required Briano and the other Aggrieved Employees to remain on duty during their rest periods. On the few occasions Briano and the other Aggrieved Employees received uninterrupted rest periods, these meal periods were often beyond the fourth hour worked. Moreover, the NCF Employers failed to pay Briano and all of the other Aggrieved Employees premium wages on workdays the NCF Employers failed to provide Briano and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Briano now seeks civil penalties for these Labor Code violations that the NCF Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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

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

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.

...

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

Wage Order, § 9(B).

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

As described above, the NCF Employers required Briano and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The NCF Employers required Briano and all of the other Aggrieved Employees to supply aprons and hair nets to perform their job duties. Briano purchased these items. However, the NCF Employers did not provide these items and did not reimburse Briano and the other Aggrieved Employees for these items. Accordingly, Briano seeks civil penalties for these Labor Code violations that the NCF Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

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

At all relevant times during the applicable limitations period, the NCF Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The NCF Employers failed to state in the wage statements they issued to Briano and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages. The NCF Employers knowingly and intentionally failed to state on the wage statements they issued to Briano and all of the

other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all overtime wages earned, all regular wages earned, all meal period premium wages earned, all rest break premium wages earned, and all hours worked at each rate of pay. The NCF Employers artificially reduced the number of hours recorded on Briano and the other Aggrieved Employees' timesheets. The NCF Employers compensated Briano and the other Aggrieved Employees based on this artificially reduced amount. The NCF Employers also required Briano and the other Aggrieved Employees to sign acknowledgments agreeing to the artificially reduced hours to receive their paychecks.

Accordingly, Briano seeks civil penalties for the Labor Code violations that the NCF Employers have committed against her and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

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

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The NCF Employers failed to compensate Briano and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, unprovided rest break premium wages, unprovided meal period premium wages, at the intervals stated above. As a result, the NCF Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Briano now seeks civil penalties for the Labor Code violations that the NCF Employers have committed against her and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus

25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

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

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The NCF Employers failed to pay Briano and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Briano, including minimum wages, regular wages, overtime wages, unprovided rest break premium wages, unprovided meal period premium wages. By failing to pay Briano and all of the other Aggrieved Employees as set forth above at the end of employment, the NCF Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the other Aggrieved Employees, Briano seeks civil penalties from the NCF Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));

2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

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

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

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

Section 7 of Wage Order states,

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

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

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

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

[illegible]

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Martha P. Briano Martinez will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

David@spivaklaw.com

cc: Martha P. Briano Martinez
Walter L. Haines, Esq.

Nor Cal Foods, LLC
c/o Attorney Burnham Brown
Burnham Brown
1901 Harrison Street
Oakland, CA 94612
rgreene@burnhambrown.com

EXHIBIT 3

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5 THE SPIVAK LAW FIRM
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8 Telephone: (213) 725-9094
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10 Attorneys for Plaintiff,
11 MARTHA P. BRIANO MARTINEZ, and all others similarly situated
12 (Additional attorney for Plaintiff on the following page)

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

16 MARTHA P. BRIANO MARTINEZ, on behalf
17 of herself and all others similarly situated, and
18 the general public,

19 *Plaintiff,*

20 vs.

21 NOR CAL FOODS, LLC, a California limited
22 liability company; and DOES 1–50, inclusive,

23 *Defendants.*

Case No.

CLASS ACTION

COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
3. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
4. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code §§ 201-203); and
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.

JURY TRIAL DEMANDED



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ELECTRONICALLY FILED
Superior Court of California
County of Sonoma
4/13/2022 5:19 PM
Arlene D. Junior, Clerk of the Court
By: Janie Dorman, Deputy Clerk

ADDITIONAL ATTORNEY FOR PLAINTIFF

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1 Plaintiff, Martha P. Briano Martinez (hereafter “Plaintiff”), on behalf of herself and all
2 others similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action for alleged violations of the California Labor
5 Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”), and the
6 California Business and Professions Code against Defendants Nor Cal Foods, LLC, a California
7 limited liability company, and Does 1 through 50, inclusive (collectively “Defendants”).

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

11 (A) Pay all wages, including minimum, regular, overtime and doubletime
12 wages, earned for all hours worked at the correct rates of pay;

13 (B) Provide all meal periods;

14 (C) Authorize and permit all rest breaks;

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

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

17 (F) Issue only accurate and complete itemized wage statements;

18 (G) Timely pay wages upon termination of employment;

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

21 **THE PARTIES**

22 3. Plaintiff Martha P. Briano Martinez is a resident of California.

23 4. Defendant Nor Cal Foods, LLC is a California limited liability company and
24 existing under the laws of California and also a citizen of California based on Plaintiff’s
25 information and belief.

26 5. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
27 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
28 is informed and believes and thereon alleges that said Defendants are legally responsible for the



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wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

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

7. 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, practice, or a lack of a practice which resulted in Defendants not compensating Plaintiff and the other Class Members or otherwise complying with their rights in accordance with applicable California labor laws as alleged herein.

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

CLASS ALLEGATIONS

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

10. **Class Definition:** The Class is defined as follows: All persons Defendants employed in California all hourly, non-exempt employees, including, but not limited to, cooks, servers, food preparers, cashiers, busboys, individuals performing work comparable to the aforementioned, compensated comparably to the aforementioned, and individuals in similar positions, at any time during the period beginning four years prior to the filing of this action and



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ending on the date that final judgment is entered in this action (“Class” or “Class Members”).

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

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

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

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

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

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

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

E. Whether Defendants willfully failed to provide the class with timely final wages;

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

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

14. **Typicality:** Plaintiff’s claims are typical of the other Class Members’ claims. Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or



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practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor Code, the Wage Order, and the Business and Professions Code.

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

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

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

STATEMENT OF FACTS

18. The Wage Order applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Public Housekeeping Industry" to mean

any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to the following:



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- (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either sold or liquid form is prepared and served to be consumed on the premises;
- (2) Catering, banquet, box lunch service, and similar establishments which prepare food for consumption on or off the premises;
- (3) Hotels, motels, apartment houses, rooming houses, camps, clubs, trailer parks, office or loft buildings, and similar establishments offering rental of living, business, or commercial quarters;
- (4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;
- (5) Private schools, colleges, or universities, and similar establishments which provide board or lodging in addition to educational facilities;
- (6) Establishments contracting for development, maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units; and
- (7) Establishments providing veterinary or other animal care services.

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Defendants, Plaintiff, and all of the Class Members were covered by the Wage Order because the Defendants operated, and Plaintiff, and all of the Class Members, worked for one or more restaurants. Accordingly, Plaintiff and all of the other Class Members are entitled to the protections the Wage Order provides.

19. On approximately October 2, 2020, the Defendants began to employ Plaintiff in Santa Rosa in the position of hourly, non-exempt cook. The Defendants continuously employed her in that capacity until on or about July 5, 2021, when her employment ended.

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

21. At all relevant times, the Defendants failed to compensate Plaintiff and all of the



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1 other Class Members for all hours worked at the applicable minimum or regular rates of pay.
2 Defendants failed to pay Plaintiff and the other Class Members for all hours worked by altering
3 time records to artificially reduce the time Plaintiff worked. Defendants compensated Plaintiff
4 and the other Class Members based on these artificially reduced hours. Defendant also failed to
5 pay Plaintiff and the other Class Members for all hours worked because Employer did not pay
6 Plaintiff and the other Class Members for at least the first week of work.

7 22. At all relevant times, the Defendants failed to compensate Plaintiff and all of the
8 other Class Members at the correct rates of pay for all hours worked over eight in a day, over 40
9 in a week, and for the first eight hours of the seventh day of the workweek. Defendant failed to
10 pay Plaintiff and the other Class Members for all overtime hours worked by altering time records
11 to artificially reduce the time Plaintiff worked. Defendants compensated Plaintiff and the other
12 Class Members based on these artificially reduced hours

13 23. At all relevant times, the Defendants failed to provide Plaintiff and all of the other
14 Class Members with all timely 30-minute, off-duty meal periods. Defendants required Plaintiff
15 and the other Class Members to remain on duty during their meal periods. On the few occasions
16 Plaintiff and the other Class Members received uninterrupted meal periods, these meal periods
17 were often beyond the fifth hour worked. The Defendants also failed to pay premium wages for
18 days on which it failed to provide Plaintiff and all of the other Class Members with meal periods
19 as required by law.

20 24. At all relevant times, the Defendants failed to authorize and permit Plaintiff and
21 all of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours
22 worked or major portion thereof. Defendants required Plaintiff and the other Class Members to
23 remain on duty during their rest periods. On the few occasions Plaintiff and the other Class
24 Members received uninterrupted rest periods, these rest periods did not occur for every four hours
25 worked or substantial portion thereof. The Defendants also failed to pay premium wages for days
26 on which it failed to authorize and permit Plaintiff and all of the other Class Members to take rest
27 breaks as required by law.

28 25. At all relevant times, the Defendants required Plaintiff and the other Class



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Members to incur certain business expenses in the course of performing their duties. Defendants required Plaintiff and the other Class Members to supply aprons and hair nets to perform their job duties. Plaintiff and the Class Members purchased these items. However, the Defendants did not provide these items and did not reimburse Plaintiff and the other Class Members for these items.

26. At all relevant times, the Defendants failed to issue to Plaintiff and all of the other Class Members complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on the wage statements they issued to Plaintiff and all of the other Class Members the unpaid wages discussed above. Defendants artificially reduced the number of hours recorded on Plaintiff and the other Class Members' timesheets. Defendants compensated Plaintiff and the other Class Members based on these artificially reduced hours. The wage statements failed to state all minimum wages earned, all overtime wages earned, all regular wages earned, all meal period premium wages earned, all rest break premium wages earned, all hours work at each rate of pay, and related information. Moreover, Defendants also required Plaintiff and the other Class Members to sign acknowledgments agreeing to these artificially reduced hours. Plaintiff and the other Class Members had to sign these acknowledgements to receive their paychecks.

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

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

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



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

4 **FIRST CAUSE OF ACTION**
5 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT THE**
6 **CORRECT RATES OF PAY**

7 **Lab. Code §§ 510, 1194, 1197, and 1198**
8 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

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

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

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

15 32. Section 3 of the Wage Order states:

16 (A) Daily Overtime - General Provisions

17 (1) The following overtime provisions are applicable to
18 employees 18 years of age or over and to employees 16 or
19 17 years of age who are not required by law to attend
20 school and are not otherwise prohibited by law from
21 engaging in the subject work. Such employees shall not be
22 employed more than eight (8) hours in any workday or
23 more than 40 hours in any workweek unless the employee
24 receives one and one-half (1 ½) times such employee’s
25 regular rate of pay for all hours worked over 40 hours in
26 the workweek. Eight (8) hours of labor constitutes a day’s
27 work. Employment beyond eight (8) hours in any workday
28 or more than six (6) days in any workweek is permissible
provided the employee is compensated for such overtime
at not less than:

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



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(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.

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

34. Labor Code section 510 states:

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

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

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

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

38. In conjunction, these provisions of the Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours



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1 worked, including unrecorded hours when the employer knew or reasonably should have known
2 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
3 Cal.4th 575, 585.)

4 39. At all relevant times during the applicable limitations period, Defendants failed to
5 compensate Plaintiff and the Class Members for all hours worked, including, but not limited to
6 minimum, regular, and overtime wages for all minimum, regular, and overtime hours,
7 respectively, that they worked at the correct rates of pay. Defendants artificially reduced the
8 number of hours recorded on Plaintiff and the other Class Members' timesheets. Defendants
9 compensated Plaintiff and the Class Members based on these artificially reduced amount of hours.
10 Moreover, Defendant also failed to pay Plaintiff and the other Class Members for all hours worked
11 because Employer did not pay Plaintiff and the Class Members for at least the first week of work.

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

16 **SECOND CAUSE OF ACTION**
17 **FAILURE TO PROVIDE MEAL PERIODS**
18 **Lab. Code §§ 226.7 and 512**

19 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

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

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

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

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

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



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

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

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

14 **Meal Periods**

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

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

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

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



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Occupational Safety and Health.

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

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

48. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty free meal periods in accordance with the Wage Order. Employer required Plaintiff and the other Class Members to remain on duty during their meal periods. On the few occasions Plaintiff and the other Class Members received uninterrupted meal periods, these meal periods were often beyond the fifth hour worked.

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

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

51. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered damages in amounts subject to proof to the extent they were not paid additional wages



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owed for all meal periods not provided to them.

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

THIRD CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT REST BREAKS

Lab. Code § 226.7

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

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

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

55. 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.

56. 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 of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

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



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1 57. In relevant part, California Labor Code § 226.7 states:
2

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

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

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

16 59. Defendants intentionally failed to authorize and permit Plaintiff and the Class
17 Members to take all 10-minute rest periods free from any work duties in accordance with the
18 Wage Order. Defendants required Plaintiff and the other Class Members to remain on duty during
19 their rest periods. On the few occasions Plaintiff and the other Class Members received
20 uninterrupted rest periods, these rest periods did not occur for every four hours worked or
21 substantial portion thereof.

22 60. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
23 Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium
24 wages to Plaintiff and the Class Members for days on which they failed to authorize and permit
25 Plaintiff and the other Class Members to take timely rest periods.

26 61. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
27 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
28



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1 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
2 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
3 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed
4 to authorize and permit them to take 10-minute rest periods every four hours worked or major
5 fraction thereof.

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

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

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

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

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

27 ///

28 ///



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FOURTH CAUSE OF ACTION
FAILURE TO INDEMNIFY

Lab. Code § 2802

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

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

68. 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.”

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

70. At all relevant times, Defendants required Plaintiff and the Class Members to incur certain business expenses in the course of performing their duties.

71. As described above, Defendants required Plaintiff and the other Class Members to incur certain business expenses in the course of performing their duties. Defendants required Plaintiff and the other Class Members to supply aprons and hair nets to perform their job duties. Plaintiff and the Class Members purchased these items. However, the Defendants did not provide these items and did not reimburse Plaintiff and the other Class Members for these items.

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

FIFTH CAUSE OF ACTION

FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS

Lab. Code §§ 226 and 226.2

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

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

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



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

18 75. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury

19 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if

20 the employer fails to provide accurate and complete information as required by California Labor

21 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement

22 alone one or more of the following:

- 23 A. The amount of the gross wages or net wages paid to the employee during
- 24 the pay period or any of the other information required to be provided on the itemized wage
- 25 statement pursuant to California Labor Code § 226(a);
- 26 B. Which deductions the employer made from gross wages to determine the
- 27 net wages paid to the employee during the pay period;
- 28 C. The name and address of the employer and, if the employer is a farm labor



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1 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
2 and address of the legal entity that secured the services of the employer during the pay period;

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

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

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

9 77. As alleged herein, at all relevant times during the applicable limitations period,
10 Defendants violated California Labor Code section 226 because they did not properly and
11 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
12 the corresponding number of hours worked at each rate by the employee and other requirements
13 of California Labor Code section 226. Defendants failed to state in the wage statements they
14 issued to Plaintiff and the other Class Members all their hours worked and wages earned,
15 including, but not limited to, regular and overtime wages. Defendants knowingly and intentionally
16 did not issue either as a detachable part of the check, draft, or voucher paying the employee’s
17 wages, or separately if wages are paid by personal check or cash, statements to Plaintiff and the
18 Class Members that state all minimum wages earned, all overtime wages earned, all regular wages
19 earned, all meal period premium wages earned, all rest break premium wages earned, and all
20 hours worked at each rate of pay.

21 78. Defendants’ failure to provide Plaintiff and the other Class Members with accurate
22 wage statements was knowing and intentional. Defendants artificially reduced the number of
23 hours recorded on Plaintiff and the other Class Members’ timesheets. Defendants compensated
24 Plaintiff and the other Class Members based on these artificially reduced amount of hours.
25 Defendants also required Plaintiff and the other Class Members to sign acknowledgments
26 agreeing to these artificially reduced hours. Plaintiff and the other Class Members had to sign
27 these acknowledgements to receive their paychecks. Defendants had the ability to provide
28 Plaintiff and the other Class Members with accurate wage statements but intentionally provided



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1 wage statements that Defendants knew were not accurate.

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

12 **SIXTH CAUSE OF ACTION**
13 **WILLFUL FAILURE TO TIMELY PAY FINAL WAGES**
14 **(Lab. Code §§ 201, 202, and 203)**
15 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

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

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

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

22 83. Labor Code § 202 provides that all earned and unpaid wages of an employee who
23 quits after providing at least 72-hours notice before quitting are due and payable at the time of
24 quitting and that all earned and unpaid wages of an employee who quits without providing at least
25 72-hours notice before quitting are due and payable within 72 hours.

26 84. The Defendants failed to pay Plaintiff and all of the other Class Members whose
27 employment ended all of the earned but unpaid wages described above by the conclusion of their
28 employment with Plaintiff, including all minimum wages earned, all overtime wages earned, all
regular wages earned, all meal period premium wages earned, all rest break premium wages



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1 earned, and all hours worked at each rate of pay.

2 85. By failing to pay such earned wages to Plaintiff and the Class Members,
3 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
4 § 201 or § 202.

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

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

13 **SEVENTH CAUSE OF ACTION**

14 **UNFAIR COMPETITION**

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

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

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

18 89. At all relevant times during the applicable limitations period, Plaintiff and the
19 Class Members have been employees of Defendants and entitled to the benefits and protections
20 of the Business and Professions Code §§ 17200, *et seq.*

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

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



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money and property.

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

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

PRAYER FOR RELIEF

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

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

- A. An order that Plaintiff be appointed class representative;
- B. An order that counsel for Plaintiff be appointed class counsel;
- C. Unpaid wages, including minimum, regular, overtime, missed meal period premium wages, and missed rest period premium wages;
- D. Liquidated damages;
- E. Statutory penalties, including waiting time penalties;
- F. Restitution;
- G. Declaratory relief;
- H. Actual damages;
- I. Pre-judgment interest;
- J. Costs of suit;
- K. Reasonable attorneys' fees; and
- L. Such other relief as the Court deems just and proper.

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1 **DEMAND FOR JURY TRIAL**

2 Plaintiff, on behalf of herself and all other Class Members, hereby demands a jury trial on
3 all issues so triable.

4 Respectfully submitted,

5 THE SPIVAK LAW FIRM

6 Dated: April 13, 2022

7 By: *David Spivak*
8 DAVID G. SPIVAK
9 SARA BROWN
10 Attorneys for Plaintiff, MARTHA P.
11 BRIANO MARTINEZ, and all others
12 similarly situated
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EXHIBIT 4

1 DAVID G. SPIVAK (SBN 179684)
2 david@spivaklaw.com
3 CHRISTINA J. PREJEAN (SBN 314772)
4 christina@spivaklaw.com

5 THE SPIVAK LAW FIRM
6 8605 Santa Monica Blvd. PMB 42554
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10 Attorneys for Plaintiff,
11 MARTHA P. BRIANO MARTINEZ, and all others similarly situated
12 (Additional attorney for Plaintiff on the following page)

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

MARTHA P. BRIANO MARTINEZ, on behalf
of herself and all others similarly situated, and
as an “aggrieved employee” on behalf of other
“aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

Plaintiff,

vs.

NOR CAL FOODS, LLC, a California limited
liability company; and DOES 1–50, inclusive,

Defendants.

ELECTRONICALLY FILED
Superior Court of California
County of Sonoma
5/27/2022 3:23 PM
By: Griselda Zavala, Deputy Clerk

Case No.: SCV-270596

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
3. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
4. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code §§ 201-203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and
8. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED



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ADDITIONAL ATTORNEY FOR PLAINTIFF

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1 Plaintiff, Martha P. Briano Martinez (hereafter “Plaintiff”), on behalf of herself and all
2 others similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action for alleged violations of the
5 California Labor Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage
6 Order”), and the California Business and Professions Code against Defendants Nor Cal Foods,
7 LLC, a California limited liability company, and Does 1 through 50, inclusive (collectively
8 “Defendants”).

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

12 (A) Pay all wages, including minimum, regular, overtime and doubletime
13 wages, earned for all hours worked at the correct rates of pay;

14 (B) Provide all meal periods;

15 (C) Authorize and permit all rest breaks;

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

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

18 (F) Issue only accurate and complete itemized wage statements;

19 (G) Timely pay wages upon termination of employment;

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

23 **THE PARTIES**

24 3. Plaintiff Martha P. Briano Martinez is a resident of California.

25 4. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8
26 California Code of Regulations § 11050 and an “aggrieved employee” within the meaning of
27 Labor Code § 2699 (c).

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1 a class action.

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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1 **STATEMENT OF FACTS**

2 19. The Wage Order applies to “all persons employed in the public housekeeping
3 industry whether paid on a time, piece rate, commission, or other basis.” Wage Order, § 1. The
4 Wage Order defines "Public Housekeeping Industry" to mean

5 any industry, business, or establishment which provides meals, housing, or
6 maintenance services whether operated as a primary business or when incidental
7 to other operations in an establishment not covered by an industry order of the
8 Commission, and includes, but is not limited to the following:

- 9 (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters,
10 cafeterias, boarding houses, clubs, and all similar establishments where
11 food in either sold or liquid form is prepared and served to be consumed
12 on the premises;
- 13 (2) Catering, banquet, box lunch service, and similar establishments which
14 prepare food for consumption on or off the premises;
- 15 (3) Hotels, motels, apartment houses, rooming houses, camps, clubs, trailer
16 parks, office or loft buildings, and similar establishments offering rental
17 of living, business, or commercial quarters;
- 18 (4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions,
19 homes for the aged, and similar establishments offering board or lodging
20 in addition to medical, surgical, nursing, convalescent, aged, or child care;
- 21 (5) Private schools, colleges, or universities, and similar establishments which
22 provide board or lodging in additional to educational facilities;
- 23 (6) Establishments contracting for development, maintenance or cleaning of
24 grounds; maintenance or cleaning of facilities and/or quarters of
25 commercial units and living units; and
- 26 (7) Establishments providing veterinary or other animal care services.

27 Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Defendants,
28 Plaintiff, and all of the Class Members were covered by the Wage Order because the Defendants
operated, and Plaintiff, and all of the Class Members, worked for one or more restaurants.
Accordingly, Plaintiff and all of the other Class Members are entitled to the protections the Wage
Order provides.

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1 20. On approximately October 2, 2020, the Defendants began to employ Plaintiff in
2 Santa Rosa in the position of hourly, non-exempt cook. The Defendants continuously employed
3 her in that capacity until on or about July 5, 2021, when her employment ended.

4 21. At all relevant times, the Defendants issued wages to Plaintiff and all of the other
5 Class Members on a bi-weekly basis and paid them by the hour. At all relevant times, the
6 Defendants classified Plaintiff and all of the other Class Members as non-exempt employees
7 entitled to the protections of the Labor Code and the Wage Order.

8 22. At all relevant times, the Defendants failed to compensate Plaintiff and all of the
9 other Class Members for all hours worked at the applicable minimum or regular rates of pay.
10 Defendants failed to pay Plaintiff and the other Class Members for all hours worked by altering
11 time records to artificially reduce the time Plaintiff worked. Defendants compensated Plaintiff
12 and the other Class Members based on these artificially reduced hours. Defendant also failed to
13 pay Plaintiff and the other Class Members for all hours worked because Employer did not pay
14 Plaintiff and the other Class Members for at least the first week of work.

15 23. At all relevant times, the Defendants failed to compensate Plaintiff and all of the
16 other Class Members at the correct rates of pay for all hours worked over eight in a day, over 40
17 in a week, and for the first eight hours of the seventh day of the workweek. Defendant failed to
18 pay Plaintiff and the other Class Members for all overtime hours worked by altering time records
19 to artificially reduce the time Plaintiff worked. Defendants compensated Plaintiff and the other
20 Class Members based on these artificially reduced hours

21 24. At all relevant times, the Defendants failed to provide Plaintiff and all of the other
22 Class Members with all timely 30-minute, off-duty meal periods. Defendants required Plaintiff
23 and the other Class Members to remain on duty during their meal periods. On the few occasions
24 Plaintiff and the other Class Members received uninterrupted meal periods, these meal periods
25 were often beyond the fifth hour worked. The Defendants also failed to pay premium wages for
26 days on which it failed to provide Plaintiff and all of the other Class Members with meal periods
27 as required by law.

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1 25. At all relevant times, the Defendants failed to authorize and permit Plaintiff and
2 all of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours
3 worked or major portion thereof. Defendants required Plaintiff and the other Class Members to
4 remain on duty during their rest periods. On the few occasions Plaintiff and the other Class
5 Members received uninterrupted rest periods, these rest periods did not occur for every four hours
6 worked or substantial portion thereof. The Defendants also failed to pay premium wages for days
7 on which it failed to authorize and permit Plaintiff and all of the other Class Members to take rest
8 breaks as required by law.

9 26. At all relevant times, the Defendants required Plaintiff and the other Class
10 Members to incur certain business expenses in the course of performing their duties. Defendants
11 required Plaintiff and the other Class Members to supply aprons and hair nets to perform their job
12 duties. Plaintiff and the Class Members purchased these items. However, the Defendants did not
13 provide these items and did not reimburse Plaintiff and the other Class Members for these items.

14 27. At all relevant times, the Defendants failed to issue to Plaintiff and all of the other
15 Class Members complete and accurate wage statements that state all hours worked at the correct
16 rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on
17 the wage statements they issued to Plaintiff and all of the other Class Members the unpaid wages
18 discussed above. Defendants artificially reduced the number of hours recorded on Plaintiff and
19 the other Class Members' timesheets. Defendants compensated Plaintiff and the other Class
20 Members based on these artificially reduced hours. The wage statements failed to state all
21 minimum wages earned, all overtime wages earned, all regular wages earned, all meal period
22 premium wages earned, all rest break premium wages earned, all hours work at each rate of pay,
23 and related information. Moreover, Defendants also required Plaintiff and the other Class
24 Members to sign acknowledgments agreeing to these artificially reduced hours. Plaintiff and the
25 other Class Members had to sign these acknowledgements to receive their paychecks.

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

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

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

FIRST CAUSE OF ACTION
FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT THE
CORRECT RATES OF PAY

Lab. Code §§ 510, 1194, 1197, and 1198
(By Plaintiff, on behalf of herself and the Class, against all Defendants)

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

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

32. Section 2 of the 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 employee is suffered or permitted to work, whether or not required to do so."

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

- (a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

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

35. Labor Code section 510 states:

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



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

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

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

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

13 40. At all relevant times during the applicable limitations period, Defendants failed to
14 compensate Plaintiff and the Class Members for all hours worked, including, but not limited to
15 minimum, regular, and overtime wages for all minimum, regular, and overtime hours,
16 respectively, that they worked at the correct rates of pay. Defendants artificially reduced the
17 number of hours recorded on Plaintiff and the other Class Members' timesheets. Defendants
18 compensated Plaintiff and the Class Members based on these artificially reduced amount of hours.
19 Moreover, Defendant also failed to pay Plaintiff and the other Class Members for all hours worked
20 because Employer did not pay Plaintiff and the Class Members for at least the first week of work.

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

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SECOND CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS
Lab. Code §§ 226.7 and 512

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

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

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

44. 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.

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

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

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

46. 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 employee and the employer. Unless the employee is relieved of all duty during a 30 minute meal period, the



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meal period shall be considered an 'on duty' meal period and counted as time worked. An 'on duty' meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

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

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

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

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

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

49. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty free meal periods in accordance with the Wage Order. Employer required Plaintiff and the other Class Members to remain on duty during their meal periods. On



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1 the few occasions Plaintiff and the other Class Members received uninterrupted meal periods,
2 these meal periods were often beyond the fifth hour worked.

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

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

12 52. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
13 suffered damages in amounts subject to proof to the extent they were not paid additional
14 wages owed for all meal periods not provided to them.

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

18 **THIRD CAUSE OF ACTION**
19 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**
20 **Lab. Code § 226.7**

21 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

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

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

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

27 The maximum hours of work and the standard conditions of labor
28 fixed by the commission shall be the maximum hours of work and
the standard conditions of labor for employees. The employment



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

57. 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 of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

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

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

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

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



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

4 60. Defendants intentionally failed to authorize and permit Plaintiff and the Class
5 Members to take all 10-minute rest periods free from any work duties in accordance with the
6 Wage Order. Defendants required Plaintiff and the other Class Members to remain on duty during
7 their rest periods. On the few occasions Plaintiff and the other Class Members received
8 uninterrupted rest periods, these rest periods did not occur for every four hours worked or
9 substantial portion thereof.

10 61. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
11 Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium
12 wages to Plaintiff and the Class Members for days on which they failed to authorize and permit
13 Plaintiff and the other Class Members to take timely rest periods.

14 62. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
15 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
16 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
17 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
18 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed
19 to authorize and permit them to take 10-minute rest periods every four hours worked or major
20 fraction thereof.

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

25 64. Defendants failed to provide Plaintiff with all required rest breaks in accordance
26 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
27 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
28 which resulted in Defendants not providing the Class Members with all rest breaks required by



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1 California law.

2 65. Defendants failed to pay Plaintiff the additional wages required by California
3 Labor Code § 226.7 for all rest breaks not provided to her. Plaintiff is informed and believes and
4 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
5 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
6 Class Members with additional wages for all rest breaks not provided to them as required by
7 California Labor Code § 226.7.

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

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

14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO INDEMNIFY**

16 **Lab. Code § 2802**

17 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

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

19 69. 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 direct
consequence of the discharge of his or her duties."

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

23 71. At all relevant times, Defendants required Plaintiff and the Class Members to incur
24 certain business expenses in the course of performing their duties.

25 72. As described above, Defendants required Plaintiff and the other Class Members to
26 incur certain business expenses in the course of performing their duties. Defendants required
27 Plaintiff and the other Class Members to supply aprons and hair nets to perform their job duties.
28 Plaintiff and the Class Members purchased these items. However, the Defendants did not provide



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1 these items and did not reimburse Plaintiff and the other Class Members for these items.

2 73. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
3 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
4 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
5 during the course of performing their duties.

6 **FIFTH CAUSE OF ACTION**
7 **FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS**
8 **Lab. Code §§ 226 and 226.2**
9 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

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

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

14 A. Gross wages earned;

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

18 C. The number of piece rate units earned and any applicable piece rate if the
19 employee is paid on a piece-rate basis;

20 D. All deductions, provided that all deductions made on written orders of the
21 Employee may be aggregated and shown as one item;

22 E. Net wages earned;

23 F. The inclusive dates of the period for which the employee is paid;

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

28 H. The name and address of the legal entity that is the employer; and

I. All applicable hourly rates in effect during the pay period and the



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1 corresponding number of hours worked at each hourly rate by the employee.

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

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

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

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

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

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

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

21 78. As alleged herein, at all relevant times during the applicable limitations period,
22 Defendants violated California Labor Code section 226 because they did not properly and
23 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
24 the corresponding number of hours worked at each rate by the employee and other requirements
25 of California Labor Code section 226. Defendants failed to state in the wage statements they
26 issued to Plaintiff and the other Class Members all their hours worked and wages earned,
27 including, but not limited to, regular and overtime wages. Defendants knowingly and intentionally
28 did not issue either as a detachable part of the check, draft, or voucher paying the employee’s



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wages, or separately if wages are paid by personal check or cash, statements to Plaintiff and the Class Members that state all minimum wages earned, all overtime wages earned, all regular wages earned, all meal period premium wages earned, all rest break premium wages earned, and all hours worked at each rate of pay.

79. Defendants' failure to provide Plaintiff and the other Class Members with accurate wage statements was knowing and intentional. Defendants artificially reduced the number of hours recorded on Plaintiff and the other Class Members' timesheets. Defendants compensated Plaintiff and the other Class Members based on these artificially reduced amount of hours. Defendants also required Plaintiff and the other Class Members to sign acknowledgments agreeing to these artificially reduced hours. Plaintiff and the other Class Members had to sign these acknowledgements to receive their paychecks. Defendants had the ability to provide Plaintiff and the other Class Members with accurate wage statements but intentionally provided wage statements that Defendants knew were not accurate.

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

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SIXTH CAUSE OF ACTION
WILLFUL FAILURE TO TIMELY PAY FINAL WAGES
(Lab. Code §§ 201, 202, and 203)
(By Plaintiff, on behalf of herself and the Class, against all Defendants)

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

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

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

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

85. The Defendants failed to pay Plaintiff and all of the other Class Members whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Plaintiff, including all minimum wages earned, all overtime wages earned, all regular wages earned, all meal period premium wages earned, all rest break premium wages earned, and all hours worked at each rate of pay.

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

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

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



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1 penalties for each Class Member.

2 **SEVENTH CAUSE OF ACTION**

3 **UNFAIR COMPETITION**

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

5 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

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

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

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

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

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

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

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EIGHTH CAUSE OF ACTION

CIVIL PENALTIES

(By Plaintiff and the Class against all Defendants)

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

96. The “Aggrieved Employees” are all members of the Class defined above who Defendants employed during the period beginning March 22, 2021, and ending on the date that final judgment is entered in this action.

97. Labor Code § 204 states

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

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

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

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

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

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



1 99. During the applicable time period, Defendants violated California Labor Code §§
2 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

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

6 101. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are
7 entitled to recover civil penalties for each of the Defendants' violations of California Labor Code
8 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 during the
9 applicable limitations period in the following amounts:

10 A. For violations of California Labor Code § 204, one hundred dollars
11 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
12 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
13 (penalty amounts established by California Labor Code § 210).

14 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
15 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00)
16 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
17 California Labor Code § 226.3).

18 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
19 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for
20 each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
21 established by California Labor Code § 558).

22 D. For violations of California Labor Code § 1174, five hundred dollars
23 (\$500.00) for each Aggrieved Employee for each violation of Labor Code § 1174 (penalty
24 amounts established by Labor Code § 1174.5).

25 E. For violations of California Labor Code § 1197, one hundred dollars
26 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
27 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
28 (regardless of whether the initial violations were intentionally committed) (penalty amounts
established by California Labor Code § 1197.1).

 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for



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1 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
2 period for each subsequent violation (penalty amounts established by California Labor Code §
3 2699(f)(2)).

4 102. Plaintiff has complied with the procedures for bringing suit specified in California
5 Labor Code § 2699.3. By letter dated March 22, 2022, Plaintiff filed written notice online with
6 the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified
7 mail to Defendants of the specific provisions of the California Labor Code alleged to have been
8 violated, including the facts and theories to support the alleged violations. A true and correct copy
9 of the notice to the LWDA dated March 22, 2022 is attached as Exhibit A. Plaintiff accompanied
10 her LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in
11 response within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff anticipates that the
12 LWDA will provide written notice to Plaintiff informing him that it does not intend to investigate
13 these allegations.

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

17 **PRAYER FOR RELIEF**

18 104. WHEREFORE, Plaintiff, on behalf of herself and the Class Members, prays for
19 relief and judgment against Defendants as follows:

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

22 B. An order that Plaintiff be appointed class representative;

23 C. An order that counsel for Plaintiff be appointed class counsel;

24 D. Unpaid wages, including minimum, regular, overtime, missed meal period
25 premium wages, and missed rest period premium wages;

26 E. Liquidated damages;

27 F. Statutory penalties, including waiting time penalties;

28 G. Civil penalties;

H. Restitution;



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- I. Declaratory relief;
- J. Actual damages;
- K. Pre-judgment interest;
- L. Costs of suit;
- M. Reasonable attorneys' fees; and
- N. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: May 27, 2022

By: 

DAVID G. SPIVAK
CHRISTINA J. PREJEAN
Attorneys for Plaintiff, MARTHA P.
BRIANO MARTINEZ, and all others
similarly situated



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EXHIBIT A



SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

March 22, 2022

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

Re: Martha P. Briano Martinez / Nor Cal Foods, LLC

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Martha P. Briano Martinez (hereafter “Briano” or “Complainant”) provides notice that Nor Cal Foods, LLC, a California limited liability company, and related entities (collectively “the NCF Employers” or “the Employers”) violated her rights and those of all other individuals the NCF Employers have employed or otherwise contracted with in California as all hourly, non-exempt employees, including, but not limited to, cooks, servers, food preparers, cashiers, busboys, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802. On behalf of herself and all other Aggrieved Employees, Briano hereby provides this notice to the Labor & Workforce Development Agency and the NCF Employers and their agents and representatives.

At all relevant times, the NCF Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Briano and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

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Statement of Facts

On approximately October 2, 2020, the NCF Employers began to employ Briano in Santa Rosa in the position of hourly, non-exempt cook. The NCF Employers continuously employed her in that capacity until on or about July 5, 2021, when her employment ended.

At all relevant times, the NCF Employers issued wages to Briano and all of the other Aggrieved Employees on a bi-weekly basis and paid them by the hour. At all relevant times, the NCF Employers classified Briano and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The NCF Employers failed to compensate Briano and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The NCF Employers failed to pay Briano and the other Aggrieved Employees for all hours worked by altering time records to artificially reduce the time Briano and the Aggrieved Employees purportedly worked. The NCF Employers compensated Briano and the other Aggrieved Employees based on these artificially reduced hours. The NCF Employers also failed to pay Briano and the other Aggrieved Employees for all hours worked because The NCF Employers did not pay Briano and the other Aggrieved Employees for the work they performed during their first week of employment.

The NCF Employers failed to compensate Briano and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The NCF Employers failed to pay Briano and the other Aggrieved Employees for all overtime hours worked by altering time records to artificially reduce the time Briano and the other Aggrieved Employees purportedly worked. The NCF Employers compensated Briano and the other Aggrieved Employees based on these artificially reduced hours. Moreover, whenever Briano and the other Aggrieved Employees worked overtime hours, the NCF employers altered the time records to make these overtime hours appear as if they were hours worked for an entirely different shift.

At all relevant times, the NCF Employers failed to provide Briano and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. Employer required Briano and the other Aggrieved Employees to remain on duty during their

meal periods. On the few occasions Briano and the other Aggrieved Employees received uninterrupted meal periods, these meal periods were often after the five hours worked. Moreover, the NCF Employers failed to pay premium wages for days on which they failed to provide Briano and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the NCF Employers failed to authorize and permit Briano and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. Employer required Briano and the other Aggrieved Employees to remain on duty during their rest periods. On the few occasions Briano and the other Aggrieved Employees received uninterrupted rest periods, these rest periods did not occur for every four hours worked or substantial portion thereof. Moreover, the NCF Employers also failed to pay premium wages for days on which they failed to authorize and permit Briano and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the NCF Employers required Briano and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The NCF Employers required Briano and all of the other Aggrieved Employees to supply aprons and hair nets to perform their job duties. Briano and the other Aggrieved Employees purchased these items. However, the NCF Employers did not provide these items and did not reimburse Briano and the other Aggrieved Employees for these items.

At all relevant times, the NCF Employers failed to issue to Briano and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The NCF Employers knowingly and intentionally failed to state on the wage statements they issued to Briano and all of the other Aggrieved Employees the unpaid wages discussed above. The NCF Employers artificially reduced the number of hours recorded on Briano and the other Aggrieved Employees' timesheets. As a result, The NCF Employers compensated Briano and the other Aggrieved Employees based on these artificially reduced amount of hours. The wage statements failed to state all minimum wages earned, all overtime wages earned, all regular wages earned, all meal period premium wages earned, all rest break premium wages earned, all hours worked at each rate of pay. Moreover, The NCF Employers also required Briano and the other Aggrieved Employees to sign acknowledgments agreeing to these artificially reduced hours. Briano and the other Aggrieved Employees had to sign these acknowledgements to receive their paychecks.

The NCF Employers also failed to timely pay Briano and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment. Although, Briano and the other Aggrieved Employees signed acknowledgments agreeing to the artificially reduced hours, Briano and the other Aggrieved Employees had no alternative choice because NCF required Briano and the Aggrieved Employees to sign these agreements to receive their paychecks.

The NCF Employers failed to maintain accurate employee records of Briano and all of the other Aggrieved Employees.

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

- (a) The NCF Employers failed to pay Briano and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, and overtime wages;
- (b) The NCF Employers failed to provide Briano and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The NCF Employers failed to authorize and permit Briano and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The NCF Employers failed to compensate Briano and all of the other Aggrieved Employees at one hour's pay for each day in which the NCF Employers failed to provide them with one or more meal periods as required by law;
- (e) The NCF Employers failed to compensate Briano and all of the other Aggrieved Employees at one hour's pay for each day in which the NCF Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The NCF Employers failed to indemnify Briano and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;

- (g) The NCF Employers knowingly and intentionally failed to provide Briano and all of the other Aggrieved Employees with accurate wage statements;
- (h) The NCF Employers willfully failed to timely pay Briano and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the NCF Employers and when their employment ended; and
- (i) The NCF Employers failed to maintain accurate employment records pertaining to Briano and all of the other Aggrieved Employees.

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

The Wage Order

The Wage Order applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Public Housekeeping Industry" to mean

any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to the following:

- (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either sold or liquid form is prepared and served to be consumed on the premises;
- (2) Catering, banquet, box lunch service, and similar establishments which prepare food for consumption on or off the premises;
- (3) Hotels, motels, apartment houses, rooming houses, camps, clubs, trailer parks, office or loft buildings, and similar establishments offering rental of living, business, or commercial quarters;

- (4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;
- (5) Private schools, colleges, or universities, and similar establishments which provide board or lodging in addition to educational facilities;
- (6) Establishments contracting for development, maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units; and
- (7) Establishments providing veterinary or other animal care services.

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the NCF Employers, Briano, and all of the Aggrieved Employees were covered by the Wage Order because the NCF Employers operated, and Briano, and all of the Aggrieved Employees, worked for one or more restaurants. Accordingly, Briano and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

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

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

In relevant part, section 2(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, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to

recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

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

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

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek; and

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

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

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

NCF Employers failed to pay Briano and the other Aggrieved Employees at the applicable minimum or regular wage rate for all hours worked by altering time records to artificially reduce the time Briano and the Aggrieved Employees purportedly worked. The NCF Employers also failed to pay Briano and the other Aggrieved Employees for all overtime hours worked because of these altered time records. The NCF Employers would only compensate Briano and the other Aggrieved Employees based on these artificially reduced hours. Moreover, The NCF Employers failed to pay Briano and the other Aggrieved Employees for all hours worked because The NCF Employers did not pay Briano and the other Aggrieved Employees for at least the first week of work.

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

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

3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

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

In relevant part, section 2(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, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

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

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

Meal Periods:

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

In addition, Labor Code section 226.7 states:

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

At all relevant times, the NCF Employers failed to provide Briano and all of the other Aggrieved Employees with all timely meal periods. The NCF Employers denied Briano

and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The NCF Employers required Briano and the other Aggrieved Employees to remain on duty during their meal periods. On the few occasions Briano and the other Aggrieved Employees received uninterrupted meal periods, these meal periods were often beyond the fifth hour worked. Furthermore, the NCF Employers failed to pay premium wages for days on which they failed to provide Briano and all of the other Aggrieved Employees with timely meal periods. Accordingly, Briano now seeks civil penalties for these Labor Code violations that the NCF Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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

Section 2(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, Labor Code section 1198 states,

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

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

Rest Periods:

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

In addition, Labor Code section 226.7 states:

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

The NCF Employers failed to authorize and permit Briano and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The NCF Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The NCF Employers required Briano and the other Aggrieved Employees to remain on duty during their rest periods. On the few occasions Briano and the other Aggrieved Employees received uninterrupted rest periods, these meal periods were often beyond the fourth hour worked. Moreover, the NCF Employers failed to pay Briano and all of the other Aggrieved Employees premium wages on workdays the NCF Employers failed to provide Briano and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Briano now seeks civil penalties for these Labor Code violations that the NCF Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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

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

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.

...

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

Wage Order, § 9(B).

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

As described above, the NCF Employers required Briano and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The NCF Employers required Briano and all of the other Aggrieved Employees to supply aprons and hair nets to perform their job duties. Briano purchased these items. However, the NCF Employers did not provide these items and did not reimburse Briano and the other Aggrieved Employees for these items. Accordingly, Briano seeks civil penalties for these Labor Code violations that the NCF Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

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

At all relevant times during the applicable limitations period, the NCF Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The NCF Employers failed to state in the wage statements they issued to Briano and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages. The NCF Employers knowingly and intentionally failed to state on the wage statements they issued to Briano and all of the

other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all overtime wages earned, all regular wages earned, all meal period premium wages earned, all rest break premium wages earned, and all hours worked at each rate of pay. The NCF Employers artificially reduced the number of hours recorded on Briano and the other Aggrieved Employees' timesheets. The NCF Employers compensated Briano and the other Aggrieved Employees based on this artificially reduced amount. The NCF Employers also required Briano and the other Aggrieved Employees to sign acknowledgments agreeing to the artificially reduced hours to receive their paychecks.

Accordingly, Briano seeks civil penalties for the Labor Code violations that the NCF Employers have committed against her and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

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

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The NCF Employers failed to compensate Briano and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, unprovided rest break premium wages, unprovided meal period premium wages, at the intervals stated above. As a result, the NCF Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Briano now seeks civil penalties for the Labor Code violations that the NCF Employers have committed against her and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus

25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

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

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The NCF Employers failed to pay Briano and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Briano, including minimum wages, regular wages, overtime wages, unprovided rest break premium wages, unprovided meal period premium wages. By failing to pay Briano and all of the other Aggrieved Employees as set forth above at the end of employment, the NCF Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the other Aggrieved Employees, Briano seeks civil penalties from the NCF Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));

2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

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

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

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

Section 7 of Wage Order states,

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

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

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

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

[illegible]

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Martha P. Briano Martinez will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

David@spivaklaw.com

cc: Martha P. Briano Martinez
Walter L. Haines, Esq.

Nor Cal Foods, LLC
c/o Attorney Burnham Brown
Burnham Brown
1901 Harrison Street
Oakland, CA 94612
rgreene@burnhambrown.com

EXHIBIT 5

Ian B. Wieland, State Bar No. 285721
Charles P. Hamamjian, State Bar No. 298685
SAGASER, WATKINS & WIELAND PC
5260 North Palm Avenue, Suite 400
Fresno, California 93704
Telephone: (559) 421-7000
Facsimile: (559) 473-1483

Attorneys for Defendant, NOR CAL FOODS, LLC, a California
limited liability company

STATE OF CALIFORNIA

SUPERIOR COURT FOR THE COUNTY OF SONOMA

MARTHA P. BRIANO MARTINEZ, on
behalf of herself and all others similarly
situated, and as an “aggrieved employee” on
behalf of other “aggrieved employees” under
the Labor Code Private Attorneys General Act
of 2004,

Plaintiff,

v.

NOR CAL FOODS, LLC, a California limited
liability company; and DOES 1-50, inclusive,

Defendant(s).

Case No.: SCV-270596

**DEFENDANT NOR CAL FOODS, LLC’S
ANSWER TO PLAINTIFF’S FIRST
AMENDED CLASS ACTION AND
REPRESENTATIVE ACTION
COMPLAINT**

Complaint Filed: April 13, 2022
Trial Date: None Set

COMES NOW Defendant NOR CAL FOODS, LLC, a California limited liability
company (hereinafter referred to as “Defendant”), hereby answers First Amended Class Action
Complaint (“First Amended Complaint”) of Plaintiff Martha P. Briano Martinez (hereinafter
referred to as “Plaintiff”) as follows:

GENERAL DENIAL

Defendant generally denies each and every allegation contained therein and the whole
thereof, pursuant to section 431.30 of the California Code of Civil Procedure. In addition,
Defendant denies Plaintiff has sustained, or will sustain, any loss or damage in the manner or
amount alleged, or otherwise, by reason of any act or omission, or any other conduct or absence
thereof on the part of Defendant.

AFFIRMATIVE DEFENSES

Defendant asserts the following affirmative and other defenses, which it designates, collectively, as “affirmative defenses.” Defendant’s designation of its defenses as “affirmative” is not intended in any way to alter Plaintiff’s burden of proof with regard to any element of her causes of action. Defendant also expressly denies the existence of any alleged putative group of persons or “class” that Plaintiff purports to represent in this lawsuit. Defendant incorporates (as if fully set forth therein) this express denial each and every time it references “Plaintiff.”

First Affirmative Defense

(Failure to State a Claim)

1. As a separate and distinctive affirmative defense, Defendant alleges that the First Amended Complaint, and each and every alleged cause of action therein, fails to state facts sufficient to constitute a cause of action upon which relief can be granted.

Second Affirmative Defense

(Class Action - Certification Prerequisites)

2. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff cannot satisfy the prerequisites for class certification and therefore cannot represent the interest of others.

Third Affirmative Defense

(Class Action - Standing)

3. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff lacks standing to assert the legal rights or interests of others.

Fourth Affirmative Defense

(Class Action - Lack of Predominance)

4. As a separate and distinctive affirmative defense, Defendant alleges that the types of claims alleged by Plaintiff on behalf of herself and/or the alleged putative group she purports to represent are matters in which individual questions dominate and thus are not appropriate for class treatment.

Fifth Affirmative Action**(Class Action - Lack of Numerosity)**

5. As a separate and distinctive affirmative defense, Defendant alleges that the alleged putative group that Plaintiff purports to represent is not so numerous that joinder is impossible or impractical.

Sixth Affirmative Defense**(Class Action - Lack of Typicality)**

6. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff is not similarly situated to other potential members of the alleged putative group she purports to represent, and she is an inadequate representative of the alleged putative group.

Seventh Affirmative Defense**(Class Action - Lack of Typicality)**

7. As a separate and distinctive affirmative defense, Defendant alleges that certain of the interests of the alleged putative group are in conflict with the interests of all or certain subgroups of the members of the putative group.

Eighth Affirmative Defense**(Class Action - Lack of Superiority)**

8. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff has not shown and cannot show that class treatment of the purported causes of action in her First Amended Complaint is superior to other methods of adjudicating the controversy.

Ninth Affirmative Defense**(Class Action - Lack of Manageability)**

9. As a separate and distinctive affirmative defense, Defendant alleges that the First Amended Complaint and each purported cause of action alleged therein, cannot proceed as a purported class or collective action because of difficulties likely to be encountered that render the action unmanageable.

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Tenth Affirmative Defense

(Class Action - Violation of Due Process)

10. As a separate and distinctive affirmative defense, Defendant alleges that certification of a class, as applied to the facts and circumstances of this case, would constitute a denial of Defendant's due process rights, both substantive and procedural, in violation of the Fourteenth Amendment to the United States Constitution and the California Constitution. Defendant reserves the right to amend its answer upon further investigation and discovery of facts supporting this defense.

Eleventh Affirmative Defense

(Labor Code §§ 226.7 and 512 No Private Right of Action)

11. As a separate and distinctive affirmative defense, Defendant alleges that there is no private right of action for an employee to recover damages under Sections 226.7 and 512 of the California Labor Code.

Twelfth Affirmative Defense

(Labor Code §§ 226.7 and 512 - Compliance with Obligations)

12. As a separate and distinctive affirmative defense, Defendant alleges that it acted under a reasonable and good faith belief that it complied with its obligations, if any, under the California Labor Code, specifically including Sections 226.7 and 512 thereof, as to Plaintiff and all putative class member(s).

Thirteenth Affirmative Defense

(No Failure to Provide Rest Periods)

13. As a separate and distinctive affirmative defense, Defendant alleges that it was not required to and/or did not fail to provide rest periods pursuant to the California Labor Code, applicable wage orders issued by the Industrial Welfare Commission, or any other basis.

Fourteenth Affirmative Defense

(Good Faith)

14. As a separate and distinctive affirmative defense, Defendant is informed and

believes that further investigation and discovery will reveal, and on that basis allege, that if any violation of the Labor Code or an Order of the Industrial Welfare Commission occurred, it was an act or omission made in good faith and Defendant has reasonable grounds for believing that its meal and rest period practices complied with applicable laws and that any such act or omission was not a violation of the Labor Code or any Order of the Industrial Welfare Commission such that Plaintiff and/or the putative class members are not entitled to any damages.

Fifteenth Affirmative Defense

(De Minimis)

15. As a separate and distinctive affirmative defense, Defendant alleges that the First Amended Complaint and each cause of action therein, or some of them, are barred to the extent the work allegedly performed was de minimis in nature.

Sixteenth Affirmative Defense

(Bus. & Prof. Code §17200 - Violates Due Process)

16. As a separate and distinctive affirmative defense, Defendant alleges that the prosecution of a representative action on behalf of the general public under California Business and Professions Code section 17200 et seq., as applied to the facts and circumstances of this case, would constitute a denial of Defendant's due process rights, both substantive and procedural, in violation of the California Constitution and the Fourteenth Amendment to the United States Constitution.

Seventeenth Affirmative Defense

(Bus. & Prof. Code §17200 - No Penalties)

17. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff and the putative class members cannot recover waiting time or other penalties under California Business and Professions Code section 17200 et seq.

Eighteenth Affirmative Defense

(Bus. & Prof. Code § 17200 — No Violation)

18. As a separate and affirmative defense, Defendant alleges that its business practices

1 were not “unfair,” “unlawful,” or “deceptive” within the meaning of California Business and
2 Professions Code section 17200 et seq.

3 **Nineteenth Affirmative Defense**

4 **(Penalties Barred)**

5 19. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff’s
6 prayer for restitution pursuant to Business and Professions Code Section 17200 et seq. is barred
7 with respect to penalties of any nature.

8 **Twentieth Affirmative Defense**

9 **(Labor Code §226 - Lack of Injury)**

10 20. As a separate and distinctive affirmative defense, Defendant alleges Plaintiff
11 sustained no injury from any alleged failure by Defendant to comply with Labor Code section 226.

12 **Twenty-First Affirmative Defense**

13 **(Labor Code § 226 - Good Faith)**

14 21. As a separate and distinctive affirmative defense, Defendant alleges that it acted in
15 good faith at all times concerning Plaintiff.

16 **Twenty-Second Affirmative Defense**

17 **(Labor Code § 226 - No Intentional Failure)**

18 22. As a separate and distinctive affirmative defense, Defendant alleges that, even
19 assuming arguendo that Plaintiff was not provided with proper itemized statements of wages and
20 deductions, or that electronic wage statements do not comply with Labor Code, Plaintiff is not
21 entitled to recover damages or penalties because Defendant’s alleged failure to comply with
22 California Labor Code section 226(a) was not a “knowing and intentional failure” under California
23 Labor Code section 226(e).

24 **Twenty-Thirty Affirmative Defense**

25 **(Labor Code § 226.3 - Lack of Standing)**

26 23. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff
27 lacks standing to bring this action forth, and the court lacks jurisdiction to award, certain of the
28

monetary penalties sought in the First Amended Complaint, including, but not limited to those penalties claimed pursuant to California Labor Code section 226.3, as such penalties may only be imposed in a proceeding brought by the California Labor Commission.

Twenty-Fourth Affirmative Defense

(No Willful or Intentional Violation)

24. As a separate and distinctive affirmative defense, Defendant alleges that the First Amended Complaint fails to state a claim for penalties because Defendant did not willfully or intentionally violate the Labor Code.

Twenty-Fifth Affirmative Defense

(Labor Code §§ 201 and 202 - No Obligation)

25. As a separate and distinctive affirmative defense, Defendant alleges that the First Amended Complaint fails to state a claim for penalties in which relief may be granted under the California Labor Code because there exists a bona fide dispute as to the existence and/or extent of Defendant's obligations to Plaintiff and/or the putative class members under any applicable Labor Code provisions, including without limitation, Labor Code section 203.

Twenty-Sixth Affirmative Defense

(Failure to State a Claim for Attorneys' Fees and Costs)

26. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff failed to state facts sufficient to constitute a claim for which attorneys' fees and costs may be awarded.

Twenty-Seventh Affirmative Defense

(Lack of Specificity)

27. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff failed to allege special damages with requisite specificity.

Twenty-Eighth Affirmative Defense

(Statute of Limitations)

28. As a separate and distinctive affirmative defense, Defendant alleges that each

1 purported cause of action set forth in the First Amended Complaint is barred in whole or in part by
2 the applicable statute(s) of limitation, including without limitation, California Code of Civil
3 Procedure sections 338(a), 340(a), and 250(a) and (b); Business and Professions Code section
4 17208, and Labor Code sections 203 and 226(a); and the one-year statute of limitations applicable
5 to claims under the Private Attorney General Act, Labor Code sections 2698 et seq. Without
6 limitation, Plaintiff's Class Action Complaint was filed on or about April 13, 2022. To the extent
7 the Plaintiffs seek to pursue any causes of action for relief that were or are untimely as of April 13,
8 2022, those causes of action for relief are barred.

9 **Twenty-Ninth Affirmative Defense**

10 **(Liquidated Damages)**

11 29. As a separate and distinctive affirmative defense, Defendant alleges that they had a
12 good faith and reasonable belief that they were in compliance with applicable law and that,
13 accordingly no liquidated damages should be awarded to Plaintiff for any violation thereof that
14 may be found to exist.

15 **Thirtieth Affirmative Defense**

16 **(Prejudgment Interest)**

17 30. As a separate and distinctive affirmative defense, Defendant alleges that the First
18 Amended Complaint fails to properly state a claim upon which prejudgment interest may be
19 awarded, as the damages claimed are not sufficiently certain or proper to allow an award of
20 prejudgment interest.

21 **Thirty-First Affirmative Defense**

22 **(Mitigation of Damages)**

23 31. As a separate and distinct affirmative defense, Defendant alleges that it is informed
24 and believes that a reasonable opportunity for investigation and discovery will reveal, and on that
25 basis allege, Plaintiff failed to exercise reasonable care to mitigate her damages, if any were
26 suffered, and that her right to recover against Defendant should be reduced and/or eliminated by
27 such a failure.

Thirty-Second Affirmative Defense**(Waiver)**

32. As a separate and distinctive affirmative defense, Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal, and on that basis allege, the First Amended Complaint and each cause of action set forth therein is barred by the equitable doctrine of waiver. Defendant reserves the right to amend its answer upon further investigation and discovery of facts supporting this defense.

Thirty-Third Affirmative Defense**(Estoppel)**

33. As a separate and distinctive affirmative defense, Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal, and on that basis, allege, the First Amended Complaint and each cause of action set forth therein is barred by the equitable doctrine of estoppel. Defendant reserves the right to amend its answer upon further investigation and discovery of facts supporting this defense.

Thirty-Fourth Affirmative Defense**(Laches)**

34. As a separate and distinctive affirmative defense, Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal, and on that basis allege, the First Amended Complaint and each cause of action set forth therein is barred by the equitable doctrine of laches. Defendant reserves the right to amend its answer upon further investigation and discovery of facts supporting this defense.

Thirty-Fifth Affirmative Defense**(Unclean Hands)**

35. As a separate and distinctive affirmative defense, Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal, and on that basis, allege, the First Amended Complaint and each cause of action set forth therein are barred by the equitable doctrine of unclean hands. Defendant reserves the right to amend its answer upon

1 further investigation and discovery of fact supporting this defense.

2 **Thirty-Sixth Affirmative Defense**

3 **(Breach of Duty)**

4 36. As a separate and distinct affirmative defense, Defendant is informed and believes
5 that a reasonable opportunity for investigation and discovery will reveal, and on that basis allege,
6 Plaintiff's claims are barred by her own breach of the duties owed to Defendant under California
7 Labor Code sections 2854, 2856, 2857, 2858 and/or 2859.

8 **Thirty-Seventh Affirmative Defense**

9 **(Preliminary and Postliminary Duties)**

10 37. As a separate and distinctive affirmative defense, Defendant alleges that, assuming
11 Plaintiff and proposed class members are entitled to any overtime, the walking, riding, traveling
12 and preliminary and postliminary activities of Plaintiff and the proposed members of the class
13 must be excluded from compensable hours of work.

14 **Thirty-Eighth Affirmative Defense**

15 **(Adequate Remedy at Law)**

16 38. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff
17 and proposed class members are not entitled to equitable relief insofar as they have an adequate
18 remedy at law.

19 **Thirty-Ninth Affirmative Defense**

20 **(Portal-to-Portal Act Preemption)**

21 39. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff
22 and the proposed class members' state law claims are preempted by the exclusive remedy of the
23 Fair Labor Standards Act and the Portal-to Portal Pay Act.

24 **Fortieth Affirmative Defense**

25 **(Portal-to-Portal Act Preemption)**

26 40. As a separate and distinctive affirmative defense, Defendant alleges that, assuming
27 Plaintiff or members of the proposed class are entitled to any overtime, Defendant is entitled to a
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credit or set off. This credit or set off includes but is not limited to, amounts erroneously overpaid to Plaintiff and/or members of the proposed class, as well as work performed not to the benefit of the Defendant. The claims of Plaintiff and/or members of the proposed class are barred because they would be unjustly enriched if they prevailed on any of said claims.

Forty-First Affirmative Defense

(Improper Party)

41. As a separate and distinctive affirmative defense, Defendant alleges that they are an improper party to this lawsuit.

Forty-Second Affirmative Defense

(Work Performed for Employee's Convenience)

42. As a separate and distinctive affirmative defense, Defendant alleges that the time Plaintiff and the putative class members spent performing any task for Plaintiff and putative class members' own convenience is not compensable time.

Forty-Third Affirmative Defense

(Accord and Satisfaction)

43. As a separate and distinctive affirmative defense, Defendant alleges Plaintiff's claims are barred by the doctrine of accord and satisfaction. Specifically, Plaintiff was properly and fully compensated for all work performed for Defendant, and Plaintiff's respective acceptances of these payments constitute an accord and satisfaction for all debts, if any, owed by Defendant to Plaintiff.

Forty-Fourth Affirmative Defense

(No Damages)

44. As a separate and distinctive affirmative defense, Defendant alleges Plaintiff's claims are barred to the extent Plaintiff was not damaged by any alleged act, omission, or violation of statute or wage order allegedly committed by Defendant.

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Forty-Fifth Affirmative Defense**(Election of Remedies)**

45. As a separate and distinctive affirmative defense, Defendant alleges Plaintiff's First Amended Complaint, and each claim and purported cause of action alleged therein, is barred in whole or in part to the extent that Plaintiff, and anyone she claims to represent, have previously obtained a final decision on any claims(s) within the scope of this lawsuit, whether before the California Department of Industrial Relations, California Division of Labor Standards Enforcement, other governmental agencies, or any court of competent jurisdiction. Such individuals are therefore precluded from recovering in this matter.

Forty-Sixth Affirmative Defense**(Ambiguity)**

46. As a separate and distinctive affirmative defense, Defendant alleges Plaintiff's First Amended Complaint, and each alleged cause of action therein, does not describe the claims against Defendant with sufficient particularity and certainty to enable Defendant to determine what defenses exist. Defendant reserves the right to assert all defenses that may be pertinent to or arise from Plaintiff's claims.

Forty-Seventh Affirmative Defense**(ERISA Preemption)**

47. As a separate and distinctive affirmative defense, Defendant alleges Plaintiff's First Amended Complaint, and each cause of action therein, is preempted by the Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.*, to the extent Plaintiff seeks damages for the alleged loss of any covered employee benefit.

Forty-Eighth Affirmative Defense**(Bad Faith)**

48. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff has acted in bad faith, and therefore, barring Plaintiff from any and all recovery from the answering Defendant.

Forty-Ninth Affirmative Defense**(Consent/Ratification)**

49. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff by reason of her knowledge, statements, and conduct, and by reason of the knowledge, statements, and conduct of her agents, has consented to and ratified the acts of Defendant barring Plaintiff from any and all recovery from Defendant.

Fiftieth Affirmative Defense**(Offset)**

50. As a separate and distinctive affirmative defense, Defendant alleges that money owed by Defendant to Plaintiff, if any, which Defendant denies, is offset either in whole or in part, by money owed and due to Defendant by Plaintiff barring Plaintiff from any and all recovery from the answering Defendant.

Fifty-First Affirmative Defense**(Attorneys' Fees)**

51. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff's claims against Defendant are frivolous, unreasonable and groundless and, accordingly Defendant should recover all costs and attorneys' fees incurred herein.

Fifty-Second Affirmative Defense**(No Permission to Work)**

52. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff nor any putative class member were suffered or permitted to work during the time for which they were not paid the appropriate wage rate, including the overtime wage rate and provided lunch periods and rest periods in accordance with applicable law.

Fifty-Third Affirmative Defense**(No Knowledge)**

53. As a separate and distinctive affirmative defense, Defendant alleges that if Plaintiff or any putative class member "worked" overtime hours for which overtime compensation was not

1 paid, Defendant had no knowledge of such overtime “work” and such overtime “work” was
2 undertaken without the consent, knowledge or permission of Defendant.

3 **Fifty-Fourth Affirmative Defense**

4 **(Legitimate Business Reasons)**

5 54. As a separate and distinctive affirmative defense, Defendant alleges that all actions
6 taken with regard to Plaintiff and the putative class members, if any, were just, fair, honest, in
7 good faith, privileged, and based upon legitimate business reasons.

8 **Fifty-Fifth Affirmative Defense**

9 **(Scope)**

10 55. As a separate and distinctive affirmative defense, Defendant alleges that any
11 unlawful or other wrongful acts of any person(s) employed by Defendant was outside the scope of
12 its authority and such act(s), if any, were not authorized, ratified, or condoned by Defendant, nor
13 did Defendant know or have reason to be aware of such conduct.

14 **Fifty-Sixth Affirmative Defense**

15 **(Conformity)**

16 56. As a separate and distinctive affirmative defense, Defendant alleges that, at all
17 times, its treatment of Plaintiff, and all purported class members, was in good faith, in conformity
18 with and in reliance upon a written administrative regulation, order, ruling or interpretation of the
19 federal Department of Labor Wage and Hour Division, the California Labor Commissioner, the
20 California Industrial Welfare Commission, and/or on administrative practices and policies
21 applicable to Defendant by federal and state agencies.

22 **Fifty-Seventh Affirmative Defense**

23 **(Due Process)**

24 57. As a separate and distinctive affirmative defense, Defendant alleges that, to the
25 extent Plaintiff and the putative class members seek statutory or other penalties, such claims must
26 comport with the due process requirements of *State Farm v. Campbell*, 538 U.S. 408 (2003).

27 ///

Fifty-Eighth Affirmative Defense**(No Willful Failure To Pay)**

58. As a separate and distinctive affirmative defense, Defendant alleges that the First Amended Complaint fails to state a claim for waiting time penalties, or otherwise, in that Defendant's alleged failure to pay wages at the time of discharge, if any, was not willful.

Fifth-Ninth Affirmative Defense**(No Knowledge or Intent)**

59. As a separate and distinctive affirmative defense, Defendant alleges that the First Amended Complaint fails to state a claim for a violation of California Labor Code section 226, or otherwise, in that Defendant's alleged failure to maintain records, if any, was not knowing or intentional.

Sixtieth Affirmative Defense**(Indemnification)**

60. As a separate and distinctive affirmative defense, Defendant alleges that the First Amended Complaint fails to state a claim under Labor Code section 2802, or otherwise, in that any alleged expenses Plaintiff may have incurred while employed by Defendant, if any, were not the result of discharging her work duties for Defendant and were not necessary expenditures required to perform her work duties for Defendant.

Sixty-First Affirmative Defense**(Federal Arbitration Act)**

61. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff and all other allegedly aggrieved employees signed legally binding arbitration agreements subjecting all claims alleged in Plaintiff's Complaint to Arbitration under the Federal Arbitration Act.

Sixty-Second Affirmative Defense**(Failure to Exhaust Remedies Through the Labor Commissioner or otherwise)**

62. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff's

1 causes of action are barred to the extent that Plaintiff failed to exhaust available administrative
2 remedies through the Labor Commissioner or other government agencies, including Plaintiff's
3 failure to exhaust administrative remedies as required pursuant to Labor Code section 2699.3
4 before filing a Labor Code Private Attorneys General Act of 2004 ("PAGA") action.

5 **Sixty-Third Affirmative Defense**

6 **(Notice and Exhaustion)**

7 63. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff's
8 First Amended Complaint, and each claim and purported cause of action alleged therein, is barred
9 to the extent Plaintiff, and any person on whose behalf relief is sought, failed to satisfy the notice
10 and exhaustion requirements under California's Private Attorney General Act ("PAGA"), Labor
11 Code section 2698 et seq.

12 **Sixty-Fourth Affirmative Defense**

13 **(Lack of Standing – PAGA)**

14 64. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff
15 lacks standing to bring a claim as a private attorney general and/or representative of the State of
16 California, and any of its agencies, departments, divisions, commissions, or boards, under PAGA.

17 **Sixty-Fifth Affirmative Defense**

18 **(Lack of Standing-PAGA)**

19 65. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff
20 lacks standing to bring an action as a representative of current and/or former aggrieved employees
21 under PAGA.

22 **Sixty- Sixth Affirmative Defense**

23 **(Labor Code §226 - Lack of Injury)**

24 66. As separate and distinctive affirmative defense, Plaintiff sustained no injury from
25 any alleged failure by Defendant to comply with Labor Code section 226.

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Sixty-Seventh Affirmative Defense**(PAGA - Unconstitutionality)**

67. As a separate and distinctive affirmative defense, Defendant alleges that although Defendant denies that it committed or has responsibility for any act that could support recovery under the PAGA, if and to the extent, any such liability is found, recovery against Defendant under PAGA is unconstitutionally excessive and violates Defendant's due process rights.

Sixty-Eighth Affirmative Defense**(PAGA - Unlawful Delegation of Executive Authority)**

68. As a separate and distinctive affirmative defense, Defendant alleges that the purported cause of action under the PAGA is barred to the extent private actions seeking PAGA penalties manifest an unlawful delegation of executive authority.

Sixty-Ninth Affirmative Defense**(PAGA - No Penalties Beyond "Initial" Violation)**

69. As a separate and distinctive affirmative defense, Defendant alleges that the purported cause of action under the PAGA is barred to the extent Plaintiff, and the individuals on whose behalf Plaintiff seeks relief, seek penalties beyond the "initial" violation as described in California Labor Code § 2699(f)(2).

Seventieth Affirmative Defense**(PAGA – Not "Aggrieved Employees")**

70. As a separate and distinctive affirmative defense, Defendant alleges that the purported cause of action under the PAGA is barred to the extent it seeks to recover penalties on behalf of individuals who are not "aggrieved employees."

Seventy-First Affirmative Defense**(PAGA - Duplicative Recovery)**

71. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff, and the individuals on whose behalf Plaintiff seeks relief, are not entitled to recovery of penalties

1 under PAGA to the extent that such penalties are sought in addition to penalties for the same
2 claims and such duplicative recovery is barred and constitutes unjust enrichment.

3 **Seventy-Second Affirmative Defense**

4 **(PAGA – Improper Representative)**

5 72. As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff's
6 claims for violation of the Labor Code are not representative of the claim for violations of the
7 Labor Code of other present ant/or former employees of Defendant. Therefore, Plaintiff cannot as
8 a matter of law be a proper PAGA representative seeking compensation on behalf of other
9 allegedly similarly situated present and former employees of Defendant.

10 **Seventy-Third Affirmative Defense**

11 **(Reservation of Rights)**

12 73. As a separate and distinctive affirmative defense, Defendant alleges that Defendant
13 presently has insufficient knowledge upon which to form a belief as to whether any additional, as
14 yet unstated, affirmative defenses to the First Amended Complaint are applicable. Defendant
15 reserves the right to assert additional affirmative defenses if appropriate.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Defendant prays for relief as follows:

- 18 1. That Plaintiff takes nothing and that the First Amended Complaint be dismissed in
19 its entirety with prejudice;
- 20 2. That judgment be entered in Defendant's favor;
- 21 3. That Defendant be awarded its attorneys' fees and costs of suit herein accordance
22 with Labor Code § 218.5; and
- 23 4. That Defendant be awarded such other and further relief as the Court deems just
24 and proper.

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Dated: July 18, 2022

SAGASER WATKINS & WIELAND PC

By: 

Ian B. Wieland
Charles P. Hamamjian
Attorneys for Defendant, NOR CAL
FOODS, LLC, a California limited liability
company

PROOF OF SERVICE
(CODE CIV. PROC. § 1013)

STATE OF CALIFORNIA, COUNTY OF FRESNO

I am employed in the County of Fresno, State of California. I am over the age of 18 years and am not a party to the within action; my business address is 5260 North Palm Avenue, Suite 400, Fresno, California 93704.

On July 18, 2022, I served the following document(s) described as **DEFENDANT NOR CAL FOODS, LLC'S ANSWER TO PLAINTIFF'S FIRST AMENDED CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

- ☐ **BY MAIL:** I deposited such envelope in the mail at Fresno, California. The envelope(s) was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.
- ☐ **BY OVERNIGHT COURIER:** I sent such document(s) on July 18, 2022, by with postage thereon fully prepaid at Fresno, California.
- ☐ **BY FAX:** I sent such document by use of facsimile machine telephone number (559) 473-1483. Facsimile cover sheet and confirmation is attached hereto indicating the recipients' facsimile number and time of transmission pursuant to California Rules of Court Rule 2.306. The facsimile machine I used complied with California Rules of Court Rule 2.301(3) and no error was reported by the machine.
- ☐ **BY PERSONAL SERVICE:** I placed the above document in a sealed envelope. I caused said envelope to be handed to our messenger service to be delivered by hand to the above address(es).
- ☒ **BY EMAIL:** I sent such document by use of email to the email address(es) above. (CCP § 1013(a)) Such document was scanned and emailed to such recipient and email confirmation is attached hereto indicating the recipients' email address and time of receipt pursuant to CCP § 1013(g).

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

Executed on July 18, 2022, at Fresno, California.



TRISTAN MATTHEWS

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EXHIBIT 6

Confidential Settlement Communication

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Case title:	Martha P. Briano Martinez v. Nor Cal Foods, LLC
Case no.:	SCV-270596
Court:	Sonoma
Judge:	Hon. Patrick Broderick, Dept. 16
Page subject:	Data

Important Dates

Unfair Competition, Bus.&Prof. § 17200 ("UCL") period begins:	Saturday, April 14, 2018
Lab.Code § 203 (waiting time penalties) period begins:	Sunday, April 14, 2019
Lab.Code § 2699 (civil penalties) period begins:	Monday, March 22, 2021
Lab.Code § 226 (pay stub penalties) period begins:	Tuesday, April 13, 2021
LWDA Notice:	Tuesday, March 22, 2022
Lawsuit:	Wednesday, April 13, 2022
Sample begin:	Thursday, February 20, 2020
Sample end:	Thursday, October 27, 2022
Mediation:	Tuesday, January 10, 2023
Anticipated Settlement Period end date:	Wednesday, May 10, 2023

Classes / Groups sizes	Total
UCL Class Members:	78
UCL Workweeks:	2,353
UCL Wage Statements:	1,177
UCL Workdays:	7,483
UCL Calendar days:	1,732
UCL Months:	57
 Waiting Time Penalties Class Members:	 78
 PAGA Aggrieved Employees:	 62
PAGA Wage Statements:	1,298
 Wage Statement Class Members:	 27
Wage Statement Class Wage Statements:	407
 Averages	
Average Hourly Rate:	\$ 15.65
Average Overtime Rate:	\$ 23.48
Average Doubletime Rate:	\$ 31.30
 Average Work Hours Per Day:	 6.63
Average Work Hours Per Week:	20.12
Average Workdays Per Week:	3.18
Workdays to Calendar Days (%):	45.43%

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Paycycle:
Paychecks Per Year:

Biweekly
26

Confidential Settlement Communication

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Case title:	Martha P. Briano Martinez v. Nor Cal Foods, LLC
Case no.:	SCV-270454
Court:	Sonoma
Judge:	Hon. Patrick Broderick, Dept. 16
Page subject:	Unpaid wages
Authority:	Lab.Code §§ 510, 1194, 1194.2, and 1198

Average Hourly Rate:	\$	15.65
Unpaid hours per pay week:		1.50
Actionable workweeks:		2,353
Interest:		10%

Unpaid wages:	\$	60,760.34
Liquidated damages:	\$	60,760.34

Confidential Settlement Communication

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Case title:	Martha P. Briano Martinez v. Nor Cal Foods, LLC
Case no.:	SCV-270454
Court:	Sonoma
Judge:	Hon. Patrick Broderick, Dept. 16
Page subject:	Unprovided Meal Periods
Authority:	Lab.Code §§ 226.7, 512, and 1198

Sample work days		3106
Sample "non break" payments		334
Extrapolated "non break" payments		805
All workdays regardless of Arb. Agree.		24,044
non-Arb Agree. shifts Ratio to all shifts		31.12%
"non break" payments for non-Arb Agree shifts		250
Average Hourly Rate:	\$	15.65
Actionable workdays:		7,483
Violation rate (%)		62.85%

Meal period premium wages:	\$	71,139.72
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Case title:	Martha P. Briano Martinez v. Nor Cal Foods, LLC
Case no.:	SCV-270454
Court:	Sonoma
Judge:	Hon. Patrick Broderick, Dept. 16
Page subject:	Unprovided Rest Periods
Authority:	Lab.Code §§ 226.7 and 1198
Average Hourly Rate:	\$ 15.65
Actionable workdays:	7,483
Violation rate (%)	96.39%
Rest period premium wages:	\$ 112,881.32

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Case title:	Martha P. Briano Martinez v. Nor Cal Foods, LLC
Case no.:	SCV-270454
Court:	Sonoma
Judge:	Hon. Patrick Broderick, Dept. 16
Page subject:	Unreimbursed expenses
Authority:	Lab.Code § 2802

Uniforms

Unprovided free uniform items:		apron and hairnet
Cost of uniform items:	\$	15.00
Unreimbursed uniforms:		78

Unreimbursed expenses:	\$	1,170.00
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Confidential Settlement Communication

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Case title:	Martha P. Briano Martinez v. Nor Cal Foods, LLC
Case no.:	SCV-270454
Court:	Sonoma
Judge:	Hon. Patrick Broderick, Dept. 16
Page subject:	Itemized Wage Statements
Authority:	Lab.Code § 226
Wage Statement Class Members:	27
Wage Statement Class Wage Statements:	407
Initial penalty:	\$ 50.00
Subsequent penalty:	\$ 100.00
Statutory wage statement penalties:	\$ 39,350.00

Confidential Settlement Communication

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Case title:	Martha P. Briano Martinez v. Nor Cal Foods, LLC
Case no.:	SCV-270454
Court:	Sonoma
Judge:	Hon. Patrick Broderick, Dept. 16
Page subject:	Waiting Time / Final Wages
Authority:	Lab.Code § 203

Waiting Time Penalties Class Members:		78
Days waiting:		30
Average Hourly Rate:	\$	15.65
Average Overtime Rate:	\$	23.48
Average Doubletime Rate:	\$	31.30
Average Work Hours Per Day:		6.63
Regular Hours Per Day:		6.63
Overtime Hours Per Day:		-
Doubletime Hours Per Day:		-
Waiting time penalties:	\$	242,797.23

Confidential Settlement Communication

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Case title:	Martha P. Briano Martinez v. Nor Cal Foods, LLC
Case no.:	SCV-270454
Court:	Sonoma
Judge:	Hon. Patrick Broderick, Dept. 16
Page subject:	PAGA Civil Penalties
Authority:	Lab.Code §§ 2698, <i>et seq.</i>

Labor Code violation	Labor Code Civil Penalty Statute	Initial penalty	Subsequent penalty	Pay periods	Total
Minimum wages (Lab.Code § 1197):	Lab.Code § 1197	\$ 100.00	\$ 250.00	1,298	\$ 324,350.00
Meal periods Lab.Code § 512):	Lab.Code § 558	\$ 50.00	\$ 100.00	1,298	\$ 129,750.00
Rest periods (Lab.Code § 1198):	Lab.Code § 2699	\$ 100.00	\$ 200.00	1,298	\$ 259,500.00
Business expenses (Lab.Code § 2802):	Lab.Code § 2699	\$ 100.00	\$ 200.00	1,298	\$ 259,500.00
Improper pay stubs (Lab.Code § 226):	Lab.Code § 226.3	\$ 250.00	\$ 1,000.00	1,298	\$ 1,297,250.00
Untimely wages (Lab.Code §§ 201-204):	Lab.Code § 2699	\$ 100.00	\$ 200.00	1,298	\$ 259,500.00
Total:				\$	2,529,850.00

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Case title:	Martha P. Briano Martinez v. Nor Cal Foods, LLC
Case no.:	SCV-270454
Court:	Sonoma
Judge:	Hon. Patrick Broderick, Dept. 16
Page subject:	Totals
Authority:	Various

Restitution		Reduction		Demand
Unpaid wages:	\$ 60,760.34	5%	\$	57,722.33
Liquidated damages:	\$ 60,760.34	5%	\$	57,722.33
Meal period premium wages:	\$ 71,139.72	5%	\$	67,582.73
Rest period premium wages:	\$ 112,881.32	5%	\$	107,237.25
Unreimbursed expenses:	\$ 1,170.00	5%	\$	1,111.50
Restitution subtotal:	\$ 306,711.72		\$	291,376.14
Penalties				
Statutory wage statement penalties:	\$ 39,350.00	5%	\$	37,382.50
Waiting time penalties:	\$ 242,797.23	5%	\$	230,657.37
Minimum wages (Lab.Code § 1197):civil penalties:	\$ 324,350.00	95%	\$	16,217.50
Meal periods Lab.Code § 512):civil penalties:	\$ 129,750.00	95%	\$	6,487.50
Rest periods (Lab.Code § 1198):civil penalties:	\$ 259,500.00	95%	\$	12,975.00
Business expenses (Lab.Code § 2802):civil penalties:	\$ 259,500.00	95%	\$	12,975.00
Improper pay stubs (Lab.Code § 226):civil penalties:	\$ 1,297,250.00	95%	\$	64,862.50
Untimely wages (Lab.Code §§ 201-204):civil penalties:	\$ 259,500.00	95%	\$	12,975.00
Penalties subtotal:	\$ 2,811,997.23		\$	394,532.37
Grand total:	\$ 3,118,708.95		\$	685,908.50

EXHIBIT 7

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OF ORIGINAL FILED
Los Angeles Superior Court
FEB 24 2010

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

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

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

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

Case No.: BC430633

CLASS ACTION

13 *Plaintiffs,*

14 vs.

FIRST AMENDED COMPLAINT FOR:

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

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

19 *Defendants.*

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

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

THE
SPIVAK
LAW FIRM

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

4 INTRODUCTION

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

12 PARTIES AND CONDUCT

13 A. Plaintiffs and Class Members

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

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

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

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

3 **B. Defendants**

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

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

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

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

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

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

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

8 CLASS ACTION ALLEGATIONS

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

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

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

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

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

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

1 date that final judgment is entered in this action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 O. Are class members entitled to prejudgment interest?

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

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

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

1 action cases.

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

12 **FIRST CLAIM FOR RELIEF**

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

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

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

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

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

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

1 23. California Labor Code § 510(a) also requires employers to compensate
2 employees at two times their regular rates of pay for:

3 A. All hours worked in excess of twelve hours in one day; and,

4 B. All hours worked in excess of eight hours on a seventh consecutive
5 workday during a workweek.

6 24. During the applicable limitations period, Plaintiffs have worked more than eight
7 hours in one workday, more than forty hours in one workweek, and eight or more hours on a
8 seventh consecutive workday without being paid for all of those hours at the rates required
9 under California Labor Code § 510(a).

10 25. Plaintiffs are informed and believe and thereon allege that Defendants have
11 maintained a policy or practice of not compensating him and the other members of the **Wages**
12 **Class** for all hours worked. Additionally, Plaintiffs are informed and believe and thereon allege
13 that Defendants have maintained a policy or practice of not compensating the other members of
14 the **Wages Class** and the **Overtime Class** at the rates required under California Labor Code §
15 510(a) for all hours worked in excess of eight hours in one day, all hours worked in excess of
16 forty hours in one week, the first eight hours on a seventh consecutive workday, and all worked
17 hours in excess of eight hours on a seventh consecutive workday.

18 26. As a result of Defendants' conduct, Plaintiffs, on behalf of themselves and the
19 other members of the **Wages Class** and the **Overtime Class**, seeks declaratory and injunctive
20 relief, damages for unpaid overtime wages, interest thereon, costs of suit, and reasonable
21 attorney's fees pursuant to California Labor Code § 1194(a).

22 **SECOND CLAIM FOR RELIEF**

23 **FAILURE TO PROVIDE REST AND MEAL PERIODS**

24 **(By Plaintiffs, the Rest Period Class, and the Meal Period Class)**

25 27. Plaintiffs incorporate paragraphs 1 through 26 of the Complaint as if fully
26 alleged herein.

27 28. At all relevant times, Plaintiffs and other members of the **Rest Period Class** and
Meal Period Class have been employees of Defendants covered by California Labor Code §§

1 226.7 and 512, and Wage order 11.

2 29. Pursuant to the applicable wage order(s), Defendants are required to provide
3 Plaintiffs and the other members of the **Rest Period Class** with net rest periods of a least ten
4 (10) minutes for each four (4) hour work period, or major portion thereof, during any given
5 workday.

6 30. Pursuant to California Labor Code § 226.7, Defendants are required to pay
7 Plaintiffs and the other members of the **Rest Period Class** one (1) additional hour of wages for
8 each rest period not provided in accordance with the applicable wage order(s).

9 31. During the applicable limitations period, Defendants failed to provide Plaintiffs
10 with net rest periods of at least ten (10) minutes for every four (4) hours work period, or major
11 portion thereof, and failed to pay them the required additional wages for rest periods not
12 provided to her.

13 32. Plaintiffs are informed and believe and thereon allege that Defendants maintain a
14 policy or practice of failing to provide other members of the **Rest Period Class** with net rest
15 periods of at least ten (10) minutes for every four (4) hours worked and of failing to pay them
16 the required additional wages for rest periods not provided to them.

17 33. Pursuant to California Labor Code § 512 and Industrial Welfare Commission
18 Order 7-2001, Defendants are required to provide Plaintiffs and the other members of the **Meal**
19 **Period Class** with an uninterrupted thirty (30) minute meal period for each five (5) hour work
20 period during any given workday.

21 34. Pursuant to California Labor Code § 226.7, Defendants are required to pay
22 Plaintiffs and the other members of the **Meal Period Class** one (1) additional hour of wages for
23 each meal period not provided in accordance with Wage order 11.

24 35. During the applicable limitations period, Defendants failed to provide Plaintiff
25 with an uninterrupted thirty (30) minute meal period for each five (5) hour work period,
26 including a second uninterrupted thirty (30) minute meal period on days he worked more than
27 ten (10) hours, and failed to pay him the required additional wages for rest periods not provided
to her.

1 36. Plaintiffs are informed and believe and thereon allege that Defendants maintain a
2 policy or practice of failing to provide other members of the **Meal Period Class** with
3 uninterrupted thirty (30) minute meal periods for each five (5) hour work period, including
4 second uninterrupted thirty (30) minute meal periods on days they worked more than ten (10)
5 hours, and failed to pay him the required additional wages for meal periods not provided to her.

6 37. Plaintiffs on behalf of themselves and the other members of the **Rest Period**
7 **Class** and the **Meal Period Class**, seeks declaratory and injunctive relief, damages for unpaid
8 wages owed, interest thereon and costs of suit pursuant to California Labor Code § 218.6, and
9 reasonable attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

10 **THIRD CLAIM FOR RELIEF**

11 **FORFEITURE OF VACATION PAY**

12 **(By Plaintiffs and the Vacation Pay Class)**

13 38. Plaintiffs incorporate paragraphs 1 through 37 of the Complaint as if fully
14 alleged herein.

15 39. Under California Labor Code § 227.3 and applicable case law, vested paid
16 vacation benefits and other similar forms of paid time off that earned based on labor performed
17 are considered wages and cannot be subject to forfeiture without providing compensation for
18 forfeited days at the applicable rates required by law.

19 40. Pursuant to written company policies, members of the **California Vacation Pay**
20 **Class** have earned vested paid vacation days, including, but not limited to, "Personal Holidays"
21 and/or "Management Recognition Days," that are explicitly subject to unpaid forfeiture
22 pursuant to written company policies if they are not used within specified time periods.

23 41. During the applicable limitations period, Plaintiff has earned vested paid
24 vacation days, including, but not limited to, "Personal Holidays" and "Management Recognition
25 Days," without being compensated by Defendants for each vested paid vacation day.

26 42. Plaintiff is informed and believes and thereon alleges that Defendants have
27 maintained policies or practices of causing members of the **California Vacation Pay Class** to
forfeit vested paid vacation days, including, but not limited to, "Personal Holidays" and/or

1 "Management Recognition Days," without compensating them for each vested paid vacation
2 day.

3 43. As a result of the above, Plaintiff seeks declaratory and injunctive relief,
4 damages for unpaid wages owed, interest thereon and costs of suit pursuant to California Labor
5 Code § 218.6, and reasonable attorney's fees pursuant to California Code of Civil Procedure §
6 1021.5.

7 **FOURTH CLAIM FOR RELIEF**

8 **FAILURE TO PROVIDE ACCURATE, WRITTEN WAGE STATEMENTS**

9 **(By Plaintiffs and the All-Inclusive Class)**

10 44. Plaintiffs incorporate paragraphs 1 through 43 of the Complaint as if fully
11 alleged herein.

12 45. At all relevant times, Plaintiffs and the other members of the **All-Inclusive Class**
13 have been employees of Defendants entitled to the benefits and protections of California Labor
14 Code § 226. Pursuant to California Labor Code § 226(a), Plaintiffs and the other class members
15 were entitled to receive, semimonthly or at the time of each payment of wages, an accurate
16 itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable
17 hourly rates in effect during the pay period; and d) the corresponding number of hours worked
18 at each hourly rate by the employee.

19 46. Defendants failed to provide Plaintiffs accurate itemized statements in
20 accordance with California Labor Code § 226(a) because Plaintiffs' wage statements did not,
21 among other things, accurately reflect all of the hours that they actually worked, the descriptions
22 for all of the hours they actually worked, and the corresponding rates of pay for all of the hours
23 they actually worked.

24 47. Plaintiffs are informed and believe and thereon allege that, at all relevant times
25 during the applicable limitations period, Defendants maintained a policy or practice of not
26 providing the other members of the **All-Inclusive Class** wage statements did not, among other
27 things, accurately reflect all of the hours that they actually worked, the descriptions for all of the
hours they actually worked, and the corresponding rates of pay for all of the hours they actually

1 worked.

2 48. Defendants' failure to provide Plaintiffs and the other members of the **All-**
3 **Inclusive Class** with accurate wage statements was knowing and intentional. Defendants had
4 the ability to provide Plaintiffs and the other class members with accurate wage statements but
5 intentionally provided wage statements that Defendants knew were not accurate.

6 49. As a result of being provided with inaccurate wage statements by Defendants,
7 Plaintiffs and the other members of the **All-Inclusive Class** have suffered an injury. Their legal
8 rights to receive accurate wage statements were violated and they were misled about the amount
9 of wages they had actually earned and were owed. In addition, the absence of accurate
10 information on their wage statements prevented immediate challenges to Defendants' unlawful
11 pay practices, has required discovery and mathematical computations to determine the amounts
12 of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay
13 records, and/or has led to the submission of inaccurate information about wages and amounts
14 deducted from wages to state and federal government agencies.

15 50. Pursuant to California Labor Code § 226(e), Plaintiffs and the other members of
16 the **All-Inclusive Class** are entitled to recover the greater of actual damages, or penalties of fifty
17 dollars (\$50) for the initial pay period in which a violation of California Labor Code § 226(a)
18 occurred and one hundred dollars for each violation of California Labor Code § 226(a) in a
19 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per
20 class member, and are also entitled to an award of costs and reasonable attorney's fees.

21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

23 **(Cal. Lab. Code §§ 201-203)**

24 **(By Plaintiffs and the Former Employee Class)**

25 51. Plaintiffs incorporate paragraphs 1 through 50 of the Complaint as if fully
26 alleged herein.

27 52. At all relevant times, Plaintiffs and the members of the **Former Employee Class**
were employees of Defendants covered by California Labor Code § 201 or California Labor

1 Code § 202. Pursuant to California Labor Code § 201 or California Labor Code § 202, Plaintiffs
2 and the members of the **Former Employee Class** were entitled to payment of all wages earned
3 and unpaid prior to the termination of their employment. Members of the **Former Employee**
4 **Class** who are discharged employees were entitled to payment of their earned and unpaid wages
5 no later than the day on which their employment was terminated. Members of the **Former**
6 **Employee Class** who resigned were entitled to payment of their earned and unpaid wages
7 within 72 hours after giving notice of resignation or, if they had given at least 72 hours previous
8 notice, no later than the day their employment terminated.

9 53. Defendants failed to timely pay Plaintiffs all final wages earned and unpaid prior
10 to the termination of his employment with Defendants, including, but not limited to, additional
11 earned wages for rest and meal periods not provided to them, and earned wages in the forms of
12 vested paid vacation time and unlawfully deducted wages, in accordance with California Labor
13 Code § 201. Plaintiffs are informed and believe and thereon allege that, at relevant times during
14 the applicable limitations period, Defendants maintained a policy or practice of not providing
15 members of the **Former Employee Class** with a final paycheck encompassing all wages owed
16 upon termination or discharge of employment, including, but not limited to, additional earned
17 wages for rest and meal periods not provided to them, and/or earned wages in the forms of
18 vested paid vacation time and/or unlawfully deducted wages, in accordance with California
19 Labor Code § 201 or California Labor Code § 202.

20 54. Defendants' failure to pay Plaintiffs and members of the **Former Employee**
21 **Class** all wages earned prior to termination in accordance with California Labor Code § 201 or
22 California Labor Code § 202 was willful. Plaintiffs are informed and believe and thereon allege
23 that Defendants had the ability to pay all wages earned by members of the **Former Employee**
24 **Class** prior to termination in accordance with California Labor Code § 201 or California Labor
25 Code § 202, but intentionally adopted policies or practices incompatible with the requirements
26 of California Labor Code § 201 or California Labor Code § 202.

27 55. Pursuant to California Labor Code § 201 or California Labor Code § 202,
Plaintiffs and the members of the **Former Employee Class** are entitled to all wages earned

1 prior to the termination of their employment that Defendants did not pay them as well as
2 continuations of their wages, from the days they earned and unpaid wages were due upon the
3 termination of their employment until paid, up to a maximum of thirty (30) days, in amounts
4 subject to proof.

5 56. Accordingly, Plaintiffs and the members of the **Former Employee Class** are
6 entitled to recover the full amount of their unpaid wages and interest thereon pursuant to
7 California Labor Code § 218.6, continuation wages under California Labor Code § 203,
8 reasonable attorney's fees, and costs of suit.

9 **SIXTH CLAIM FOR RELIEF**

10 **UNAUTHORIZED DEDUCTIONS**

11 **(By Plaintiffs and the Unauthorized Deductions Class)**

12 57. Plaintiffs incorporate paragraphs 1 through 56 of the Complaint as if fully
13 alleged herein.

14 58. California Labor Code §§ 221 and 224 prohibit an employer from taking
15 deductions from an employee's wages without the employee's express written consent or other
16 legal authority for doing so.

17 59. At relevant times during the applicable limitations period, Defendants deducted
18 wages from Plaintiffs' paychecks without their express written consent or other legal authority
19 for doing so. Plaintiffs are informed and believe and thereon allege that, at relevant times during
20 the applicable limitations period, Defendants deducted wages from the paychecks of members
21 of the **Unauthorized Deduction Class** without their express written consent or other legal
22 authority for doing so.

23 60. By reason of the above, Plaintiffs and the members of the **Unauthorized**
24 **Deductions Class** are entitled to restitution for all unpaid amounts due and owing to within four
25 years (4) of the date of the filing of the Complaint until the date of entry of judgment. Further,
26 Plaintiffs, on behalf of themselves and the members of the **Unauthorized Deductions Class**,
27 seek interest thereon pursuant to California Labor Code § 218.6, costs pursuant to California
Labor Code § 218.6, and reasonable attorney's fees pursuant to California Code of Civil

1 Procedure § 1021.5.

2 **SEVENTH CLAIM FOR RELIEF**

3 **FAILURE TO INDEMNIFY**

4 **(By Plaintiffs and the Indemnification Class)**

5 61. Plaintiffs incorporate paragraphs 1 through 60 of the Complaint as if fully
6 alleged herein.

7 62. In pertinent part, California Labor Code § 2802(a) states, "An employer shall
8 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in
9 direct consequence of the discharge of his or her duties." California Labor Code § 452 of the
10 Labor Code authorizes employers to prescribe the weight, color, quality, texture, style, form,
11 and make of uniforms required to be worn by their employees. However, the Wage Orders
12 impose an obligation on an employer that requires uniforms to be worn by its nonexempt
13 employees as a condition of employment to provide and maintain such uniforms, regardless of
14 the amount of the employees' compensation. The applicable wage order states, "When uniforms
15 are required by the employer to be worn by the employee as a condition of employment, such
16 uniforms shall be provided and maintained by the employer. The term "uniform" includes
17 wearing apparel and accessories of distinctive design or color." If the employer does not choose
18 to maintain employees' uniforms itself where it is required to do so, the Division of Labor
19 Standards Enforcement takes the position that the employer may pay each affected employee a
20 weekly maintenance allowance of an hour's pay at the state minimum wage rate (\$7.50 as of
21 January 1, 2007, and \$8.00 as of January 1, 2008) in lieu of maintaining the uniforms, assuming
22 that an hour is a realistic estimate of the time involved in maintaining the uniforms. The term
23 "uniform" is defined to include wearing apparel and accessories of distinctive design or color.

24 63. At relevant times during the applicable limitations period, Defendants required
25 Plaintiffs and the members of the **Indemnification Class** to purchase and maintain uniforms
26 and apparel unique to Defendants at their expense. Defendants failed to indemnify Plaintiffs and
27 the members of the **Indemnification Class** for such expenditures.

64. By reason of the above, Plaintiffs and the members of the **Indemnification Class**

1 are entitled to restitution for all unpaid amounts due and owing to within four years (4) of the
2 date of the filing of the Complaint until the date of entry of judgment. Further, Plaintiffs, on
3 behalf of themselves and the members of the **Indemnification Class**, seeks interest thereon
4 pursuant to California Labor Code § 218.6, costs pursuant to California Labor Code § 218.6,
5 and reasonable attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

6 **EIGHTH CLAIM FOR RELIEF**

7 **UNFAIR COMPETITION**

8 **(By Plaintiffs and the California All-Inclusive Class)**

9 65. Plaintiffs incorporate paragraphs 1 through 64 of the Complaint as if fully
10 alleged herein.

11 66. The unlawful conduct of Defendants alleged herein amounts to and constitutes
12 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
13 *seq.* California Business & Professions Code §§ 17200, *et seq.*, protects against unfair
14 competition and allows a person who has suffered an injury-in-fact and has lost money or
15 property as a result of an unfair, unlawful, or fraudulent business practice to seek restitution on
16 her own behalf and on behalf of other similarly situated persons in a class action proceeding.

17 67. As a result of Defendants' violations of the California Labor Code as during the
18 applicable limitations period as alleged herein, Plaintiffs have suffered an injury-in-fact and
19 have lost money or property in the form of earned wages. Specifically, Plaintiffs have lost
20 money or property as a result of not being paid for hours worked, not being paid at legal
21 overtime rates for all overtime hours worked, not being paid additional required wages for rest
22 and meal periods not provided to them, being provided with inaccurate written wage statements
23 that have had the effect of concealing other wage underpayments, Defendants' improper
24 deductions, and Defendants' failure to reimburse for necessary expenditures, and Defendants'
25 failure to timely pay all wages due or owed upon termination or resignation.

26 68. Plaintiffs are informed and believe that other similarly situated persons have
27 been subject to the same unlawful policies or practices of Defendants, including not being paid
for all wages earned, not being paid at overtime rates for all overtime hours worked, not being

1 paid additional required wages for rest and meal periods not provided to them, being provided
2 with inaccurate written wage statements that have had the effect of concealing other wage
3 underpayments, Defendants' improper deductions, and Defendants' failure to reimburse for
4 necessary expenditures, and/or Defendants' failure to timely pay all wages due or owed upon
5 termination or resignation.

6 69. Due to its unfair and unlawful business practices in violation of the California
7 Labor Code as alleged herein, Defendants have gained a competitive advantage over other
8 comparable companies doing business in the State of California that comply with their legal
9 obligations to compensate employees for all earned wages and to provide them with reasonable
10 means of verifying that they have been paid all earned wages with accurate written wage
11 statements.

12 70. Pursuant to California Business & Professions Code § 17203, Plaintiffs, on
13 behalf of themselves and the other members of the **All-Inclusive Class**, seek declaratory and
14 injunctive relief, and restitution of all monies rightfully belonging to them that Defendants did
15 not pay them or otherwise retained by means of its unlawful and unfair business practices.

16 71. Plaintiffs and the other members of the **All-Inclusive Class** are entitled to
17 recover reasonable attorney's fees in connection with their unfair competition claims pursuant
18 to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the
19 common fund doctrine.

20 **NINTH CLAIM FOR RELIEF**

21 **CIVIL PENALTIES**

22 **(By Plaintiffs and the All-Inclusive Class)**

23 72. Plaintiffs incorporate paragraphs 1 through 71 of the Complaint as if fully
24 alleged herein.

25 73. During the applicable time period, Defendants violated California Labor Code §§
26 204, 223, 226(a), 226.7, 227.3, 510, 512, and 1194.

27 74. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
behalf of himself and other current or former employees, to bring a civil action to recover civil

1 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

2 75. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiffs and the other
3 aggrieved employees of Defendants are entitled to recover civil penalties for Defendants'
4 violations of California Labor Code §§ 200, 201, 202, 203, 204, 224, 226(a), 226.7, 227.3, 510,
5 512, 1194 and 2802 during the applicable limitations period in the following amounts:

6 A. For violations of California Labor Code §§ 200, 201, 202, 203, 224,
7 226.7, 1194, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay
8 period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee
9 per pay period for each subsequent violation (penalty amounts established by California Labor
10 Code § 2699(f)(2));

11 B. For violations of California Labor Code § 204, one hundred dollars
12 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
13 (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount
14 unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional
15 violation (penalty amounts established by California Labor Code § 210);

16 C. For violations of California Labor Code § 226(a), two hundred fifty
17 dollars (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per
18 employee for each subsequent violation (penalty amounts established by California Labor Code
19 § 226.3); and,

20 D. For violations of California Labor Code §§ 510 and 512, fifty dollars
21 (\$50.00) for each aggrieved employee for each initial violation for pay period for which the
22 employee was underpaid in addition to an amount sufficient to recover unpaid wages and one
23 hundred dollars (\$100.00) for each underpaid employee for each pay period for which the
24 employee was underpaid in addition to an amount sufficient to recover unpaid wages (penalty
25 amounts established by California Labor Code § 558).

26 76. Plaintiffs have complied with the procedures for bringing suit specified in
27 California Labor Code § 2699.3. By letters dated January 8 and February 19, 2010, Plaintiffs
gave written notice by certified mail to the Labor and Workforce Development Agency

1 (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to
2 have been violated, including the facts and theories to support the alleged violations. Plaintiffs
3 anticipate that the LWDA will soon provide Plaintiffs with written notice that it does not intend
4 to investigate the violations of the California Labor Code alleged herein.

5 77. Pursuant to California Labor Code § 2699(g), Plaintiffs and the other members of
6 the **All-Inclusive Class** are entitled to an award of reasonable attorney’s fees and costs in
7 connection with their claims for civil penalties.

8 **PRAYER FOR RELIEF**

9 78. WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly
10 situated, prays for relief and judgment against Defendants as follows:

11 A. An order that the action be certified as a class action with respect to
12 Plaintiffs’ claims for violations of California law;

13 B. An order that Plaintiffs be appointed class representatives;

14 C. An order that counsel for Plaintiffs be appointed class counsel;

15 D. Declaratory relief;

16 E. Injunctive relief;

17 F. Actual damages;

18 G. Liquidated damages;

19 H. Restitution;

20 I. Civil penalties;

21 J. Statutory penalties;

22 K. Pre-judgment interest;

23 L. Costs of suit;

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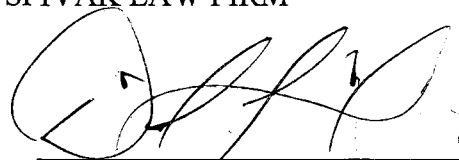
- M. Reasonable attorney's fees; and
- N. Such other relief as the Court deems just and proper.

Respectfully submitted,

THE SPIVAK LAW FIRM

Date: February 23, 2010

By:



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

EXHIBIT 8

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

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

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

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

21 (A PAUSE IN THE PROCEEDINGS.)

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

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

1 (A PAUSE IN THE PROCEEDINGS.)

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

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

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

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

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

28 I SAY THAT BECAUSE THE CASE OF WHITTINGTON

1 VERSUS MCKINNEY -- WHITTINGTON IS SPELLED

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

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

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

19 IT READS NOW, (READING:)

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

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

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

28 (4) DIRECT THAT THE TENTATIVE DECISION

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

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

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

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

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

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

8 MR. SABZEVAR: DEFENSE PREFERENCE IS NUMBER ONE.

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

12 MR. SABZEVAR: YES, YOUR HONOR.

13 THE COURT: PLAINTIFF?

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

16 THE COURT: ALL RIGHT.

17 MR. SPIVAK: BY "WE" I MEAN WE BELIEVE IT SHOULD BE
18 PREVAILING PARTY.

19 THE COURT: UH-HUH. I'M GOING TO USE -- I
20 APPRECIATE -- I'M GOING TO USE METHOD (4). THIS TENTATIVE
21 DECISION WILL BECOME THE STATEMENT OF DECISION UNLESS WITHIN
22 TEN DAYS AFTER ANNOUNCEMENT, AND SO FORTH. THAT'S
23 3.1590(C)(4).

24 SO WHAT I'M GOING TO DO NOW IS ANNOUNCE A
25 TENTATIVE WHICH, AS YOU CAN SEE, IS ALSO A CONDITIONAL
26 STATEMENT OF DECISION.

27 THIS CASE CAME BEFORE ME PRESIDING IN THIS
28 DEPARTMENT 41 ON THE 10TH OF APRIL, 2012, FOR TRIAL WITHOUT

1 JURY. DAVID G. SPIVAK, STATE BAR 179684, APPEARED AS
2 ATTORNEY FOR PLAINTIFFS ALINA GHRDILYAN AND EVGENIA
3 SULTANIAN, AND F. MICHAEL SABZEVAR, STATE BAR 172312 APPEARED
4 AS ATTORNEY FOR DEFENDANT, RAMIL ABALKHAD.

5 THE CASE WAS SUBMITTED FOR DECISION TODAY, THE
6 23RD OF APRIL, 2012.

7 IN THIS CASE, TWO PLAINTIFFS CLAIM THAT
8 DEFENDANT ABALKHAD IS LIABLE TO THEM ON VARIOUS
9 EMPLOYMENT-DERIVED THEORIES INCLUDING AND ESPECIALLY FOR
10 PENALTIES AND THAT THEY CAN ENFORCE VARIOUS REMEDIES AGAINST
11 THEM UNDER THE LABOR CODE PRIVATE ATTORNEY GENERAL ACT, WHICH
12 IS AT LABOR CODE 2698, AND FOLLOWING.

13 IN OPEN COURT ON THE 10TH OF APRIL, 2012, THE
14 ATTORNEYS CONFIRMED THAT THE OPERATIVE PLEADINGS ARE THE
15 PLAINTIFFS'S FIRST AMENDED COMPLAINT, ET CETERA, FILED
16 FEBRUARY 24, 2010, AND THE DEFENDANT'S ANSWER TO THEIR FIRST
17 AMENDED COMPLAINT FILED SEPTEMBER 13, 2010. I WILL MAKE A
18 COUPLE OF QUICK COMMENTS ABOUT THOSE TWO DOCUMENTS NOW.

19 THE FULL NAME OF THE PLAINTIFFS'S OPERATIVE
20 PLEADING IS FIRST AMENDED COMPLAINT FOR -- AND THEN THERE ARE
21 NINE THEORIES LISTED: FAILURE TO COMPENSATE EMPLOYEES FOR
22 ALL HOURS WORKED; NUMBER TWO IS FAILURE TO PROVIDE BOTH REST
23 AND MEAL PERIODS; NUMBER THREE IS FORFEITURE OF VESTED
24 VACATION BENEFITS; NUMBER FOUR IS FAILURE TO PROVIDE ACCURATE
25 WRITTEN WAGE STATEMENTS; NUMBER FIVE IS FAILURE TO TIMELY PAY
26 ALL FINAL WAGES; NUMBER SIX IS UNAUTHORIZED DEDUCTIONS;
27 NUMBER SEVEN IS FAILURE TO INDEMNIFY; NUMBER EIGHT IS UNFAIR
28 COMPETITION; AND NUMBER NINE IS CIVIL PENALTIES.

1 THE DEFENDANT'S ANSWER TO THE FIRST AMENDED
2 COMPLAINT WAS ON A JUDICIAL COUNCIL FORM PLEADING.

3 INSOFAR AS IT'S PERTINENT TO THIS PORTION OF
4 MY ANALYSIS, LABOR CODE 2699 READS, (READING:)

5 SUBSECTION (A), NOTWITHSTANDING ANY OTHER
6 PROVISION OF LAW, ANY PROVISION OF THIS CODE
7 THAT PROVIDES FOR A CIVIL PENALTY TO BE
8 ASSESSED AND COLLECTED BY THE LABOR AND
9 WORKFORCE DEVELOPMENT AGENCY OR ANY OF ITS
10 DEPARTMENTS, DIVISIONS, COMMISSIONS, BOARDS,
11 AGENCIES, OR EMPLOYEES FOR A VIOLATION OF THIS
12 CODE MAY, AS AN ALTERNATIVE, BE RECOVERED
13 THROUGH A CIVIL ACTION BROUGHT BY AN AGGRIEVED
14 EMPLOYEE ON BEHALF OF HIMSELF OR HERSELF AND
15 OTHER CURRENT OR FORMER EMPLOYEES PURSUANT TO
16 THE PROCEDURES SPECIFIED IN SECTION 2699.3.

17 THE PLAINTIFFS HAD ORIGINALLY DENOMINATED THIS
18 CASE AS A CLASS ACTION AND THEY CONTINUED THAT DESIGNATION
19 THROUGH VARIOUS OTHER FILINGS, BUT THEY HAVE NEVER OBTAINED
20 AN ORDER CERTIFYING THE CLASS. THEY CLAIM, THOUGH, THAT THEY
21 ARE ENTITLED TO PROCEED ON BEHALF OF OTHERS PURSUANT TO THE
22 CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL ACT AS TO
23 DEFENDANT ABALKHAD.

24 THE PLAINTIFFS HAD TRIED THIS CASE BEFORE ME
25 SOLELY AS TO CAUSE OF ACTION NINE. THEY CONCEDE THAT THIS
26 CASE IS STAYED IN THIS COURT IN PART BECAUSE OF THE FACT THAT
27 DEFENDANT RJ FINANCIAL, INC., ORIGINALLY THE ONLY NAMED
28 DEFENDANT, BUT BY VIRTUE OF THE FIRST AMENDED PLEADING, A

1 CODEFENDANT, THAT CORPORATION IS A DEBTOR IN CHAPTER 11
2 PROCEEDING, WHICH IS STILL PENDING.

3 PURSUANT TO 11 U.S.C. 362, THIS CASE WOULD BE
4 STAYED AS TO THAT PARTY. BUT MR. ABALKHAD HAS NOT BEEN SHOWN
5 TO BE A DEBTOR IN A BANKRUPTCY PROCEEDING AND DURING CLOSING
6 ARGUMENT OF THE 17TH OF APRIL, 2012, MR. SPIVAK CONFIRMED HIS
7 CLIENTS HAVE CLAIMS PENDING IN THE BANKRUPTCY CASE. THAT
8 WILL MEAN THAT THE CASE CAN PROCEED AND HAS PROCEEDED ON THE
9 BASIS PLEADED AGAINST MR. ABALKHAD AS AN INDIVIDUAL.

10 ALTHOUGH BECAUSE OF 11 U.S.C. 362, IT IS STAYED AS TO THE
11 CORPORATION.

12 THE PERSONS WHO GAVE TESTIMONY AT THE TRIAL
13 WERE JOSEPH HARSANY, H-A-R-S-A-N-Y, AN EMPLOYEE OF PAYROLL
14 CHECK WRITING SERVICE USED BY THE DEFENDANTS; BREK OYAMA --
15 BREK IS SPELLED B-R-E-K; AND OYAMA IS O-Y-A-M-A, MR. SPIVAK'S
16 PARALEGAL; RAMIL ABALKHAD, ONE OF THE DEFENDANTS, THE
17 PRESIDENT AND CHIEF EXECUTIVE OFFICER OF DEFENDANT RJ
18 FINANCIAL AND, INDEED, THAT -- APPARENTLY THAT COMPANY'S ONLY
19 OFFICER AND ONLY DIRECTOR. THE FOURTH WITNESS WAS ALINA
20 GHRDILYAN, ONE OF THE PLAINTIFFS, AND THE FIFTH WAS EVGENIA
21 SULTANIAN, ONE OF THE PLAINTIFFS, THE OTHER PLAINTIFF.

22 I'M GOING TO REFER TO THE LABOR CODE PRIVATE
23 ATTORNEY GENERAL ACT IN THE WAY THE ATTORNEYS HAVE -- IT
24 SEEMS TO ME TO BE SERVICEABLE -- AND I'M GOING TO REFER --
25 I'M GOING TO USE THE ACRONYM PAGA, P-A-G-A.

26 PAGA ACTIONS DO NOT HAVE BEEN MAINTAINED AS
27 CLASS ACTIONS. THEY CAN BE, BUT THEY ARE NOT REQUIRED TO BE.
28 THE AUTHORITY ON THAT IS ARIAS VERSUS SUPERIOR COURT, (2009),

1 46 CALIFORNIA 4TH, 969, 981 TO 982.

2 WE WILL GO INTO RECESS NOW. COME BACK AT
3 1:30, PLEASE.

4 (AT 11:58 A.M., A LUNCH RECESS WAS TAKEN.)

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(THE FOLLOWING PROCEEDINGS WERE HELD AT 1:47 P.M.)

THE COURT: NOW, WE WILL GO BACK TO THE GHRDILYAN
AGAINST RJ CASE.

OKAY. WHEN WE LEFT, I HAD, I THINK, TALKED
ABOUT SOME GENERAL POINTS OF LAW HAVING TO DO WITH PAGA
ACTIONS, AND I WILL JUST OVERLAP SLIGHTLY.

I WAS SAYING THAT PAGA ACTIONS DO NOT HAVE TO
BE HAVE MAINTAINED AS CLASS ACTIONS. THEY CAN BE, BUT ARE
NOT REQUIRED TO BE. AND ONE OF AUTHORITIES ON THAT IS ARIAS,
A-R-I-A-S, VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH
969 FROM PAGES 981 TO 982. PAGA IS NOT THE EMPLOYEE'S
EXCLUSIVE REMEDY. THEY MAY SEPARATELY OR CONCURRENTLY SEEK
OTHER REMEDIES. LABOR CODE 2699(G) AND CALIBER BODY WORKS
VERSUS SUPERIOR COURT, (2005) 134 CALIFORNIA APPELLATE 4TH
365 AT 375.

THE KINDS OF PENALTIES THAT PAGA PLAINTIFFS
CAN SEEK TO RECOVER, ASSUMING THAT THE FACTS SUPPORT IT, ARE
THOSE FOR FAILURE TO PAY STATUTORILY PRESCRIBED WAGES --
THAT'S LABOR CODE 210 -- UNLAWFULLY WITHHELD WAGES -- THAT'S
LABOR CODE 225.5 -- OR FOR VIOLATING, FOR EXAMPLE, AN
INDUSTRIAL WELFARE COMMISSION ORDER -- THAT'S LABOR CODE 558.
AN AGGRIEVED EMPLOYEE -- THAT WOULD MEAN ANYONE EMPLOYED BY
THE ALLEGED VIOLATOR AND AGAINST WHOM ONE OR MORE VIOLATIONS
WAS COMMITTED -- AND I PICKED UP THAT DEFINITION FROM LABOR
CODE 2699(C) AND FROM THE COMMENTS IN AMALGAMATED TRANSIT
UNION VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH 993 AT
1004 TO 1005 -- AN AGGRIEVED EMPLOYEE CAN SUE TO RECOVER
CIVIL PENALTIES FOR VIOLATIONS OF THE LABOR CODE ON BEHALF OF

1 HIMSELF, OR HERSELF, AND OTHER CURRENT OR FORMER EMPLOYEES
2 AGAINST WHOM ONE OR MORE OF THE ALLEGED VIOLATIONS WAS
3 COMMITTED. THAT'S LABOR CODE 2699(G)(1).

4 THE ATTORNEYS HAVE FROM TIME TO TIME REFERRED
5 TO WHAT THEY HAVE CALLED THE BRINKER CASE.

6 NOW, WHAT THEY ARE REFERRING TO IS THE CASE
7 ENTITLED BRINKER RESTAURANT CORPORATION VERSUS SUPERIOR
8 COURT, REAL PARTY IN INTEREST, HOHNBAUM H-O-H-N-B-A-U-M. THE
9 VERSION OF THAT THAT I HAVE USED IN MY ANALYSIS AND
10 PREPARATION IS THE VERSION THAT WAS PRINTED AT 2012 DAILY
11 JOURNAL, DAILY APPELLATE REPORT, PAGE 4615, AND FOLLOWING.

12 I HAVE BEEN REQUIRED TO EVALUATE THE TESTIMONY
13 OF THE PARTY WITNESSES IN THIS CASE, THAT IS, MS. GHRDILYAN,
14 MS. SULTANIAN, AND MR. ABALKHAD WITH SOME CAUTION AND
15 RESERVATIONS. THOSE THREE PERSONS IN THEIR CAPACITIES AS
16 WITNESSES ARGUED AND WRANGLLED WITH THE QUESTIONERS DURING
17 TRIAL, AND SOME OF THAT WAS PROVOKED BY THE QUESTIONERS; SOME
18 OF IT WAS NOT. THAT BECOMES AN IMPORTANT FACTOR IN
19 EVALUATING RELATIVE CREDIBILITIES UNDER EVIDENCE CODE 780(A).
20 THOSE THREE PARTIES ALL HAVE AN INTEREST, BIAS, AND OTHER
21 MOTIVE FOR SLANTING THEIR TESTIMONY, OBVIOUSLY, AND THAT
22 BECOMES SIGNIFICANT UNDER EVIDENCE CODE 780(F) AND EVIDENCE
23 CODE 780(J).

24 MR. ABALKHAD HAS SUFFERED FELONY CONVICTIONS
25 ON HIS PLEA OF NOLO CONTENDERE AS TO PERJURY AND TAX EVASION
26 AND DID NOT OWN UP TO THAT COMPLETELY IN DISCOVERY. THAT'S
27 EVIDENCE -- THAT BECOMES PERTINENT UNDER EVIDENCE CODE 780(E)
28 AND EVIDENCE CODE 780(H), AND EVIDENCE CODE 780(I) AND IS

1 COMMENTED ON IN THE CASE OF RUSHEEN, R-U-S-H-E-E-N, VERSUS
2 DREWS, D-R-E-W-S, (2002) 99 CALIFORNIA APPELLATE 4TH 279 AT
3 PAGES 283 TO 284.

4 ASPECTS OF THE TESTIMONY OF THESE WITNESSES,
5 THESE THREE PEOPLE AS WITNESSES, WERE EXAGGERATED AND
6 OVERSTATED. THAT BECOMES PERTINENT UNDER EVIDENCE CODE
7 780(B).

8 FURTHERMORE, EVIDENCE CODE SECTION 412
9 PROVIDES THAT IF WEAKER AND LESS SATISFACTORY EVIDENCE IS
10 OFFERED WHEN IT WAS IN -- WHEN IT WAS WITHIN THE POWER OF THE
11 PARTY TO PRODUCE STRONGER AND MORE SATISFACTORY EVIDENCE, THE
12 EVIDENCE ACTUALLY OFFERED SHOULD BE VIEWED WITH DISTRUST.
13 THIS, OF COURSE, IS A PERMISSIBLE INFERENCE AND NOT A
14 MANDATORY ONE, BUT THIS COURT HAS, AS THE LAW INDICATES,
15 TAKEN THIS INTO CONSIDERATION.

16 BUT ALL THAT HAVING BEEN SAID, THE COURT DOES
17 NOT ACCEPT MR. SABZEVAR'S INVITATION TO REJECT THE ENTIRETY
18 OF THE PLAINTIFFS'S TESTIMONY. INSTEAD, THIS COURT HAS HAD
19 TO ACCEPT THE PART OF THE TESTIMONY OF THE WITNESSES WHICH
20 THIS COURT FOUND -- HAS FOUND TO BELIEVE TRUE AND -- AND WILL
21 REJECT THE REST. THIS IS PRECISELY WHAT THE COURT -- PARDON
22 ME -- IS AUTHORIZED TO DO OR ANY FINDER OF FACT WOULD BE
23 AUTHORIZED TO DO. ONE MODEL FOR THAT IS CACI INSTRUCTION
24 107, FOURTH PARAGRAPH.

25 THE DATES INVOLVED IN THIS CASE -- AND THE
26 DATES BECOME SIGNIFICANT -- ARE AS FOLLOWS. MS. SULTANIAN
27 WAS HIRED ON -- IN NOVEMBER, 2007, AND WAS FIRED ON NOVEMBER
28 19, 2009. MS. GHRDILYAN WAS HIRED IN AUGUST, 2008, AND WAS

1 FIRED ON DECEMBER 3, 2009. ONE OF THE QUESTIONS WHICH I HAVE
2 BEEN CALLED UPON TO ANSWER IS WHETHER MR. ABALKHAD AS AN
3 INDIVIDUAL WAS AN EMPLOYER OF PLAINTIFFS AND -- UNDER WAGE
4 ORDER 7. I FIND THAT HE WAS NOT. BUT I FIND THAT THE
5 THEORIES OF LIABILITY UNDER -- I SHOULD BACK OFF. BUT I FIND
6 THAT THE OTHER BASES FOR ASSERTING LIABILITY ON THE PART OF
7 MR. ABALKHAD DO HAVE MERIT, AND LIABILITY DOES ATTACH TO HIM
8 UNDER THOSE THEORIES.

9 THE THEORIES I'M REFERRING TO ARE LABOR CODE
10 558 TO WHICH LABOR CODE 510 AND 512 ARE APPENDED OR INCLUDED
11 SUBSTANTIVE PROVISIONS AND LABOR CODE 1197.1 TO WHICH THE
12 SUBSTANTIVE PROVISIONS OF LABOR CODE 1198 AND THE WAGE ORDER
13 ARE ASSOCIATED THEORIES OF LIABILITY.

14 IN OTHER WORDS, I AM FINDING THAT UNDER 558
15 LABOR CODE AND 1197.1 LABOR CODE FOR THE SUBSTANTIVE REASONS
16 REFERRED TO IN THE OTHER TWO SOURCES AS TO EACH OF THOSE
17 SECTIONS, THAT IS 510 AND 512 LABOR CODE, AND 1193 AND WAGE
18 ORDER, LIABILITY CAN ATTACH TO MR. ABALKHAD AND UNDER THE
19 CIRCUMSTANCES OF THIS CASE, WILL ATTACH.

20 I'M GOING TO MAKE A FINDING ON THAT, AS YOU
21 WILL SEE, IN FAVOR OF -- PARDON ME -- OF THE PLAINTIFFS'S
22 POSITION.

23 NOW, I SAY IN FAVOR OF THE PLAINTIFFS'S
24 POSITION BECAUSE THAT MEANS NOT JUST IN FAVOR OF THE
25 PLAINTIFFS BUT SINCE WE HAVE A PAGA ACTION, I AM REFERRING TO
26 THE PLAINTIFFS'S POSITION.

27 NOW -- PARDON ME. I WILL SAY THIS.

28 AS YOU CAN TELL, I AM AT SOME PAINS TO GO

1 THROUGH THE LEGAL REASONING AND STEPS PREPARATORY TO REACHING
2 A DECISION IN THIS CASE WITH SOME CARE BECAUSE IT MAY VERY
3 WELL BE THAT THIS CASE WILL REACH ITS WAY INTO THE APPELLATE
4 COURTS AND THAT IT IS ALSO POSSIBLE THAT THE APPELLATE COURTS
5 MAY DECIDE THIS CASE IN A PUBLISHED OPINION, AND I WILL SAY
6 THAT THE DETERMINATION I HAVE MADE ABOUT ABALKHAD AS AN
7 EMPLOYER -- I SAID THAT HE'S NOT -- OR ABALKHAD AS A
8 POTENTIALLY LIABLE PARTY UNDER LIABILITY-ENHANCING STATUTES
9 OTHER THAN LABOR CODE 558 AND LABOR CODE 1197.1, THAT IS, THE
10 ABALKHAD-FAVORING DETERMINATIONS I HAVE MADE ON THOSE POINTS,
11 ARE NOT BEYOND REASONABLE ARGUMENT.

12 MY DECISION IS, AS I HAVE EXPRESSED IT, AND I
13 BELIEVE THAT I AM CORRECT -- BUT I -- BUT I DO RECOGNIZE THAT
14 THERE ARE ARGUMENTS THAT CAN BE MADE -- AND THEY HAVE BEEN
15 MADE HERE IN THIS COURTROOM -- ON THOSE POINTS.

16 I HAVE COMPARED THE EMPLOYEE HANDBOOKS,
17 EXHIBIT 3 AND EXHIBIT D. IT APPEARS TO ME THAT EXHIBIT D
18 FROM THE EVIDENCE IN THIS CASE WAS NOT SUPPLIED BY ABALKHAD
19 DURING THE DISCOVERY PHASE OF THIS CASE. THE PARTICULAR
20 PROVISIONS THAT I AM DEALING WITH ARE THOSE HAVING TO DO WITH
21 OVERTIME AND LUNCH AND EXHIBIT 3 IS COMMENTED ON BY THE
22 PLAINTIFFS AS BEING DEFICIENT BECAUSE THEY SAY THAT A LUNCH
23 PERIOD MUST BE PROVIDED AFTER FIVE HOURS OF WORK, NOT SIX
24 HOURS OF WORK, AND THE PLAINTIFFS'S POSITION IS THAT THAT WAS
25 THE ONLY PERTINENT EMPLOYEE HANDBOOK.

26 I THINK THE PLAINTIFFS ARE RIGHT AS TO BOTH
27 THOSE CONTENTIONS. EXHIBIT 3 BEARS THE DATE OF JANUARY,
28 2003. PLAINTIFFS ADMIT THAT THIS IS THE CORRECT DATE. THAT

1 IS, IT SEEMS TO ME, THE OPERATIVE EMPLOYEE HANDBOOK. EXHIBIT
2 D WHICH HAS DIFFERENT PROVISIONS IN IT CONCERNING THE SAME
3 TOPICS WAS, IN MY VIEW, FIRST NOT PRODUCED DURING DISCOVERY;
4 SECOND, A WRITING THAT CAME INTO EXISTENCE IN AUGUST, 2010,
5 SUBSTANTIAL PERIOD OF TIME AFTER THE PLAINTIFFS HAD ALREADY
6 HAD THEIR EMPLOYMENT TERMINATED AND INDEED AUGUST, 2010, IS
7 EVEN AFTER THE PRESENT SUIT WAS FILED. THIS CAN BE SEEN FROM
8 EXHIBIT D PAGE 17, SECOND FULL PARAGRAPH.

9 AS I HAVE SAID, THIS SUIT WAS FILED ON THE
10 28TH OF JANUARY, 2010.

11 ONE OF THE COMPLICATING FACTORS IN THIS
12 CASE -- AND THE LAWYERS HAVE RECOGNIZED IT, AND IT'S OBVIOUS
13 TO ANYONE WITH ANY LEGAL EXPERIENCE -- IS THAT ALTHOUGH THE
14 LAWSUIT ORIGINALLY NAMED RJ FINANCIAL, INC., THAT DEFENDANT
15 IS A DEBTOR IN A CHAPTER 11 BANKRUPTCY. AS I HAVE SAID, THE
16 CASE IS OBVIOUSLY STAYED AS TO THAT PARTY, BUT THE PLAINTIFFS
17 HAVE HAD TO REORGANIZE THEIR CASE TO PRESS IT AGAINST
18 MR. ABALKHAD WHO IS NOT IN BANKRUPTCY AND IT SEEMS TO ME THEY
19 HAVE DONE SO SUCCESSFULLY.

20 THERE IS NO SERIOUS QUESTION BETWEEN THE SIDES
21 CONCERNING THE FOLLOWING PROPOSITIONS OF LAW. AN EMPLOYEE IS
22 ENTITLED TO OVERTIME COMPENSATION FOR WORK IN EXCESS OF EIGHT
23 HOURS IN ONE WORKDAY, FOR WORKING IN EXCESS OF 40 HOURS IN
24 ONE WORKWEEK, AND FOR WORK ON THE SEVENTH DAY IN ONE WORK
25 WEEK. THE OVERTIME COMPENSATION DIFFERS, BUT THOSE ARE
26 OVERTIME ITEMS.

27 IT IS ALSO TRUE -- BY THE WAY, THIS IS
28 PROVIDED FOR UNDER LABOR CODE 510(A). IT'S ALSO TRUE THAT

1 EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EMPLOYEES WHO ARE
2 SPECIFICALLY EXEMPTED BY THE CALIFORNIA INDUSTRIAL WELFARE
3 AND COMMISSION ARE EXEMPT FROM THE HOURS WORKED AND DAYS
4 WORKED PER WEEK LIMITATIONS AS PROVIDED FOR IN LABOR CODE 515
5 BUT -- PARDON ME -- THE PLAINTIFFS IN THIS CASE DO NOT FALL
6 INTO THAT EXEMPTED CATEGORY AND INDEED THE DEFENDANT DOES NOT
7 CLAIM THAT THEY DO.

8 FOR THE REASONS THAT I HAVE MENTIONED EARLIER
9 ABOUT THE RESERVATIONS WITH WHICH THE TESTIMONY OF THE
10 WITNESSES HAVE TO BE INTERPRETED WITH, I DO NOT ATTEMPT TO
11 SUMMARIZE ALL THE TESTIMONY OF ALL THE WITNESSES.

12 IT IS ALSO TRUE THAT SUCCESSFUL EMPLOYEE
13 PLAINTIFFS WHO ARE AWARDED UNPAID OVERTIME ARE ENTITLED TO
14 INTEREST ACCRUING FROM THE DATE ON WHICH THE RIGHT TO RECOVER
15 THEIR OVERTIME VESTS. THIS WOULD BE ON THE MODEL INDICATED
16 IN CIVIL CODE 3287(A) COMPUTED TO THE DATE OF ENTRY OF
17 JUDGMENT. THIS IS LABOR CODE 1194(A), AND IT'S ALSO
18 DISCUSSED IN ESPINOSA VERSUS CLASSIC PIZZA, WHICH IS A CASE
19 THAT APPEARS IN 114 CALIFORNIA APPELLATE 4TH. THE PARTICULAR
20 PASSAGE THAT I'M MAKING REFERENCE TO IS AT PAGE 975.

21 THE TERM "WILLFUL" UNDER THE LABOR CODE --
22 THIS APPEARS IN LABOR CODE 203 -- IT MEANS ONLY THAT AN
23 EMPLOYER INTENTIONALLY FAILED OR REFUSED TO PERFORM AN ACT
24 THAT WAS REQUIRED TO BE DONE. THAT POINT IS MADE IN BARNHILL
25 VERSUS ROBERT SAUNDERS & COMPANY, (1981) 125 CALIFORNIA
26 APPELLATE 3D 1 AT PAGES 7 AND 8.

27 OBVIOUSLY, IN THE CURRENT CASE, UNLIKE THE
28 SITUATION IN BARNHILL, THERE'S NO EVIDENCE OF OFFSET. I'M

1 CITING BARNHILL JUST FOR THE PURPOSE OF THE DEFINITION OF THE
2 WORD "WILLFUL."

3 I WILL MAKE A COUPLE OF OTHER POINTS.

4 I RECOGNIZE THE INTENSITY WITH WHICH THE
5 DEFENSE HAS MAINTAINED THAT THIS IS A CASE DRIVEN BY
6 ATTORNEYS AND ATTORNEY'S FEES ON THE PLAINTIFFS'S SIDE. FOR
7 THE REASONS THAT I HAVE MENTIONED PREVIOUSLY, THAT IS, THAT
8 ONE OF THE PURPOSES OF PAGA IS PRECISELY TO INCENTIVIZE
9 ATTORNEYS TO -- TO FILE AND TO PROSECUTE SUCH CASES -- THAT
10 ARGUMENT EXISTS AND IT DOES HAVE A CERTAIN AMOUNT OF
11 OCCURRENCE, BUT I DO NOT REGARD IT AS BEING A STRONG
12 ARGUMENT. IT IS THE PURPOSE OF THE LAW PRECISELY TO PROVIDE
13 AN INCENTIVE FOR ATTORNEYS WHO MIGHT OTHERWISE BE UNABLE TO
14 HANDLE CASES OF THIS TYPE TO BE ABLE TO HANDLE CASES OF THIS
15 TYPE.

16 I WILL SAY THAT APPLICATIONS FOR ATTORNEYS'S
17 FEES, IF ANYBODY CLAIMS ENTITLEMENT TO ANY, CAN BE MADE BY
18 POST-JUDGMENT MOTION FOR ALLOWANCE OF ATTORNEY'S FEES AS
19 PARTS OF COSTS UNDER CIVIL CODE 1717(A), IF THAT'S WHAT
20 APPLIES, OR UNDER THE CORRESPONDING STATUTE IN THE LABOR
21 CODE. AND THE METHOD OF MAKING A POST-JUDGMENT MOTION FOR
22 ALLOWANCE IS REFERRED TO IN SUCH CASES AS ALLSTATE INSURANCE
23 VERSUS LEW, (1996) 46 CALIFORNIA APPELLATE 4TH 174 -- 1794 AT
24 1797, AND BANKES VERSUS LUCAS -- BANKES IS SPELLED
25 B-A-N-K-E-S, VERSUS LUCAS -- (1992) 9 CALIFORNIA --
26 9 CALIFORNIA APPELLATE 4TH, 365 AT 370.

27 I CITE THOSE TWO CASES NOT FOR THE PROPOSITION
28 THAT THEY APPLY IN LABOR CASES OR THAT THEY ARE DISPOSITIVE

1 ON THE ISSUE OF THE AMOUNT OF LEGAL FEES BUT JUST TO SHOW
2 THAT THAT IS AN APPROPRIATE TIME TO MAKE APPLICATIONS FOR
3 FEES.

4 IN THE PREMISES OF THIS CASE, THOUGH, FOR
5 REASONS THAT I WILL EXPLAIN IN JUST A SECOND, THE APPLICATION
6 FOR ATTORNEY'S FEES, IF THERE IS GOING TO BE ONE ON THE PART
7 OF THE PLAINTIFFS'S ATTORNEY, SHOULD BE, IT SEEMS TO ME, MADE
8 AFTER DISTRIBUTION OF ALL THE FUNDS THAT WILL BE DISTRIBUTED
9 UNDER MY AWARD WHICH I'M GOING TO MAKE UNDER PAGA SO THAT WE
10 DON'T HAVE THE SITUATION WHERE THE ATTORNEY IS PAID,
11 PLAINTIFFS'S ATTORNEY IS PAID FIRST OR SEEKS PAYMENT FIRST
12 WITHOUT ALSO DOING ALL THE, IT SEEMS TO ME, RATHER LABORIOUS
13 WORK THAT'S GOING TO BE REQUIRED UNDER PAGA, AND IT'S 25
14 PERCENT, 75 PERCENT SHARING ARRANGEMENT WITH THE PLAINTIFFS
15 TO GET 25 PERCENT AND WITH THE STATE OF CALIFORNIA TO GET THE
16 75 PERCENT.

17 SO I'M GOING TO TREAT THAT ASPECT OF THIS CASE
18 AS CALLING FOR ATTORNEY FEE MOTIONS, IF ANY ARE TO BE MADE,
19 AT A TIME AFTER THAT STEP OF CONCURSUS OF CLAIMS AND
20 DISTRIBUTION OF FUNDS HAS EITHER BEEN COMPLETELY FINISHED OR
21 HAS BEEN FINISHED WITH THE EXCEPTION OF A FEW SMALL
22 MINISTERIAL ACTS.

23 PARDON ME.

24 WITH RESPECT TO THE -- TO THE REMEDIES, IT
25 SEEMS TO ME THAT THE EVIDENCE STRONGLY SUPPORTS THE
26 PLAINTIFFS'S ARGUMENTS AS TO WHAT I WILL CALL THE 558-510-512
27 THEORY AND THE 1197.1-1198-WORK ORDER THEORY.

28 I THINK THAT THE EVIDENCE ESTABLISHES

1 VIOLATIONS OF THOSE SUBSTANTIVE PROVISIONS AND THAT THE
2 EVIDENCE ESTABLISHES A RIGHT TO RECOVER ON BEHALF OF THE
3 PAGA-AGGRIEVED EMPLOYEES AND ON BEHALF OF THE PLAINTIFFS BUT
4 IN AMOUNTS THAT ARE DIFFERENT FROM THOSE -- THE THEORIES ARE
5 THOSE ADVOCATED BY MR. SPIVAK AND HIS CLIENTS. THE AMOUNTS
6 ARE AMOUNTS THAT I AM GOING TO ALTER, THOUGH, AS WILL BE
7 CLEAR.

8 WITH RESPECT TO THE GHRDILYAN 558-510-512
9 LABOR CODE RECOVERY, I AM GOING TO AWARD \$7,654.60 -- THAT'S
10 EXACTLY AS CALCULATED BY MR. SPIVAK AND THOSE ARE -- THAT'S
11 IN FAVOR OF MS. GHRDILYAN AND AGAINST MR. ABALKHAD.

12 WITH RESPECT TO THE 1197.1 THEORY, WITH 1198
13 AND WORK ORDER BEING THE SUBSTANTIVE BASES, I AGREE WITH
14 MR. SPIVAK THAT MS. GHRDILYAN'S RECOVERY SHOULD BE \$14,218
15 AND THAT COMES OUT TO A TOTAL OF 21,872.60 FOR GHRDILYAN.

16 WITH RESPECT TO SULTANIAN, MY DETERMINATION IS
17 THAT REGARDING THE LABOR CODE 558-510-512 THEORY,
18 MS. SULTANIAN IS ENTITLED TO RECOVERY AGAINST MR. ABALKHAD OF
19 \$5,264.19, AND WITH RESPECT TO HER THEORY UNDER 1197.1 LABOR
20 CODE, MS. SULTANIAN IS ENTITLED TO RECOVER AGAINST
21 MR. ABALKHAD \$13,936.50. TOTAL IS \$19,200.69, AND THAT'S THE
22 AMOUNT THAT SULTANIAN IS ENTITLED TO RECOVER ON HER ACCOUNT
23 AGAINST MR. ABALKHAD.

24 THIS NOW BRINGS US TO THE AWARD IN FAVOR OF
25 THE SO-CALLED AGGRIEVED EMPLOYEES.

26 MY DETERMINATION IS THAT THE AGGRIEVED
27 EMPLOYEES'S CLAIMS ARE VALID AND MERITORIOUS CLAIMS; THAT
28 THEY CAN BE AND HAVE BEEN VALIDLY ASSERTED BY, PROSECUTED BY

1 THE TWO PLAINTIFFS IN OUR CASE.

2 I AM GOING, HOWEVER, NOT TO ACCEPT THE DOLLAR
3 FIGURES IN THE ULTIMATE SENSE THAT MR. SPIVAK AND HIS CLIENTS
4 HAVE ADVOCATED. IN DOING THIS, I AM GOING TO SPECIFICALLY
5 EXERCISE MY POWERS, WHICH IT SEEMS TO ME ARE IN THE NATURE OF
6 JUDICIAL DISCRETION, TO REDUCE THE AMOUNT OF RECOVERY FROM
7 THE AMOUNTS ADVOCATED BY MR. SPIVAK AND HIS CLIENTS.

8 WITH RESPECT TO THE LABOR CODE 558, 510, AND
9 512 THEORIES, AS TO THE AGGRIEVED EMPLOYEES, MY DETERMINATION
10 IS THAT THE AMOUNT WHICH MR. ABALKHAD MUST PAY IS NOT THE
11 \$2,164,278 AMOUNT THAT MR. SPIVAK ARGUED FOR BUT RATHER
12 \$125,000.

13 WITH RESPECT TO THE 1197.1-1198-WAGE-ORDER
14 CLAIM, MY DETERMINATION IS THAT THE AMOUNT THAT MR. ABALKHAD
15 WILL BE REQUIRED TO PAY IS NOT \$3,269,490, WHICH WAS THE
16 AMOUNT ADVOCATED BY MR. SPIVAK ON BEHALF OF HIS CLIENTS BUT
17 RATHER \$200,000.

18 NOW, THAT COMES OUT TO A TOTAL THEN OF
19 \$325,000.

20 NOW, IN DOING THIS, I HAVE EXERCISED MY
21 DISCRETION TAKING INTO CONSIDERATION THE FOLLOWING POINTS. I
22 AGREE WITH MR. SPIVAK'S CHARACTERIZATION OF MR. ABALKHAD AS A
23 PERSON WHO WAS INADEQUATELY OBSERVANT OF CALIFORNIA LAW.
24 MR. SPIVAK REFERS TO HIM AS A "SCOFFLAW." THAT'S A
25 JOURNALISTIC RATHER THAN A -- A LEGAL TERM. BUT I THINK HE
26 DID HAVE THE INTENTION SIMPLY OF TRYING TO RUN THINGS THROUGH
27 AND GET OFF AS CHEAPLY AS HE COULD WHILE HE WAS RUNNING HIS
28 BUSINESSES.

1 BUT I ALSO FIND THAT ONE OF THE PROBLEMS IN
2 THE OPERATION OF HIS BUSINESS WAS THAT HE GOT IN WAY OVER HIS
3 HEAD. HE SIMPLY EXPANDED BEYOND HIS OR HIS CORPORATION'S
4 CAPACITY PROPERLY TO RUN THESE BUSINESSES. HE RAN THEM AS
5 THOUGH HE WERE RUNNING A KIND OF SMALL OPERATIONS OUT OF HIS
6 HIP POCKET, AND I RECOGNIZE THAT THAT IS NOT A PRAISEWORTHY
7 BEHAVIOR, BUT IT SEEMS TO ME THAT IT IS NOT BEHAVIOR OF A
8 HIGHLY BLAMEWORTHY SENSE AND THAT IT IS BEHAVIOR WHICH MERITS
9 A REDUCTION OR SOFTENING OF THE PENALTIES.

10 NOW, I WILL ALSO SAY THE FOLLOWING. IF ON
11 APPEAL, THE APPELLATE COURT DETERMINES THAT I AM MISTAKEN
12 CONCERNING THE POTENTIAL OTHER THEORIES OF LIABILITY ASSERTED
13 BY MR. SPIVAK AND HIS CLIENTS AGAINST MR. ABALKHAD, I WILL
14 TELL YOU WHAT I WOULD HAVE AWARDED ON THOSE THEORIES SO THAT
15 IT MAY BE THAT THE APPELLATE COURT CAN SIMPLY TAKE WHAT I
16 HAVE SAID HERE AND RATHER THAN MAKING A DISPOSITION WHICH
17 REMANDS THE CASE FOR FURTHER CALCULATION OF DAMAGES, THE
18 APPELLATE COURT CAN SIMPLY INSERT THE MONETARY REMEDY THAT I
19 WOULD HAVE INSERTED MYSELF HAD I NOT BEEN PERSUADED THAT
20 MR. ABALKHAD WAS NOT LIABLE EXCEPT UNDER THE THEORIES THAT I
21 HAVE MADE REFERENCE TO.

22 HAD THAT BEEN DONE, I WOULD HAVE AWARDED AN
23 ADDITIONAL \$200,000 AS TO THE AGGRIEVED EMPLOYEES.

24 NOW, I WILL SAY THAT THESE AMOUNTS ARE, I
25 RECOGNIZE, EXTREMELY LENIENT AND PERMISSIVE TO MR. ABALKHAD.
26 IN OTHER WORDS, THIS IS NOT A CASE WHERE THE COURT HAS TRIED
27 TO SOCK IT TO HIM. IT IS, RATHER, A CASE IN WHICH I HAVE
28 TREATED IT AS A SERIES OF OFFENSES BUT ONE AS TO WHICH

1 MR. ABALKHAD SHOULD BE GIVEN AT LEAST SOME LENIENCY IN THE
2 FASHIONING OF A REMEDY. I THINK THAT'S IT. LET ME ASK THE
3 LAWYERS.

4 FIRST OF ALL, PLAINTIFFS'S LAWYER. ARE THERE
5 OTHER MATTERS AS TO WHICH YOUR CLIENTS CONTEND I SHOULD MAKE
6 A STATEMENT OF SOME KIND OR A FINDING OF SOME KIND?

7 MR. SPIVAK: WAS THERE SOME FINDING AS TO THE
8 ADDITIONAL \$200,000 WITH RESPECT TO THE INDIVIDUAL
9 PLAINTIFFS, YOUR HONOR?

10 YOU SPOKE TO THE OTHER CLAIMS WHICH PERHAPS
11 WOULD AFFECT THE APPELLATE COURT SHOULD IT SEND BACK FOR
12 CALCULATION.

13 THE COURT: YEAH.

14 MR. SPIVAK: I KNOW YOU GAVE AN AGGRIEVED EMPLOYEE
15 NUMBER BUT NOT FOR THE TWO PLAINTIFFS.

16 THE COURT: SHOW ME -- JUST A SECOND. COULD YOU,
17 PLEASE, TURN BACK TO -- OH, I GUESS I OUGHT TO SAY THAT. LET
18 ME DO THAT NOW.

19 THE PLAINTIFFS CONTEND THAT THERE WERE THESE
20 WRONGS AS TO BOTH THEMSELVES AND AS TO THE AGGRIEVED
21 EMPLOYEES, AND I WILL JUST REFER TO THEM IN SHORT, COMPRESSED
22 TERMS. AND ESSENTIALLY IT BOILS DOWN TO I THINK NINE
23 THEORIES AND I WILL ENUMERATE THEM NOW: OVERTIME, REST AND
24 MEAL PERIODS, WAGE STATEMENT, IN OTHER WORDS, LABOR CODE 226,
25 UNPAID TRAVEL EXPENSES AND MILEAGE -- THAT'S FOUR --
26 OFF-THE-CLOCK WORK, UNTIMELY PAYMENT OF WAGES, VACATION PAY
27 AT TERMINATION, AND FAILURE FAIRLY TO ADVISE THE EMPLOYEES OF
28 CHANGE IN THE COMMISSION STRUCTURE SO THAT WHAT HAPPENED WAS

1 THAT THEY WERE MADE TO DO WORK WITHOUT KNOWING -- WITHOUT, AS
2 IT TURNED OUT, WHAT THE ULTIMATE PAYMENT FOR IT WAS GOING TO
3 BE.

4 EACH OF THOSE CONTENTIONS -- EACH OF THOSE
5 THEORIES IS A THEORY THAT WOULD BE DECIDED IN FAVOR OF THE
6 PLAINTIFFS AND AGAINST THE -- AND AGAINST THE DEFENDANT
7 ABALKHAD EXCEPT FOR MY DETERMINATION THAT HE INDIVIDUALLY IS
8 NOT LIABLE. BUT IF HE IS LIABLE, THAT IS, IF THE APPELLATE
9 COURT DECIDES THAT I HAVE MADE AN ERROR REGARDING EXCESSIVELY
10 NARROW INTERPRETATION OF THE LABOR CODE PROVISIONS, I WOULD
11 AWARD EACH OF THE PLAINTIFFS AS PENALTIES \$60,000 EACH; 60
12 PLUS 60 IS 120.

13 NOW, I WILL SAY, AGAIN, I RECOGNIZE THAT THIS
14 IS WAY BELOW THE PLAINTIFFS'S TARGET NUMBER, BUT IT IS A
15 NUMBER THAT I THINK IS APPROPRIATE.

16 NOW, I WANT TO SAY SOMETHING ELSE ABOUT THIS,
17 AND THIS IS A COMPLICATION CREATED BY FACTORS THAT I HAD
18 REFERRED TO PREVIOUSLY. THIS IS THE BANKRUPTCY OF THE
19 CORPORATION.

20 WHAT I AM SAYING CONCERNING THESE OTHER
21 PENALTIES AND OTHER AMOUNTS, THAT IS, AMOUNTS I AM NOT
22 ACTUALLY 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 9

Case Name: BRIANO/NOR CAL (rev.)

Tuesday, July 18, 2023

Requesting Law Firm

Contact

E-Mail

ILYM Contact

E-Mail

Contact Number

The Spivak Law Firm

Emily Houg Ly

emily@spivaklaw.com

ILYM Group

Lisa@ilymgroup.com

714.878.8836

ESTIMATE FOR ADMINISTRATION SOLUTIONS

Opt-Out

ASSUMPTIONS

Total Number of Class Members	131
Estimated Percentage of Undeliverable Mail	20%
NCOA	Yes
Certified Spanish Translations	Yes

Activity

Rate Type

Unit Cost

Volume

Amount

CASE STARTUP

Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	1	\$150.00
Programming of Class Database	Hourly	\$175.00	1	\$175.00

**ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.*

Subtotal \$325.00

PROJECT MANAGEMENT

Project Manager (Case notification and maintenance)	Hourly	\$120.00	3	\$360.00
Staff Hours for Processing Opt-Outs, Disputes & Objections	Hourly	\$70.00	1	\$70.00
Staff Hours for Processing Returned Mailed	Hourly	\$70.00	1	\$70.00
Report Processing	Hourly	\$70.00	2	\$140.00
NCOA	Per Piece	\$50.00	1	\$50.00
Toll-Free Call Center	Flat Fee	\$50.00	1	\$50.00
ILYM Group Static Website, Includes Hosting	Flat Fee	\$750.00	1	\$750.00
Certified Spanish Translations	Flat Fee	\$1,250.00	1	\$1,250.00
Weekly Reports	Flat Fee	\$500.00	1	Waived

Subtotal \$2,740.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity	Rate Type	Unit Cost	Volume	Amount
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NOTIFICATION/MAILING				
Fulfillment Notice, English and Spanish	Per Piece	\$2.00	131	\$262.00
USPS First Class Postage	Per Piece	\$0.83	131	\$108.73
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.50	26	\$65.50
Storage, Photocopies, Deliveries	Flat Fee	\$270.44	1	\$270.44

Subtotal \$706.67

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	\$1.00	131	\$131.00
USPS First Class 1oz Postage	Per Piece	\$0.63	131	\$82.53
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$1.50	13	\$19.65
Check Cashing Reminder Postcard	Per Piece	\$1.00	85	\$85.15
Preparation of Taxes	Hourly	\$120.00	6	\$720.00
Annual Filing of Tax Return	Per Year	\$750.00	1	\$750.00

***Additional Bank fees may apply*

Subtotal \$2,338.33

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	2	\$200.00
Project Manager Final Reporting	Hourly	\$120.00	2	\$240.00
Process Uncashed Funds to the State	Flat Fee	\$350.00	1	\$350.00
Declaration	Hourly	\$125.00	2	\$250.00

Subtotal \$1,040.00

Total Case Estimate: \$7,150.00

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



Reference No. 20230720-PJI-06

July 20, 2023

Emily HOUNG Ly
The Spivak Law Firm
1801 Century Park East
25th Fl
Los Angeles, CA 90067

RE: BRIANO/NOR CAL Class and PAGA Settlement

Dear Emily,

Thank you for this opportunity to provide a quote for your above-captioned settlement. Using the parameters you described, Simpluris' total estimated cost is \$9,955. After applying a \$455 courtesy discount, we are proposing a discounted fee of \$9,500 for this administration.

Please let me know if you have questions. I look forward to this opportunity to work together.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Patrick J. Ivie".

PATRICK J. IVIE
Chief Sales Executive
m: 310-995-6455
o: 714-975-5260
e: pivie@simpluris.com



3194-C Airport Loop Drive, Costa Mesa, CA 92626
www.simpluris.com | 1 (800) 779 - 2104



3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104
www.simpluris.com

Estimate Number:	20230720-PJI-06	Prepared By:	Patrick J. Ivie
Estimate Date:	7/20/2023	Telephone Number (mobile):	310.995.6455
Estimate Expiration Date:	10/18/2023	Email:	pivie@simpluris.com

Attorney Contact
Attorney: **Emily Hough Ly**
Firm: The Spivak Law Firm
Email: emily@spivaklaw.com

Opposing Counsel Contact
Attorney:
Firm:
Email:

Case Name: **BRIANO/NOR CAL Class and PAGA Settlement**

Assumptions

In addition to the assumptions enumerated below, this estimate assumes that

- (1) Simpluris will receive data in a single, complete file; (2) there will be no substantial change to class size or in response rate;
- (3) administration costs will be paid from the QSF, and (4) Simpluris will submit revisions to this estimate to account for any material changes to scope.

Anticipated Class Size:	131	Undeliverable Rate:	10%
Claims Rate:	N/A	Mail Skip Trace Success Rate:	85%
Opt-out Rate:	1%	Call Rate:	4%
Language(s) for Communication	EN/SP	Average Call Length:	3 Minutes
Reminder Mailing:	Yes	Fund Distribution:	Simpluris
Unclaimed Funds:	Escheat	Number of Distributions:	1
State(s):	CA	Tax Year(s):	1
Length of Administration:	9 Months		

Case Setup

- Undertake postings on Simpluris website of key documents as ordered by the Court (e.g. orders and the Settlement Agreement)
- Data compilation: develop case-specific response tracking

Category	Unit Value	# of Units	Total
Project Manager - Case Setup	\$110.00	2	\$220.00
Case Document Web Postings	\$250.00	1	\$250.00
Database Manager - Initial Data Analysis	\$125.00	2	\$250.00
Total:			\$720.00

Notice and Communications

- 7-page Packet: Notice, Opt Out Form and Dispute Form, mailed in English and Spanish
- Single Postcard Reminder Mailing

Category	Unit Value	# of Units	Total
Spanish Translation assuming 3,500 words	\$0.25	3,500	\$875.00
Bilingual Notice Packet assuming total of 14 images	\$3.00	131	\$393.00
Postage	\$0.63	131	\$82.53
NCOA/CASS/LACS	\$0.25	131	\$32.75
Undeliverable Processing and Skip Trace	\$0.50	14	\$7.00
Remail Notice (assuming 85% skip trace success)	\$4.00	12	\$47.60
Remail Postage	\$0.63	12	\$7.50
Single Postcard Reminder Mailing	\$0.20	131	\$26.20
Postage	\$0.48	131	\$62.88
Mailing Supervisor	\$50.00	3	\$150.00
Total:			\$1,684.46

Contact Center

- Establish case-specific toll-free number and 24/7 IVR
- Assuming 3-minute calls

Category	Unit Value	# of Units	Total
IVR Call Center Setup	\$450.00	1	\$450.00
IVR Monthly Maintenance	\$100.00	9 Months	\$900.00
IVR (includes toll-free number charges)	\$15.00	1	\$15.00
Subtotal			\$1,365.00

Administration

- Process incoming class and counsel communications, disputes, opt-outs, and objections

Category	Unit Value	# of Units	Total
Database Manager	\$125.00	2	\$250.00
Project Manager	\$110.00	2	\$220.00
Disputes Processing	\$3.50	7	\$22.93
Opt-out Processing	\$3.50	1	\$3.50
Reporting to Counsel (hours)	\$100.00	4	\$400.00
Total:			\$896.43

Award Disbursement

- Establish 26 CFR § 1.468B-1 compliant Qualified Settlement Fund ("QSF")
- Disburse award payments and tax documents
- Uncashed checks will be sent to the State Unclaimed Property Fund
- Conduct regular and annual IRS-mandated QSF reporting and reconciliation (one per calendar year)
- Complete all required filings with state and federal tax authorities

Category	Unit Value	# of Units	Total
Disbursement Data Preparation	\$125.00	2	\$250.00
Disbursement Manager - Data Validation	\$90.00	2	\$180.00
Setup Banking Account/QSF	\$675.00	1	\$675.00
QSF Monthly Reconciliation and Maintenance	\$100.00	9	\$900.00
Print & Mail Distribution Check with W2 and 1099	\$0.65	131	\$85.15
Postage	\$0.63	131	\$82.53
Process Returned Checks (assuming 5%)	\$0.25	7	\$1.75
Skip Trace Search Undeliverable Checks	\$0.50	7	\$3.50
Remail Checks (includes postage)	\$1.60	7	\$11.20
Escheat Uncashed Checks	\$500.00	1	\$500.00
QSF Reporting and Final Declaration	\$500.00	1	\$500.00
QSF Annual Tax Reporting and Reconciliation	\$1,350.00	1	\$1,350.00
Distribution Manager	\$90.00	2	\$180.00
Total:			\$4,719.13

Case Completion

- Final audit and review
- Send final declaration and reporting to counsel

Category	Unit Value	# of Units	Total
Data Manager-Final Reporting	\$125.00	2	\$250.00
Clerical-Clean Up Any Misc.	\$50.00	2	\$100.00
Project Manager-Wrap-up Final Issues	\$110.00	2	\$220.00
Total:			\$570.00

Total Estimated Cost of Administration:	\$9,955
Less Client Courtesy Discount:	-\$455
Total Administration Cost, with Discount:	\$9,500

Terms and Conditions

All administration services to be provided by Simpluris to Client, are provided subject to the following terms and conditions ("Agreement"):

1. Services: Simpluris agrees to provide Client those services set forth in the Proposal (the "Services") to which these terms and conditions are attached and which has been provided to Client. As compensation for such Services, Client agrees to pay the fees for Services outlined in the Proposal. Simpluris will often take direction from Client's representatives, employees, agents and or professionals (collectively, the "Client Parties") with respect to the Services. The parties agree that Simpluris may rely upon, and Client agrees to be bound by, any direction, advice or information provided by the Client Parties to the same extent as if provided by Client. Client agrees and understands that Simpluris shall not provide Client or any other party with any legal advice.

2. Fee Estimates Not Binding: Simpluris and Client acknowledge that it is difficult to determine all necessary work required for the Services or the total amount of fees that may be incurred in performing the Services. Client agrees that fees for Services described in the Proposal are estimated based on the requirements provided by Client. Actual fees charged by Simpluris may be greater or less than such estimate. Client specifically agrees that it will be responsible for the payment of all such fees. Simpluris will provide estimates and budgets, but they are not intended to be binding; are subject to unforeseen circumstances, and by their nature are inexact.

3. Billing and Payment: Simpluris will invoice Client on a regular basis unless a specific timeframe is otherwise set forth in the Proposal. Client shall pay all invoices within 30 days of receipt. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Services are not provided on a contingency basis and Client shall remain liable to Simpluris for all fees incurred by Simpluris in performing the Services, regardless of any circumstance that impacts the outcome of Client's matter, including but not limited to, court decisions, actions by the parties, or a failure to consummate a settlement.

4. Further Assurances: Client agrees that it will use its best efforts to include provisions reasonably acceptable to Simpluris in any relevant court order, settlement agreement or similar document that provide for the payment of Simpluris' fees and expenses hereunder. No agreement to which Simpluris is not a party shall reduce or limit the full and prompt payment of Simpluris' fees and expenses as set forth herein and in the Proposal.

5. Rights of Ownership: The parties understand that the software programs and other materials furnished Simpluris to Client and/or developed during the course of the performance of Services are the sole property of Simpluris. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. Client agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished to Client. Fees and expenses paid by Client do not vest in Client any rights in such property, it being understood that such property is only being made available for Client's use during and in connection with the Services provided by Simpluris.

6. Bank Accounts: Simpluris will establish a demand deposit checking account (i.e. non-interest bearing) for funds received related to a distribution, unless directed otherwise in writing by the parties or unless the settlement agreement stipulates otherwise. Simpluris may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and compensation for services Simpluris performs for financial institutions to be eligible for FDIC deposit insurance. The amounts held pursuant to these Terms and Conditions are at the sole risk of Client and, without limiting the generality of the foregoing, Simpluris shall have no responsibility or liability for any diminution of the fund that may result from any deposit made with a financial institution including any losses resulting from a default by such institution or other credit losses. It is acknowledged and agreed that Simpluris will have acted prudently in depositing the fund at such institution.

7. Retention of Documents & Data: Unless otherwise required in writing by the Client or court orders, all returned/undeliverable physical documents will be securely shredded after the data has been confirmed uploaded to our systems. Simpluris will retain bank and tax documents for such period of time as it determines is required to maintain compliance with various federal and state law requirements. Unless otherwise required in writing by the Client or court orders, Simpluris will adhere to the Company's data deletion policies and will destroy all remaining project-related information from our systems three (3) years after the conclusion of the project. Storage beyond three (3) years is available upon request and will be billed as incurred.

8. Limitation of Liability; Disclaimer of Warranties: Simpluris warrants that it will perform the Services diligently, with competence and reasonable care. In no event will Simpluris be liable to Client or any third party for any claims, losses, costs, penalties, fines, judgments, tax activities, lost profits or business opportunities, business interruptions or delay, special, exemplary, punitive, consequential, indirect or incidental damages relating to the performance of the Services, regardless of whether Client's claim is for breach of contract, tort (including negligence and strict liability) or otherwise, regardless of whether such damage was foreseeable and whether such party has been advised of the possibility of such damages. Simpluris' cumulative liability for damages to Client hereunder will be limited to the total fees charged or chargeable to Client for the particular portion of the Services affected by Simpluris' omission or error. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

9. Force Majeure: To the extent performance by Simpluris of any of its obligations hereunder is substantially prevented or delayed by reason of any act of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date

that Simpluris began performing Services, epidemic, pandemic, quarantine, civil commotion, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an export or import restriction, quota, or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation or because of any other matter beyond Simpluris' reasonable control, then Simpluris' performance shall be excused and this Agreement, at Simpluris' option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

10. Rights in Data: Client agrees that it will not obtain, nor does Simpluris convey, any rights of ownership in the programs, system data, or materials provided or used by Simpluris in the performance of the Services.

11. Electronic Communications: During the provision of the Services, the parties may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each party agrees to use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.

12. Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier to the address identified by each Party in the Proposal. Notice shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service. Notice should be addressed to an officer or principal of Client and Simpluris, as the case may be.

13. Waiver: Failure or delay on the part of a party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof or any of other subject, right, power or privilege.

14. Termination: Client may terminate the Services at any time upon 30 days prior written notice to Simpluris. Termination of Services shall in no event relieve Client of its obligation make any payments due and payable to Simpluris for Services rendered up to the effective date of Termination. Simpluris may terminate this Agreement (i) for any reason upon no less than 60 days prior written notice to the Client; or (ii) upon 15 calendar days' prior written notice if the Client is not current in payment of fees.

15. Jurisdiction: These Terms and Conditions will be governed by and construed in accordance with the laws of the state of California, without giving effect to any choice of law principles.

16. Survival: Any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 4 - Limitation of Liability; Disclaimer of Warranties, Section 6 – Rights in Data, and Section 12- Jurisdiction, 14 -Confidentiality, and Section 15 – Indemnification.

17. Confidentiality: Simpluris maintains reasonable and appropriate safeguards to protect the confidentiality and security of data provided by Client to Simpluris in connection with the Services. If, pursuant to a court order or other proceeding, a third-party requests that Simpluris to disclose any confidential data provided by or for Client, Simpluris will promptly notify the Client unless prohibited by applicable law. Client will then have the option to provide Simpluris with qualified legal representation at Client's expense to defend against such request. If, pursuant to a court order, Simpluris is required to disclose data, produce documents, or otherwise act in contravention of the obligation to maintain confidentiality set forth in these terms and conditions, Simpluris will not be liable for breach of said obligation.

18. Indemnification: Client will indemnify and hold Simpluris (and the officers, employees, affiliates and agents) harmless against any losses whatsoever incurred by Simpluris, arising out of any action by a third party, including governmental agencies, in connection with , or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by Simpluris in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by Simpluris pursuant to Client's instructions.

19. Severability: If any term or condition or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

20. Database Administration: Simpluris' database administration for Client assumes that Client will provide complete data that includes all information required to send notifications and calculate and mail settlement payments. Data must be provided in a complete, consistent, standardized electronic format. Simpluris' standardized format is Microsoft Excel, however, Simpluris may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by Simpluris on a time and materials basis according to Simpluris' Standard Rates.

21. Entire Agreement: These Terms and Conditions together with the Proposal constitutes the entire agreement between the parties with respect of the subject matter hereof and supersede all prior understandings, agreements, or representations by or among the parties, written or oral, to the extent they relate in any way to the subject matter hereof.

EXHIBIT 11

CASE NAME: BRIANO v NOR CAL

Date: July 18, 2023

Requesting Paralegal: Emily Houg Ly

Plaintiff or Defense: Plaintiff

Firm Name: The Spivak Law Firm

Telephone: (818) 205-9033

Email: emily@spivaklaw.com

All-In Settlement

Class Size: 131

Opt-Out Rate: 1.5%

No. of Checks Issued: 129

Postage Total: \$287.26

Grand Total: \$12,308.52

DISCOUNTED FLAT FEE: \$8,250.00

The services and numbers reflected herein are an estimate provided by counsel. If the actual services and number are different, our cost estimate will change accordingly.

The attached Terms and Conditions are included as part of our cost proposal. By accepting our costs proposal for this matter, you are thereby agreeing to the Terms and Conditions.

CASE SETUP

Upon Intake of the Data, CPT will Scrub all Records to a Useable Format to Reduce Duplicates, Anomalies and Increase the Success Rate of Deliverability of the Class Notice. Class Members will be Assigned a Unique Mailing ID which will be Used Throughout Administration. All Pertinent Documents will be Posted on a Case Specific Website. The Notice Packet will be Translated into Spanish.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Case Intake & Review	\$95.00	1	\$95.00
Programming: Data Base Setup	\$150.00	1	\$150.00
Static Website	\$500.00	1	\$500.00
Spanish Translation	\$1,200.00	1	\$1,200.00
TOTAL			\$1,945.00

DIRECT MAIL NOTICE

To Ensure Mailing to the Most Current Address Possible, CPT will Perform an Address Update via NCOA. CPT will Mail a Full-Length Notice, 1-Page Exclusion, Dispute & Objection Form in English & Spanish.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Format Documents	\$95.00	2	\$190.00
National Change of Address Search (NCOA)	\$135.00	1	\$135.00
Print & Mail Notice Packets	\$1.50	131	\$196.50
First-Class Postage (up to 2 oz.)*	\$0.87	131	\$113.97
TOTAL			\$635.47

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

PROCESS RETURNED UNDELIVERABLE MAIL

Based On CPT's Historical Data, 6% of the Notices will be Returned Undeliverable. Upon Receipt, CPT will Perform a Skip Trace in an Attempt to Obtain a Current Address; Thus, 91% of the Notice Packets are Remailled.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Clerical Staff	\$60.00	1	\$60.00
Update Undeliverable Mail Database	\$0.50	8	\$4.00
Skip Trace for Best Address	\$1.00	7	\$7.00
Print & Remail Notice Packets	\$1.50	6	\$9.00
First-Class Postage (up to 2 oz.)	\$0.87	6	\$5.22
TOTAL			\$85.22

OPT-OUT PROCESSING

CPT will Process and Validate all Opt-Outs and Other Responses from Class Members. Deficient Opt-Outs will Receive a Deficiency Notice by Mail and Provide an Opportunity to Cure. CPT will Scrub the Filed Opt-Outs to Eliminate Duplicates, Fraudulent, and Otherwise Invalid.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: De-duplication/Scrubbing	\$150.00	1	\$150.00
Project Manager: Validate Opt-Out Requests	\$95.00	1	\$95.00
Clerical Staff	\$60.00	1	\$60.00
Opt-Out & Change of Address Processing	\$2.00	2	\$3.93
Print & Mail Deficiency/Dispute Notices	\$1.50	1	\$1.50
First-Class Postage (up to 1 oz.)	\$0.66	1	\$0.66
Review & Process Deficiency Responses	\$10.00	1	\$10.00
		TOTAL	\$321.09

TELEPHONE SUPPORT

CPT will Maintain a Toll-Free Phone Number with IVR Capabilities and Live Class Member Support Representatives During Normal Business Hours, Monday-Friday, 9:00 AM - 5:30 PM, PT. The Dedicated Case Phone Number will Remain Active Up to 120 Days After Disbursement.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Toll-Free Number Establish/Setup	\$150.00	2	\$300.00
Live Call Center Support Reps.	\$3.00	27	\$81.00
		TOTAL	\$381.00

SSN VERIFICATION

Verify SSN for Validity with IRS / IRS Backup Withholdings

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: SSN Selection	\$150.00	1	\$150.00
Department Manager: Analysis & Reporting	\$95.00	2	\$190.00
IRS SSN Verification	\$0.10	129	\$12.90
		TOTAL	\$352.90

DISTRIBUTION SERVICES

CPT will Establish and Manage the Qualified Settlement Fund (QSF) for up to One Year After Disbursement. Upon Approval, CPT will Perform all Necessary Calculations and Disburse Funds. CPT will Mail an 8.5"x11" MICR Check to Valid Class Members. CPT Uses a Payee Positive Pay System to Reconcile Checks Cashied and Conducts Monthly Account Reconciliations for the QSF.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: Calculation Totals	\$150.00	2	\$300.00
Project Supervisor: Review of Distribution	\$150.00	2	\$300.00
Project Manager: Correspondence w/Parties	\$95.00	1	\$95.00
Programming: Setup & Printing of Checks	\$150.00	3	\$450.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Print & Mail Notice, Checks & W2/1099	\$2.50	129	\$322.59
First-Class Postage (up to 1 oz.)*	\$0.66	129	\$85.16
Check Reminder Postcard	\$0.40	103	\$41.29
Postage for Postcard	\$0.51	103	\$52.65
		TOTAL	\$2,096.69

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

POST-DISTRIBUTION & TAX REPORTING

Any Check Returned Undeliverable is Skip Traced to Locate a Current Address and Remailed Accordingly. CPT will Process Requests for Check Reissues Continuously. CPT Prepares Annual Tax Reporting on Behalf of the QSF and Federal and State Taxes in Accordance with Current State and Federal Regulations. Upon the Conclusion of the Settlement, a Final Report and Declaration will be Provided to all Parties.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Supervisor: Account Reconciliation	\$150.00	10	\$1,500.00
Update Undeliverable Checks Database	\$0.50	10	\$5.00
Skip Trace for Best Address	\$1.00	10	\$10.00
Remail Undeliverable Checks	\$2.50	9	\$22.50
First-Class Postage (up to 1 oz.)	\$0.66	9	\$5.94
Re-Issue Checks as Required	\$5.00	7	\$35.00
First-Class Postage (up to 1 oz.)	\$0.66	7	\$4.62
Project Supervisor: Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming: Weekly & Final Reports	\$150.00	2	\$300.00
Project Supervisor: Final Declaration	\$150.00	2	\$300.00
Project Manager: Account Files Sent to Atty	\$95.00	2	\$190.00
CA Tax Preparation*	\$600.00	1	\$600.00
Annual Tax Reporting to IRS*	\$750.00	1	\$750.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
TOTAL			\$4,373.06

*CPT will file Federal and California taxes in accordance to current state and federal regulations. Additional charges will apply if the Settlement/Order/parties require(s) multiple state tax filings.

SCO ESCHEATMENT PROCESSING

Escheatment Processing to the State Controller Unclaimed Property Division / Uncashed Check Rate 21%			
ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
UPEnterprise Reporting Services	\$0.15	27	\$4.05
Project Manager: SCO Fall Reporting	\$95.00	2	\$190.00
Project Supervisor: Review of SCO Reports	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Check Reissues for Winter/Spring QTR	\$5.00	3	\$15.00
First-Class Postage (up to 1 oz.)	\$0.66	3	\$1.98
Project Supervisor: June Remittance	\$150.00	1	\$150.00
Project Manager: June Remittance	\$95.00	2	\$190.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Add'l Account Recons	\$150.00	6	\$900.00
Add'l QSF Annual Tax Reporting	\$500.00	1	\$500.00
TOTAL			\$2,118.09

GRAND TOTAL \$12,308.52

TERMS AND CONDITIONS

These Terms and Conditions are made a part of, and incorporated by reference into, any cost proposal or Bid presented by CPT Group, Inc. to Client

1. Definitions.

- a) **"Affiliate"** means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with another party.
 - b) **"Approved Bank"** means a financial institution insured by the Federal Deposit Insurance Corporation with capital exceeding \$1 billion.
 - c) **"Case"** means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.
 - d) **"Claims Administrator"** means CPT Group, Inc., a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
 - e) **"Client"** means collectively Plaintiff Counsel and Defense Counsel.
 - f) **"Client Content"** means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, and objections, which contain Client Data.
 - g) **"Client Data"** means proprietary or personal data regarding Client or any of its Class Members under this Agreement, as provided by Client.
 - h) **"Class Member"** means an individual who is eligible under the Settlement Agreement to receive a designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons so designated or addressed therein.
 - i) **"Confidential Information"** means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
 - j) **"Court Order"** means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more parties to the Case to carry out a legal obligation pursuant to the Case.
 - k) **"Defendant"** means the named party and/or parties in the Case against whom action is brought.
 - l) **"Defense Counsel"** means the attorney of record for the defendant(s) in the Case.
 - m) **"Intellectual Property Right"** means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
 - n) **"Order"** means a Product purchase in a schedule, statement of work, addendum, exhibit, or amendment signed by Client and CPT.
 - o) **"Parties"** shall mean collectively Defendants, Defense and Plaintiff as defined in the Settlement Agreement or Court Order.
 - p) **"Plaintiff"** means the named party and/or parties in the Case who are bringing the action.
 - q) **"Plaintiff Counsel"** means the attorney of record for plaintiff Class Members in the Case.
 - r) **"Products"** means any and all CPT Services, and work products resulting from Services.
 - s) **"Qualified Settlement Fund"** means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.
 - t) **"Service"** means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
 - u) **"Software"** means any and all of CPT's proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
 - v) **"Settlement"** means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.
 - w) **"Settlement Agreement"** means the contract between parties to the Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Class Members.
 - x) **"Term"** means the term of the Agreement, as set forth in the Order.
 - y) **"Transmission Methods"** means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.
 - z) **"Wire Information"** means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.
2. Client Obligations. Client will ensure that it has obtained all necessary consents and approvals for CPT to access Client Data for the purposes permitted under this Agreement and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect the Client Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.
3. Security. The Parties and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any personally identifiable information provided by Class Members and/or Client under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such personally identifiable information; (c) protect against unauthorized access to or use of such personally identifiable information that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such personally identifiable information in connection with its disposal. Each Party will respond promptly to remedy any known security breach involving the personally identifiable information provided by you and/or Client under this Agreement and shall promptly inform the other Parties of such breaches.
4. CPT Obligations. Provided that Client complies with all provisions of Section "Client Obligations", CPT will (i) maintain appropriate safeguards for the protection of Client Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Client Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Client.
5. Mutual Obligations.
- a) Resources. Each party agrees to: (i) provide the resources reasonably necessary to enable the performance of the Services; (ii) manage its project staffing, milestones, and attendance at status meetings; and (iii) ensure completion of its project deliverables and active participation during all phases of a Service project. The parties acknowledge that failure to cooperate during a Service project may delay delivery of the Service.

If there is a delay, the party experiencing the delay will notify the other party as soon as reasonably practicable, and representatives of each party will meet to discuss the reason for the delay and applicable consequences. Changes beyond the scope of an Order and/or a party's delay in performing its obligations may require an amended Order.

- b) **Incident Notification.** Each party will promptly inform the other parties in the event of a breach of Client Data in their possession and shall utilize best efforts to assist the other parties to mitigate the effects of such incident.
6. **Qualified Settlement Fund Account.** At Client's request, CPT shall be authorized to establish one or more bank accounts at an Approved Bank. The amounts held at the Approved Bank under this Agreement are at the sole risk of Client. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.
7. **Fees and Payment.** Pricing stated within the proposal is good for 90 Days. All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the Client data and /or notice documents. Client will be invoiced for any remaining fees according to the applicable Order. Pricing stated within any proposal from CPT to Client is for illustrative purposes only and is only binding upon an Order executed by CPT and Client. Payment of fees will be due within 30 days after the date of the invoice, except where this Agreement expressly prescribes other payment dates. All fees set forth in an Order are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% (or the highest rate allowable by law, whichever is lower) per month on the outstanding balance from the date due until the date of actual payment. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation.
8. **Term and Termination.**
- a) **Term.** The Term is set forth in the Order. The Agreement may be renewed by mutual written agreement of the parties.
- b) **Termination for Cause.** Either party may immediately terminate this Agreement if the other party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching party's receipt of written notice describing the breach in reasonable detail.
- c) **Bankruptcy Events.** A party may immediately terminate this Agreement if the other party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
- d) **Effect of Termination.** Immediately following termination of this Agreement, upon Client's written request, Client may retrieve Client Data via Client's secure FTP site in the same format in which the Client Data was originally inputted into the Software, at no additional charge. Alternatively, Client Data can be returned in a mutually agreed format at a scope and price to be agreed. CPT will maintain a copy of Client Data and Client Content for no more than four (4) years following the date of the final check cashing deadline for Class Members under the Settlement Agreement, after which time any Client Data and Client Content not retrieved will be destroyed.
- e) **Final Payment.** If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination," Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.

Confidentiality. Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; provided, however, that such party shall use at least reasonable care. These obligations shall survive termination of this Agreement.

- 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 12