

1 HAROUT MESSRELIAN (SBN: 272020)  
2 MESSRELIAN LAW INC.  
3 500 N. Central Ave., Suite 840  
4 Glendale, CA 91203  
5 Telephone: (818) 484-6531  
6 Facsimile: (818) 956-1983

7 Attorneys for Plaintiff MARIO CABRAL, and all others similarly situated

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

11 MARIO CABRAL, on behalf of himself, all  
12 others similarly situated, and the general  
13 public, and as an "aggrieved employee" on  
14 behalf of other "aggrieved employees"  
15 under the Labor Code Private Attorneys  
16 General Act of 2004,

17 *Plaintiff,*

18 vs.

19 SENTRY INSURANCE COMPANY and  
20 DOES 1 to 25, inclusive,

21 *Defendants.*

Case No.: 22STCV21484

22 **DECLARATION OF HAROUT**  
23 **MESSRELIAN IN SUPPORT OF**  
24 **PLAINTIFF'S UNOPPOSED MOTION**  
25 **FOR PRELIMINARY APPROVAL OF**  
26 **CLASS ACTION AND PAGA**  
27 **SETTLEMENT**

28 Action filed: July 1, 2022  
Hearing Date: December 13, 2023  
Hearing Time: 9:00 a.m.  
Hearing Dept: 54, Hon. Maurice A. Leiter

**DECLARATION OF HAROUT MESSRELIAN IN SUPPORT OF PLAINTIFF'S**  
**UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**  
**AND PAGA SETTLEMENT**

I, HAROUT MESSRELIAN, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California and am the attorney of record for Plaintiff Mario Cabral ("Plaintiff") in his complaint against Defendant Sentry Insurance Company (hereafter "Sentry" or "Defendant"). Plaintiff and Defendant together are referred to herein as "Parties".

2. I am experienced in handling employment law matters and specifically wage and hour representative and individual actions. My qualifications are as follows: I received my JD from Loyola Law School in 2010. I started my own law firm in 2011 – the Law Offices of Harout Messrelian. Since 2016, I have been the founder and principal attorney at Messrelian Law, Inc. Since 2011, I have filed and handled over 275 civil actions and/or claims involving representative actions under the Private Attorneys General Act ("PAGA") and/or wage and hour claims on behalf of my clients and have been appointed Class Counsel in three class action cases – *Zohrab Mekhitarian v. Triple Play Motors dba Bob Smith Toyota*, Los Angeles Superior Court Case No. 19STCV22411 (ADR Services, Inc., Case Number 20-2668-RWT), *Carina Camberos, on behalf of herself and others similarly situated, v. Great American Chicken Corp, Inc.*, Los Angeles Superior Court Case No. 21STCV32015, and *Robert Garcia, on behalf of himself and others similarly situated v. HD Supply Management Inc.*, San Bernardino Superior Court Case No. CIVSB2028067. I have a practice that encompasses cases in the Los Angeles Superior Courts, the Orange County Superior Courts, the Riverside County Superior Courts, the San Bernardino County Superior Courts, the Alameda County Superior Courts, Santa Clara County Superior Courts, San Mateo County Superior Courts, San Diego Superior Courts, San Francisco County Superior Courts, and the Monterey County Superior Courts.

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

4. The Class Action and PAGA Settlement Agreement (the "Settlement") is attached

hereto as **Exhibit 1**.

***Factual and Procedural Background***

5. Defendant Sentry Insurance Company (hereafter “Sentry”) is a mutual insurance company specializing in business insurance.

6. Defendant employed Plaintiff for over ten (10) years. Plaintiff was classified as an hourly, non-exempt employee and his latest job title was Senior Claims Field Appraiser. Plaintiff’s employment with Defendant ended in or around March 2022.

7. The Settlement defines the “Class Members” (collectively referred to as the “Settlement Class”) to mean all individual Defendants employed in California in an hourly, non-exempt position at any time during the Class Period. The “Class Period” means July 1, 2018 through the date the Court grants preliminary approval of the Settlement.

8. Defendant estimates that it employed about 121 Class Members during the Settlement Period.

9. By a letter dated April 14, 2022, Plaintiff, through his counsel’s office, advised the Labor and Workforce Development Agency (“LWDA”) and Defendant by certified mail of the specific Labor Code provisions Plaintiff alleges Defendant violated, including the facts and theories to support the alleged violations. A true and correct copy of Plaintiff’s letter to the LWDA dated September 23, 2019 is attached hereto as **Exhibit 2**.

10. On July 1, 2022, Plaintiff commenced the instant Action by filing a Complaint in the Los Angeles Superior Court, Case No. 22STCV21484, against Defendant alleging causes of action against Sentry for (1) Failure to Pay Wages for All Hours Worked; (2) Failure to Pay Minimum Wages; (3) Failure to Pay Overtime; (4) Failure to Provide Accurate Itemized Wage Statements; (5) Failure to Pay Wages When Employment Ends; (6) Failure to Pay Wages Owed Every Pay Period; (7) Failure to Provide Rest Breaks; (8) Failure to Provide Meal Breaks; (9) PAGA; (10) Failure to Reimburse; (11) FEHA age discrimination; (12) Failure to prevent discrimination; (13) Wrongful Termination; and (14) Violation of Bus. and Professions Code section 17200. A true and correct copy of the Complaint is attached hereto as **Exhibit 3**.

11. SENTRY filed its Answer to the original Complaint on September 20, 2022

denying the allegations in such Complaint and denying any and all liability for the causes of action alleged therein. A true and correct copy of Defendant's Answer to the Complaint is attached hereto as **Exhibit 4**. The Parties met and conferred and agreed to participate in a private mediation.

12. On April 19, 2023, the parties participated in an all-day mediation with Todd Smith, Esq., an experienced professional mediator, and engaged in further post-mediation negotiations that resulted in the Settlement Agreement to settle the Action.

13. On August 9, 2023, per the Settlement, Plaintiff filed a First Amended Class Action Complaint (the "FAC") for: (1) Failure to Pay Wages at the Correct Rates of Pay; (2) Failure to Provide Rest Breaks; (3) Failure to Provide Meal Periods; (4) Failure to Indemnify; (5) Wage Statement Penalties; (6) Waiting Time Penalties; (7) Failure to Pay Wages Owed Every Pay Period; (8) Unfair Competition; and (9) PAGA. The FAC is the operative complaint in the Action. A true and correct copy of the FAC is attached hereto as **Exhibit 5**. Sentry filed its Answer to Plaintiff's FAC on September 6, 2023, denying any and all liability for the causes of action alleged therein. A true and correct copy of Defendant's Answer to Plaintiff's FAC is attached hereto as **Exhibit 6**.

14. In advance of the mediation, and before agreeing to the terms of the Settlement, the Parties engaged in informal discovery. Through informal discovery, Defendant produced a sampling of time and pay records, policies and procedures regarding the payment of wages, the provision of meal and rest breaks, time keeping policies, including recording hours, issuance of wage statements, and providing all wages at separation, as well as information regarding the number of putative class members and the mix of current versus former employees, the average number of hours worked, the wage rates in effect, and length of employment for the average putative class member. Now that the Parties have finalized the long-form Settlement, Plaintiff submits it to this Court for preliminary approval.

#### ***Ascertainable and Numerous Class***

15. A class is ascertainable when it may be readily identified without unreasonable expense or time by reference to official records. Here, Plaintiff maintains that the Settlement Class

is ascertainable because its members may be identified by reference to Defendant's records and Defendant has agreed to share the relevant information from its records to facilitate the process. Therefore, the Settlement Class is ascertainable.

16. 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 121 potential Settlement 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's membership is sufficiently numerous.

#### ***Predominant Common Questions***

17. 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 uniform policy of failing to properly account for all time worked and failing to, among other things, properly pay overtime wages, provide off-duty meal and rest periods, indemnify the Class Members for all business expenses, timely pay wages upon termination, and provide compliant wage statements, 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 provide the Class Members with all meal and rest periods, and failed to pay the required premiums for workdays with unprovided meal and rest periods; (2) Whether Defendant failed to pay all wages earned to Class Members for all hours worked at the correct rates of pay; (3) Whether Defendant failed to indemnify the Class Members for all business expenses; (4) Whether Defendant willfully failed to provide the Class Members with timely final wages; (5) Whether Defendant engaged in unfair competition within the meaning of Business and Professions Code §§ 17200, et seq., with respect to the Class Members; (6) Whether Defendant knowingly and intentionally failed to provide the Class Members with accurate wage statements. Therefore,

common questions predominate.

***Typicality***

18. Plaintiff contends that his claims are typical for the purposes of certifying the Class. Plaintiff, like absent Class Members was subject to the same relevant policies and procedures governing his compensation, hours of work, meal and rest periods, and reimbursement of business expenses. Because Plaintiff contends that he was subject to the same general course of conduct as absent Class Members, resolving the common questions as they apply to the Plaintiff will determine Defendant's *prima facie* liability to the all the Class Members. Moreover, Plaintiff's claims could potentially be subject to the same primary affirmative defenses as those of absent Class Members. Accordingly, Plaintiff's claims are typical of the Settlement Class.

***Adequacy***

19. The adequacy requirement is met where the plaintiff is represented by counsel qualified to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to the class' interests. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451. In other words, where the plaintiff has adequate counsel, the plaintiff may represent the entire class absent any disabling conflicts of interest that might hinder the plaintiff's ability to represent the class.

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

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***Class Action Treatment Is Superior***

21. A class action is also superior to other means adjudicating the issues in this action. The predominance of common legal and factual questions shows that this Court could fairly adjudicate the claims of the Class Members through a single class action. In view of the *theoretical* alternatives that proposed class members could potentially utilize, such as a 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.

***Exposure & Risk Analysis***

22. The Parties reached the Settlement through arm's-length bargaining with the aid of a respected mediator. The Parties conducted sufficient investigation and discovery to allow Counsel and the Court to act intelligently. I considered various sources of information in the lead-up to and during the mediation of April 19, 2023 that enabled Plaintiff to achieve the Settlement at issue.

- Defendant produced and I reviewed Plaintiff's personnel file.
- My office requested that Defendant produce any and all policies on "off the clock" work, meal and rest periods, and reimbursement of expenses in effect during the relevant time period. Defendant produced those policies as part of their employee handbook. They are largely consistent with the Wage Order and the Labor Code.
- My office requested that Defendant provide the total number of employees, paychecks, and the pay cycles during the relevant period. Defendant provided the answers to each of these questions.
- My office requested sample time and payroll records for the relevant time period. Defendant produced time and pay records for 15 individuals. This represents a little over 10% of the total employees that Defendant employed during the Class Period.
- My office then retained a professional data analyst, James Toney, to examine the records and determine if there was any pay discrepancy in timesheet hours versus paid hours, meal violations, and if there was any rounding/time shaving issues. Plaintiff is prepared to provide the Court with the data analysis for *in camera* inspection upon its request.

- I analyzed the state of caselaw on off-the-clock claims, travel time, and claims for unreimbursed expenses.

23. Defendant disclosed that as of the date of mediation, there were approximately 121 Class Members and 5400 Workweeks during the Class Period. Based on this information and with the aid of the data analyst, I prepared “damages” estimates to determine Defendant’s maximum exposure in connection with the settlement negotiations. True and correct copies of the spreadsheets I prepared are collectively attached to this declaration as **Exhibit 7**. As a result of my analysis of potential monetary recoveries for all claims in this case, I determined that such monetary remedies could reach approximately \$5,887,246.69 (of which \$1,954,500 consists of civil penalties, \$256,350 in wage statement penalties, and \$434,055.19 in waiting time penalties). Id. The estimates are in essence “home run” projections that do not factor in any of the risks involved in litigating this Action and not in line with reality, especially when considering Defendant’s policies and its position on the issues.

24. Plaintiff’s primary theory of recovery – that Defendant failed to pay him and other putative class members minimum wages for travel time and off the clock work– is subject to significant risk. Regarding travel time, Defendant contends that Plaintiff and the others were on the clock during all travel time and as such, properly compensated. Furthermore, Defendant provided evidence at mediation that due to the Covid-19 Pandemic, any issues with travel time ceased to exist as all of the employees began to work remotely. Regarding off-the clock- work Plaintiff contends that Defendant required him and the other Class Members to continue working after 4:30 p.m., including emails, calls, working on reports and other such work. It is Defendant’s position that such off-the-clock work was not a requirement. Plaintiff will rely on declarations and witness statements to prove this claim. Generally, a court will not certify a class unless it can determine an appropriate classwide methodology. *See, e.g., Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1. Here, Plaintiff may rely heavily on anecdotal evidence to prove the off-the-clock claim, especially given the lack of records indicating when and how long such off-the-clock work may have taken place. Individualized inquiries would need to be conducted person-by-

1 person, day-by-day, to determine if an individual in fact spent “minutes” off-the-clock on a  
2 “regular” basis. Accordingly, there is a significant risk that the Court would consider this  
3 evidentiary showing insufficient as a classwide methodology.

4 25. There are risks to Plaintiff’s meal period claim. The employee handbook  
5 Defendant produced prior to mediation appears to be fully consistent with California law and  
6 required all the employees to take meal periods in accordance with the relevant laws. Moreover,  
7 based on the sample time records provided by Defendant, out of 15,562 workdays recorded in the  
8 sample that were greater than 5 hours, only 10.6% were workdays with a late, short, or no meal  
9 period recorded. HM ¶ 25. As such, this required a discount on the meal period claim.

10 26. There are risks to Plaintiff’s rest period claim. Employers are not required to record  
11 rest periods and such periods are paid. Thus, unlike unpaid meal periods where there are often  
12 records showing whether an employee clocked out or not, there is no such evidence to prove a  
13 missed rest period or that the employer refused to authorize and permit one. Managing such claims  
14 at trial has become exceedingly difficult. Plaintiff will depend on sample witness testimony and  
15 surveys to prove the claims. While a victory with such evidence is certainly possible, relevant  
16 caselaw makes such claims risky from a trial management and due process perspective. See *Duran*  
17 *v. U.S. Bank National Assn.*, 59 Cal. 4th 1, 31 (2014) (explaining “[I]f sufficient common  
18 questions exist to support class certification, it may be possible to manage individual issues  
19 through the use of surveys and statistical sampling.”); *Tyson Foods, Inc. v. Bouphakeo* (2015)  
20 136 S.Ct. 382; *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426.

21 27. There also risks to Plaintiff’s claims as to Defendant’s alleged failure to indemnify  
22 for business expenses. Plaintiff alleges that Defendant required him and the others to use their  
23 personal cell phones, personal computers, and home internet in the course of performing their  
24 duties. There is a risk that the Court may consider Plaintiff’s claims to be individual in nature and  
25 unfit for class wide resolution. Furthermore, Defendants had expense reimbursement policies in  
26 place during the relevant time period.

27 28. Plaintiff also asserts claims for wage statement violations, untimely wage  
28 violations, and PAGA penalties, which are all derivative claims that have no value on their own,

1 and especially when the substantive labor code violations, like “off the clock” work or business  
2 expense reimbursement is being used as a predicate. *See Naranjo v. Spectrum Security Services,*  
3 *Inc.*, 40 Cal App 5th 444.

4         29. Regarding PAGA, the Parties discounted potential penalties under this claim for  
5 multiple reasons. For one, Plaintiff’s PAGA claims are predicated on the wage underpayment,  
6 meal, rest, business expense reimbursement, and wage statement violations described above, and  
7 thus subject to the same disputes and defenses. Additionally, PAGA states a court has discretion  
8 to award a lesser amount than the maximum penalty. Lab. Code § 2699(e)(2); *Thurman v.*  
9 *Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award).  
10 It is also difficult to imagine a Court awarding substantially more in penalties than the restitution  
11 it awards. In my personal experience, PAGA penalty awards in State court are small even for  
12 egregious, intentional violations of the Labor Code. The PAGA expressly counsels against such  
13 awards. *See* Labor Code § 2699(e)(2) (“...a court may award a lesser amount than the maximum  
14 civil penalty amount specified by this part if, based on the facts and circumstances of the particular  
15 case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or  
16 confiscatory.”). There is a substantial risk that the Court could reduce civil penalties to an  
17 insignificant amount if it is unpersuaded by Plaintiff’s evidence of willful and intentional conduct.  
18 The Court could also award no civil penalties if it determines that an award of premium wages  
19 (which many view as a penalty) is sufficient to punish Defendants’ conduct. In *Carrington v.*  
20 *Starbucks* (2018) 30 Cal. App. 5th 504, court made a significant reduction from \$50 per violation  
21 to \$5 per violation in imposing penalty and declined to impose penalties for the additional  
22 statutory violations. Under the logic of *Carrington*, Plaintiff and aggrieved employees could not  
23 hope to recover a substantial amount. Defendant has also posed valid defenses to the Labor Code  
24 claims underlying Plaintiff’s allegations. Thus, the chance of Plaintiff recovering the maximum  
25 value of the claims is highly unlikely.

26         30. For mediation purposes, I estimated a maximum exposure of approximately  
27 \$1,954,500 in civil penalties. This estimate does not reflect the realities of this case and did not  
28 take into account any of the risks discussed above and assumed a violation for every single pay

1 period. I also assessed multiple penalties for the same pay period for the same alleged violations  
2 of different Labor Code provisions and derivative violations. I am not aware of any California  
3 state courts awarding plaintiffs multiple PAGA penalties for the same violation for the same pay  
4 period under different Labor Code provisions. This may be because the PAGA does not provide  
5 for what many employers characterize as claim splitting and not merely stacking.

6 31. In view of the risks, the Settlement reflects my estimate of the total amount of  
7 damages, monetary penalties or other relief that the class could reasonably expect to be awarded  
8 at trial, taking into account the likelihood of prevailing and other attendant risks. It also represents  
9 a fair, adequate, and reasonable compromise amount for these claims and warrants preliminary  
10 approval.

#### 11 ***Allocation of PAGA Payment***

12 32. The settlement of PAGA penalties in the sum of \$15,000, of which 75% (\$11,250)  
13 will be paid to the LWDA and 25% (\$3,750) will be distributed to the Class, is reasonable and  
14 appropriate under the circumstances. The Parties negotiated a good faith amount for PAGA  
15 penalties to be paid to the LWDA and to the Settlement Class. The portion to be paid to the  
16 LWDA was not the result of self-interest at the expense of other Class Members. Where  
17 settlements “negotiate[] a good faith amount” for PAGA penalties and “there is no indication that  
18 this amount was the result of self-interest at the expense of other Class Members,” such amounts  
19 are generally considered reasonable. *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No.  
20 CV-08-0844 EDL, 2009 WL 928133, at \*9. Likewise, where the employer did not act willfully,  
21 and made good faith attempts to comply with wage and hour laws, a reduction or lesser penalty  
22 is warranted because imposing maximum PAGA penalty for each violation would have been  
23 unjust, arbitrary, and oppressive. *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-  
24 529 (affirming trial court’s award of only 10% of maximum PAGA penalty for meal break  
25 violations). The amount to be paid to the LWDA comports with PAGA settlement amounts  
26 approved by other courts. *See, e.g., Chu v. Wells Fargo Investments, LLC* (N.D. Cal., Feb. 16,  
27 2011) 2011 WL 67245, 81 (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million  
28 common fund); *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal., July 11, 2013) 2013 WL 3541217

(approving PAGA payment of \$7,500 to LWDA out of \$1.25 million common fund settlement); *Hopson v. Hanesbrands, Inc.* (N.D. Cal. Aug. 8, 2008) 2008 WL 3385452, at \*1 (approving PAGA settlement of 0.3% or \$1,500); *see Nordstrom Com’n Cases* (2010) 186 Cal.App.4th 576, 589 (approving PAGA settlement and release that allocated \$0 to PAGA claim). Courts have also approved settlements for \$20,000 or less. *See, e.g., Hicks v. Toys ‘R’ Us–Delaware, Inc.*, (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at \*1 (approving \$5,000 PAGA payment in a case involving \$4 million settlement); *Franco v. Ruiz Food Prods., Inc.* (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801 at \*14 (approving PAGA penalties of \$10,000 as part of \$2.5 million settlement); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at \*3 (approving PAGA payment of \$10,000 as part of \$3.7 million common-fund settlement).

***Attorneys’ Fees and Costs***

33. I represent Plaintiff on a straight contingency basis. I intend to request attorneys’ fees of \$75,000 (33.33% of the GSA) and reasonable litigation costs incurred which I currently estimate is approximately \$8,966.00 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 representative and class action matters, fee awards of approximately one-third of the settlement fund are routinely approved as reasonable.

34. The amount of fees and costs requested are commensurate with (1) the risk I took in bringing the case, (2) the extensive time, effort and expense dedicated to the case, (3) the results achieved for the Class, and (4) the other cases I turned down to devote time to this matter. I also met and conferred with Defendant’s counsel on numerous occasions, reviewed and analyzed the data and documents provided by Defendant, researched applicable law, and prepared estimates of “damages” for purposes of settlement discussions, among other tasks.

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

1 fees requested, the work performed, and the risks incurred, the requested fees and costs are  
2 reasonable and should be awarded. I will provide the Court with the total number of hours I have  
3 spent working on this case with the motion for final approval.

4 ***Enhancement to Named Plaintiff***

5 36. The Settlement provides that Plaintiff may seek an Enhancement award of not  
6 more than \$2,500.00. This amount is entirely reasonable given Plaintiff's efforts in this action  
7 and the risks he undertook on behalf of the Class Members. Here, Plaintiff has devoted many  
8 hours advancing the interests of the Class. Plaintiff has done this by, among other things, retaining  
9 experienced counsel, providing them with information about his work history with Defendant and  
10 Defendant's policies and practices with respect to the wage and hour claims at issue, and being  
11 actively involved in the settlement process to ensure a fair result for the Class as a whole. In doing  
12 this, Plaintiff has been exposed to significant risks, including the risk of an order to pay  
13 Defendant's attorney's fees and costs if this action had been unsuccessful (see Lab. Code §§  
14 218.5-218.6). The efforts and risks that Plaintiff undertook on behalf of the Class shows that the  
15 proposed payment is fair, adequate, and reasonable, and thus warrants preliminary approval. See  
16 *generally* Declaration of Mario Cabral.

17 ***Plaintiff's Additional Released Claims***

18 37. Plaintiff entered into a confidential individual settlement agreement with  
19 Defendant to settle his individual claims for wrongful termination. As part of this confidential  
20 agreement, Plaintiff also provided Defendant with a general release of all claims, whether known  
21 or unknown, including unknown claims covered by Civil Code Section 1542. Plaintiff will  
22 provide the individual settlement to the Court for *in camera* inspection upon its request.

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

24 38. The Settlement requires distribution of the Class Notice by First Class U.S. mail  
25 only. Although there are current employee Class Members, it is uncertain whether Defendant's  
26 records of their contact information include email addresses and Class Members may not be in a  
27 position to check their emails on electronic device. As such, notice by mail alone is fair, adequate,  
28 and reasonable.

1           39.     The Class Notice (Exhibit A to the Settlement) provides Class Members with all  
2     pertinent information that they need to fully evaluate their options and exercise their rights under  
3     the Settlement. Specifically, it clearly and concisely explains, among other things: (1) what the  
4     Settlement is about; (2) who is a Settlement Class Member; (3) how Class Counsel will be paid;  
5     (4) how to submit an exclusion request not to be bound by the Settlement; (5) how to object to  
6     the Settlement; (6) how the Settlement will be allocated; (7) how payments to Settlement Class  
7     Members will be calculated; and (8) how the disputes will be resolved. Additionally, the Class  
8     Notice will include the number of eligible Workweeks a Class Member had during the Settlement  
9     Period. Accordingly, the Class Notice should be approved because it describes the Settlement  
10    with sufficient clarity and specificity to explain to Settlement Class Members what this action is  
11    about, their rights under the Settlement, and how to exercise those rights.

12                                   ***Settlement Administration Duties***

13           40.     The duties of the Settlement Administrator are spelled out in sections 4 and 8 of  
14    the Settlement and in the bid provided by Phoenix Settlement Administrators.

15                                   ***Settlement Administration Costs***

16           41.     With regard to the settlement administration costs provision, it is reasonable.  
17    Before agreeing to Phoenix Settlement Administrators, the Parties sought and reviewed bids from  
18    another reputable third party administrator and mutually decided to go with Phoenix Settlement  
19    Administrators:

20                   A. CPT Group, Inc. = \$10,000.00;

21                   B. Phoenix Settlement Administrators= \$6,500.00; and

22                   C. ILYM, Inc. = \$4,995.00;

23    A true and correct copy of the bid from CPT Group is attached hereto as **Exhibit 8**. A true and  
24    correct copy of the bid from Phoenix Settlement Administrators is attached hereto as **Exhibit 9**.  
25    A true and correct copy of the bid from ILYM Group, Inc. is attached hereto as **Exhibit 10**. Thus,  
26    settlement administration costs provision should be given preliminary approval.

27                                   ***Uncashed Checks***

28           42.     Participating Class Members shall have one hundred and eighty (180) days from

1 the date of the check's issuance to cash their Net Settlement Payment checks. The participating  
2 Class Members shall mean those Class Members who do not exclude themselves from the  
3 Settlement. After the expiration of the 180-day period, on Defendant's behalf, the Settlement  
4 Administrator shall remit any amounts from settlement checks that remain uncashed and  
5 otherwise unclaimed, to the California Unclaimed Property Fund, with an identification of the  
6 participating Class Member to whom the funds belong.

7 ***Notice of Settlement to the LWDA***

8 43. Pursuant to the Labor Code § 2699(l)(2), Plaintiff submitted a copy of the  
9 Settlement with the LWDA at the same time Plaintiff's Motion is being filed with the Court. A  
10 true and correct copy of Plaintiff's submission with the LWDA and a confirmation email is  
11 attached as **Exhibit 11**.

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

14 Executed on November 29, 2023 at Glendale, California.



15 \_\_\_\_\_  
16 Harout Messrelian,  
17 Declarant  
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# **EXHIBIT 1**

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

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between PLAINTIFF Mario Cabral (“PLAINTIFF”) and DEFENDANT Sentry Insurance Company (“SENTRY”). The Agreement refers to PLAINTIFF and SENTRY collectively as “Parties,” or individually as “Party.”

### **1. DEFINITIONS.**

- 1.1. “Action” means PLAINTIFF’s lawsuit alleging, among other things, wage-and-hour violations against SENTRY, captioned *Mario Cabral v. Sentry Insurance Company* initiated on July 1, 2022 and pending in Superior Court of the State of California, County of Los Angeles, Case Number 22STCV21484.
- 1.2. “Administrator” means Phoenix Settlement Administrators (“Phoenix”), the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employees” means all individuals, including PLAINTIFF, employed by SENTRY in California in an hourly, non-exempt position at any time during the PAGA Period, and “Aggrieved Employee” means an individual member of the group of Aggrieved Employees.
- 1.5. “Class” means all individuals, including PLAINTIFF, employed by SENTRY in California in an hourly, non-exempt position at any time during the Class Period.
- 1.6. “Class Counsel” means Messrelian Law, Inc.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means each Class Member’s identifying information in SENTRY’s possession, including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Work Shifts and PAGA Pay Periods during which each Class Member performed work for SENTRY.
- 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 Members’ 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 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 July 1, 2018 through the date the Court grants preliminary approval of the Settlement.
- 1.13. "Class Period Work Shift" means any Workweeks during which a Class Member worked for Sentry during the Class Period.
- 1.14. "Class Representative" means PLAINTIFF as named in the Operative Complaint in the Action.
- 1.15. "Class Representative Service Payment" means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.16. "Court" means the Superior Court of California, County of Los Angeles.
- 1.17. "Defendant" means Sentry Insurance Company.
- 1.18. "Defense Counsel" means Foley & Lardner LLP.
- 1.19. "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 (c) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.20. "Final Approval" means the Court's order granting final approval of the Settlement.
- 1.21. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval of the Settlement.
- 1.22. "Final Judgment" means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.23. "FLSA Settlement Class Member" means, and refers to, a Class Member who timely cashes his or her Individual Class Payment check, and thereby will be deemed to have opted into the action for purposes of the Fair Labor Standards Act and to have waived

and released any claims such FLSA Settlement Class Members may have under the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* Only those Class Members who timely cash their settlement check will be deemed to have opted into the action for purposes of the Fair Labor Standards Act and thereby released and waived any of their claims under the Fair Labor Standards Act.

- 1.24. “Gross Settlement Amount” means \$225,000.00 which is the total amount SENTRY 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, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the Class Representative Service Payment and the Administration Expenses Payment.
- 1.25. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.26. “Individual PAGA Payment” means each Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of pay periods worked during the PAGA Period.
- 1.27. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.28. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under California Labor Code section 2699, subd. (i).
- 1.29. “LWDA PAGA Payment” means 75% of the PAGA Penalties to be paid to the LWDA under California Labor Code section 2699, subd. (i).
- 1.30. “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, the Class Representative Service Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder of the Gross Settlement Amount is to be paid to Participating Class Members as Individual Class Payments.
- 1.31. “Non-Participating Class Member” means any Class Member who opts out of the Class Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.32. “Operative Complaint” has the meaning defined in Paragraph 2.1, below.
- 1.33. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for SENTRY for at least one day during the PAGA Period.
- 1.34. “PAGA Period” means the period from April 14, 2021 through the date the Court grants preliminary approval of the Settlement.

- 1.35. "PAGA" means the Private Attorneys General Act (California Labor Code §§ 2698 *et seq.*).
- 1.36. "PAGA Notice" means PLAINTIFF's April 14, 2022 letter to SENTRY and the LWDA providing notice pursuant to California Labor Code § 2699.3, subd. (a).
- 1.37. "PAGA Penalties" means the total amount of PAGA civil penalties (\$15,000.00) to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$3,750.00) and 75% to LWDA (\$11,250.00) in settlement of PAGA claims.
- 1.38. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Class Settlement.
- 1.39. "PLAINTIFF" means Mario Cabral, the named PLAINTIFF in the Action.
- 1.40. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.
- 1.41. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.42. "Released Class Claims" means the claims being released as described in Paragraph 6.2 below.
- 1.43. "Released PAGA Claims" means the claims being released as described in Paragraph 6.2 below.
- 1.44. "Released Parties" means: SENTRY and its parents, subsidiaries, affiliates and related entities, their predecessors, successors and assigns, and each of their respective former and present directors, officers, shareholders, owners, members, managers, partners, agents, employees, attorneys and insurers.
- 1.45. "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.
- 1.46. "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 Class Settlement, or (b) fax, email, or mail his or her Objection to the Class 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.
- 1.47. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.
- 1.48. "Workweek" means any week during which a Class Member performed work for SENTRY during the Class Period.

## **2. RECITALS.**

- 2.1. On July 1, 2022, PLAINTIFF commenced this Action by filing a Complaint alleging causes of action against SENTRY for (1) Failure to Pay Wages for All Hours Worked; (2) Failure to Pay Minimum Wages; (3) Failure to Pay Overtime; (4) Failure to Provide Accurate Itemized Wage Statements; (5) Failure to Pay Wages When Employment Ends; (6) Failure to Pay Wages Owed Every Pay Period; (7) Failure to Provide Rest Breaks; (8) Failure to Provide Meal Breaks; (9) PAGA; and (10) Failure to Reimburse. On August 9, 2023, PLAINTIFF filed a First Amended Class Action Complaint for: (1) Failure to Pay Wages at the Correct Rates of Pay; (2) Failure to Provide Rest Breaks; (3) Failure to Provide Meal Periods; (4) Failure to Indemnify; (5) Wage Statement Penalties; (6) Waiting Time Penalties; (7) Failure to Pay Wages Owed Every Pay Period; (8) Unfair Competition; and (9) PAGA. The First Amended Class Action Complaint is the operative complaint in the Action (the "Operative Complaint").
- 2.2. SENTRY filed its Answer to the original Complaint on September 20, 2022 denying the allegations in such Complaint and denying any and all liability for the causes of action alleged therein. SENTRY filed its Answer to Plaintiff's First Amended Class Action Complaint on September 6, 2023, denying any and all liability for the causes of action alleged therein.
- 2.3. Pursuant to California Labor Code section 2699.3, subd. (a), PLAINTIFF gave timely written notice pursuant to PAGA to SENTRY and the LWDA by sending his PAGA Notice.
- 2.4. On April 19, 2023, the Parties participated in an all-day mediation with mediator Todd Smith and engaged in further post-mediation negotiations that resulted in the instant Agreement to settle the Action.
- 2.5. Prior to mediation, PLAINTIFF obtained from SENTRY, through informal discovery, substantial data, documents and information regarding PLAINTIFF'S claims and SENTRY's defenses. This information provided PLAINTIFF with sufficient information to investigate, analyze and evaluate the merits of the action for purposes of entering into fair and reasonable settlement. 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.4<sup>th</sup> 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4<sup>th</sup> 116, 129-130 ("*Dunk/Kullar*").
- 2.6. The Court has not granted Class certification.
- 2.7. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

## **3. MONETARY TERMS.**

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, SENTRY promises to pay no more than \$225,000.00 as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the wage portions of the Individual Class Payments. SENTRY has no obligation to pay the Gross Settlement Amount (or any employer payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to SENTRY.
- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
- 3.2.1. To PLAINTIFF: A Class Representative Service Payment to the Class Representative of not more than \$2,500.00 (in addition to any Individual Class Payment and any Individual PAGA Payment that the Class Representative is entitled to receive as a Participating Class Member). SENTRY will not oppose PLAINTIFF'S request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, PLAINTIFF will seek Court approval for any Class Representative Service Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using an IRS 1099 Form. PLAINTIFF assumes full responsibility and liability for income and employment taxes owed on the Class Representative Service Payment.
- 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 33.33%, which is currently estimated to be \$75,000.00 and a Class Counsel Litigation Expenses Payment of not more than \$15,000.00. SENTRY will not oppose requests for these payments provided that they do not exceed these amounts. PLAINTIFF and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other PLAINTIFF's Counsel arising from any claim to any portion of any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel and PLAINTIFF assume full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and hold SENTRY harmless, and indemnify SENTRY, from any dispute or controversy regarding any division or sharing of any of these payments.

- 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$15,000.00 except for a showing of good cause and as approved by the Court. To the extent the administration expenses are less or the Court approves payment of an Administrative Expense Payment less than \$15,000.00, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.
- 3.2.4.1. Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any income and employment taxes owed on their Individual Class Payment.
- 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.
- 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$15,000.00 to be paid from the Gross Settlement Amount, with 75% (\$11,250.00) allocated to the LWDA PAGA Payment and 25% (\$3,750.00) allocated to the Individual PAGA Payments.
- 3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$3,750.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any income and employment taxes owed on their Individual PAGA Payment.
- 3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

#### **4. SETTLEMENT FUNDING AND PAYMENTS.**

- 4.1. **Class Workweeks.** Based on a review of its records to date, SENTRY estimates there are 121 Class Members who collectively worked a total of 5,400 Workweeks during the Class Period (as of the time of mediation).
- 4.2. **Class Data.** Not later than fifteen (15) business days after the Court grants Preliminary Approval of the Settlement, SENTRY will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. SENTRY has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which SENTRY 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.
- 4.3. **Funding of Gross Settlement Amount.** If no objection to the settlement is made, SENTRY will pay to the Administrator the Gross Settlement Amount, together with the employer's share of payroll taxes on the Net Class Payment, within twenty (20) business days of the final approval order. If an objection to the settlement is made but no appeal is filed, then payment to the Administrator of the Gross Settlement Amount, together with the employer's share of payroll taxes on the Net Class Payment, shall be made within twenty (20) business days of the expiration of the appeal period. If an appeal is filed, then payment to the Administrator for the Gross Settlement Amount, together with the employer's share of payroll taxes on the Net Class Payment, shall occur within twenty (20) business days of the date the judgment is final and no longer subject to appeal. Within twenty (20) business days of SENTRY's funding of the Gross Settlement Amount, the Administrator will mail the checks for the Individual Class Payments and Individual PAGA Payments. Within twenty (20) business days thereafter, the Administrator will mail the checks for the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
- 4.3.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members and/or Aggrieved Employees (as applicable) via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Class Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-

Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator must update the recipients' mailing addresses using the National Change of Address Database.

- 4.3.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within seven (7) calendar days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address 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.
- 4.3.3. For any Class Member or Aggrieved Employee whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member or Aggrieved Employee thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).
- 4.3.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate SENTRY to confer any additional benefits or make any additional payments to Class Members or Aggrieved Employees (such as 401(k) contributions or bonuses).
6. **RELEASES OF CLAIMS.** Effective on the date when SENTRY fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, PLAINTIFF, Class Members, Aggrieved Employees and Class Counsel will release claims against all Released Parties as follows:
  - 6.1 **PLAINTIFF'S Release.** PLAINTIFF and his respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, PLAINTIFF'S PAGA Notice, or ascertained during the Action and released under Paragraph 6.2, below ("PLAINTIFF'S Release"). PLAINTIFF's Release includes, but is not limited to, all claims, rights, demands, liabilities, damages, attorneys' fees, costs, and causes of action of every nature and description, whether known or unknown, arising from or related to the claims litigated or to have been litigated in the Action, or arising during the Class Period of this settlement, including statutory, constitutional or common law claims for wages, damages, unpaid

costs, penalties, interest, attorneys' fees, litigation costs, restitution, equitable relief, or other relief under California Business & Professions Code § 17200 *et seq.* or the federal Fair Labor Standards Act, based on the following categories of allegations as set forth in the Operative Complaint: (a) all claims for unpaid wages (including any and all claims for, among other things, alleged failure to pay overtime or properly calculate the overtime rate, improper rounding, or off-the-clock work); (b) all claims for failure to provide meal periods (including claims for late or short meal periods); (c) all claims for failure to authorize and permit rest periods; (d) all claims for the failure to promptly pay all wages due and owing at the time of an employee's termination or discharge; (e) all claims for the failure to issue properly itemized wage statements; (f) all related claims for Unfair Competition or Business Practices under California's Business and Professions Code or similar laws related to the alleged claims; (g) all claims for any and all penalties pursuant to the California Labor Code and/or the Private Attorneys General Act of 2004; and (h) all other claims that were or could have been asserted based on the facts alleged in the Action. PLAINTIFF'S Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. PLAINTIFF acknowledges that PLAINTIFF may discover facts or law different from, or in addition to, the facts or law that PLAINTIFF now knows or believes to be true but agrees, nonetheless, that PLAINTIFF'S Release shall be and remain effective in all respects, 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: "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or released party."

6.2 Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action. The Participating Class Members' release includes, but is not limited to, all claims, rights, demands, liabilities, damages, attorneys' fees, costs, and causes of action of every nature and description, whether known or unknown, arising from or related to the claims litigated in the Action, or arising during the Class Period of this settlement, including statutory, constitutional or common law claims for wages, damages, unpaid costs, penalties, interest, attorneys' fees, litigation costs, restitution, equitable relief, or other relief under California Business & Professions Code § 17200 *et seq.* or the federal Fair Labor Standards Act, based on the following categories of allegations as set forth in the Operative Complaint: (a) all claims for unpaid wages (including any and all claims for, among other things, alleged failure to pay overtime or properly calculate the overtime rate, improper rounding, or off-the-clock work); (b) all claims for failure to

provide meal periods (including claims for late or short meal periods); (c) all claims for failure to authorize and permit rest periods; (d) all claims for the failure to promptly pay all wages due and owing at the time of an employee's termination or discharge; (e) all claims for the failure to issue properly itemized wage statements; (f) all related claims for Unfair Competition or Business Practices under California's Business and Professions Code or similar laws related to the alleged claims; (g) all claims for any and all penalties pursuant to the California Labor Code and/or the Private Attorneys General Act of 2004; and (h) all other claims that were or could have been asserted based on the facts alleged in the Action. Except as set forth in Section 6.3 of this 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. Additionally, any Participating Class Member who cashes his or her settlement check (and, in so doing, becomes a FLSA Settlement Class Member) will be deemed to have opted into the action for purposes of the Fair Labor Standards Act and, as to those FLSA Settlement Class Members, the Released Claims include any and all claims the FLSA Settlement Class Members may have under the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* arising during the Class Period relating to the alleged claims. Only those Participating Class Members who cash their settlement check will be deemed to have opted into the action for purposes of the Fair Labor Standards Act and thereby released and waived any of their claims under the Fair Labor Standards Act relating to the alleged claims.

- 6.3 Release by Non-Participating Class Members Who Are Aggrieved Employees: All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, and the PAGA Notice and ascertained in the course of the Action.
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 SENTRY's Declaration in Support of Preliminary Approval. Within 30 days of the full execution of this Agreement, SENTRY will prepare and deliver to Class Counsel a signed Declaration from SENTRY and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator. In their Declarations, Defense Counsel and SENTRY 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 the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (vii) all facts relevant to any actual or potential conflict of interest with Class Members or the Administrator. In their Declarations, PLAINTIFF and Class Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

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

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

## 8. SETTLEMENT ADMINISTRATION.

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

settlements.

- 8.2 **Employer Identification Number.** The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.
- 8.3 **Qualified Settlement Fund.** The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 8.4 **Notice to Class Members.**
- 8.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.
- 8.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
- 8.4.3 Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- 8.4.4 The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 8.4.5 If the Administrator or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person 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, whichever are later. If the Parties do not agree, the Court will be the final arbiter of whether or not to include such persons as Class Members.

**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' Release under Paragraph 6.2 of this Agreement, regardless of 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 6.3 of this Agreement and are eligible for an Individual PAGA Payment.

- 8.6 Challenges to Calculation of Workweeks. Each Class Member shall have 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class

Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Class Workweeks and PAGA Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Class Workweeks and/or PAGA Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Class Workweeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination regarding the challenges.

**8.7 Objections to Settlement.**

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

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

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

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

8.8.1 Website, Email Address and Toll-Free Number. The Administrator will 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 Notice, the Motion for Final Approval, the Motion for the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will

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

- 8.8.3 **Weekly Reports.** The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Class Workweeks and/or PAGA Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments ("Weekly Report"). The Weekly Reports must provide the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- 8.8.4 **Workweek and/or Pay Period Challenges.** The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member or Aggrieved Employee (as applicable) challenges over the calculation of Class Workweeks and/or PAGA Pay Periods. The Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.
- 8.8.5 **Administrator's Declaration.** Not later than 14 days before the date by which PLAINTIFF is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable 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 number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.
- 8.8.6 **Final Report by Settlement Administrator.** Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

9. **CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on its records, SENTRY estimates that, as of the date of mediation, (1) there are 121 Class Members and 5,400 workweeks during the Class Period. If the total number of workweeks in the Class Period exceeds 15% more than 5,400 (i.e. exceeds 6,210), SENTRY will have the option to either (a) increase the gross settlement amount proportionally or (b) to shorten the release and Class Period and PAGA Period so that there are no more than 6,210 workweeks without an increase in the Gross Settlement Amount.
10. **SENTRY'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all Class Members, SENTRY may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if SENTRY withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, SENTRY will remain responsible for paying all Settlement Administration Expenses incurred to that point. SENTRY, must notify Class Counsel and the Court of its election to withdraw not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.
11. **MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared Final Approval Hearing, PLAINTIFF will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). PLAINTIFF shall provide drafts of these documents to Defense Counsel not later than seven days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.
- 11.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
- 11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and/or the Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
- 11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement

administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

11.4 **Waiver of Right to Appeal.** Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as 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 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

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

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

### 13. **ADDITIONAL PROVISIONS.**

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

bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

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

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

- 13.3 **No Solicitation.** The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 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.
- 13.5 **Attorney Authorization.** Class Counsel and Defense Counsel separately warrant and represent that they are authorized by PLAINTIFF and SENTRY respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 13.6 **Cooperation.** The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement

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

- 13.7 **No Prior Assignments.** The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 13.8 **No Tax Advice.** Neither PLAINTIFF, Class Counsel, SENTRY nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 13.9 **Modification of Agreement.** This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 13.10 **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 13.11 **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without 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.
- 13.13 **Confidentiality.** To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 13.14 **Use and Return of Class Data.** Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by SENTRY in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, PLAINTIFF shall destroy, all paper and electronic versions of Class Data received from SENTRY unless, prior to the Court's discharge of the Administrator's obligation, SENTRY makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.
- 13.15 **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

- 13.16 **Calendar Days.** Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 13.17 **Notice.** All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:
- To PLAINTIFF:  
Messrelan Law, Inc.  
Harout Messrelan, Esq.  
500 N. Central Ave., #840  
Glendale, CA 91203
- To SENTRY:  
Foley & Lardner, LLP  
Kevin Jackson, Esq.  
11988 El Camino Real, Suite 400  
San Diego, CA 92130
- 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.

***[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE  
FOLLOWS.]***

**IN WITNESS THEREOF**, the Parties each acknowledge that they have read the foregoing Class Action and PAGA Settlement Agreement, accept and agree to the provisions contained in this Agreement and hereby execute it voluntarily and with full understanding of its consequences.

**PLAINTIFF:**

Dated: Oct 11, 2023

  
Mario Cabral (Oct 11, 2023 14:47 PDT)  
\_\_\_\_\_  
Mario Cabral

**DEFENDANT:**

Dated: October 17, 2023

SENTRY INSURANCE COMPANY

By:   
Its: Vice President + Secretary

**EXHIBIT A – CLASS NOTICE**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

MARIO CABRAL, on behalf of himself and on  
behalf of all similarly situated individuals,

Plaintiffs,

v.

SENTRY INSURANCE COMPANY, and  
DOES 1 through 25, inclusive,

Defendants.

CASE NO: 22STCV21484

Assigned to [JUDGE/DEPARTMENT]

**NOTICE OF PENDENCY OF PROPOSED  
CLASS ACTION SETTLEMENT AND  
FINAL HEARING**

**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT  
PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.**

*A California court authorized this notice. This is not a solicitation from a lawyer.*

- A settlement will provide \$225,000 to pay claims to all individuals who currently work or previously worked for SENTRY INSURANCE COMPANY ("Defendant") in California in a non-exempt position between July 1, 2018 and [REDACTED] (the "Class Period") and in a non-exempt position between April 14, 2021 and [REDACTED] (the "PAGA Period").
- The settlement resolves a lawsuit alleging that Defendant failed to pay all minimum and overtime wages; provide compliant meal and rest periods, or premium compensation in lieu thereof; reimburse all business expenses; timely issue final wages upon separation of employment; and issue accurate and complete itemized wage statements. The Settlement avoids costs and risks of continuing the lawsuit; pays money to employees; and releases Defendant from liability from the claims asserted in this lawsuit.
- Lawyers for the employees will ask the Court to award them up to \$75,000 as attorneys' fees and \$15,000 as expenses for investigating the facts, litigating the case, and negotiating the settlement. This will be paid from the \$225,000 settlement amount.
- Defendant denies liability and believes all appropriate wages were paid and that it otherwise complied with any Labor Code obligations. The Parties disagree on how much money could have been awarded if employees won at trial. After investigating the claims at issue, and the possible defenses to those claims, the Parties have agreed to settle this case in order to avoid the cost and risk of further litigation. In view of the costs and risks that continued litigation would entail, Plaintiff and his counsel believe the Settlement is in the best interests of all parties.

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:**

**WHY DID YOU RECEIVE THIS NOTICE?**

This notice explains a proposed settlement of a class action lawsuit, and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of the Class on whose behalf this class action lawsuit has been brought.

### **WHAT IS THIS LAWSUIT ABOUT?**

On July 1, 2022, Plaintiff Mario Cabral ("Plaintiff"), a former employee of Defendant, filed this lawsuit in the Los Angeles County Superior Court. The lawsuit alleges violations of the California Labor Code and California Business and Professions Code. The lawsuit seeks to certify a class of all current and former non-exempt California employees of Defendant at any time between July 1, 2018 and [REDACTED]. Specifically, the lawsuit alleges that members of the Class were not paid all minimum and overtime wages; were not provided compliant meal and rest periods, or premium compensation in lieu thereof; were not reimbursed for all business expenses; were not timely issued final wages upon separation of employment; and were not issued accurate and complete itemized wage statements. The Settlement seeks recovery of wages, damages, interest, statutory and civil penalties, restitution, attorneys' fees and costs. Defendant denies all of the material allegations in the lawsuit and denies that they owe Class Members any remedies. The Court has not made a ruling on the merits of the case.

The lawyers for the parties are:

**Plaintiff's Attorneys**

Harout Messrelian, Esq.  
Messrelian Law, Inc.  
500 N. Central Ave., Suite 840  
Glendale, California 91203

**Defendant's Attorneys**

Krista M. Cabrera, Esq.  
Kevin Jackson, Esq.  
FOLEY & LARDNER LLP  
1198 El Camino Real, Suite 400  
San Diego, CA 92130

### **SUMMARY OF THE SETTLEMENT**

**A. Why is there a Settlement?**

The Court did not decide in favor of Plaintiff or Defendant. Plaintiff believes he would have prevailed on the claims at a trial. Defendant does not believe that Plaintiff would have won anything from a trial. There has been no trial. Instead, both sides agreed to a settlement, which is memorialized in the Settlement Agreement and Release of Claims ("Settlement" or "Settlement Agreement"), in order to avoid the further costs, risks, and uncertainty of a trial. Plaintiff and Plaintiff's Attorney believe the settlement is fair, reasonable, adequate, and in the best interests of all Class Members and Aggrieved Employees.

**B. Who is in the Settlement Class?**

The Settlement encompasses a class composed of all individuals who worked for Defendant as a non-exempt employee in California at any time between July 1, 2018 and [REDACTED], and, with regard to the PAGA Claims, all individuals who worked for Defendant as a non-exempt employee in California at any time between April 14, 2021 and [REDACTED].

**C. What does the Settlement provide?**

**1. Gross Settlement Amount.**

The Settlement provides that Defendant will pay \$225,000 (the “Gross Settlement Amount”) to settle the lawsuit.

**2. Net Settlement Proceeds.**

The “Net Settlement Proceeds” is the portion of the Gross Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion in exchange for the release of their class claims. The Net Settlement Proceeds is the Gross Settlement Amount less the following amounts that will be requested at the Final Approval Hearing and are subject to comment or objection by Participating Class Members. The Court will fix these amounts at the Final Approval Hearing.

(a) **Class Counsel’s Attorneys’ Fees** in an amount set by the Court, not to exceed 33.33% of the Gross Settlement Amount (i.e. \$75,000);

(b) **Class Counsel’s Documented Litigation Costs/Expenses** in an amount set by the Court, not to exceed \$15,000;

(c) **Service Awards to the Class Representative** in an amount set by the Court, not to exceed \$2,500 for his service in the lawsuit;

(d) **Settlement Administration Costs** which are currently estimated to not exceed \$15,000, for administering the settlement; and

(e) **PAGA Payment** in the total amount of \$15,000 for the settlement of claims arising under the California Private Attorneys General Act (“PAGA”). 75% of the PAGA Payment, or \$11,250, shall be paid to the California Labor and Workforce Development Agency. The remaining 25% of the PAGA Payment, or \$3,750, will be distributed to non-exempt California employees who worked for Defendant from April 14, 2021 to [REDACTED] (“Aggrieved Employees”), for the release of their claims arising under PAGA.

**3. Individual Payment Amount.**

Your share of the Net Settlement Proceeds will be determined by the formula detailed in section E below. Your Individual Payment Amount includes both your estimated share of the Net Settlement Proceeds and, if eligible, your share of the PAGA Payment.

**D. What Are You Giving Up To Get A Payment Or Stay In The Class?**

Upon the Effective Date, and subject to Defendant’s full payment of the Gross Settlement Amount, Defendant shall be entitled to a release by participating Class Members of all claims pled or that could have been pled based on the factual allegations contained in the operative complaint and PAGA letters sent by Plaintiff that occurred during the Class Period during employment in a non-exempt position in California.

Upon the Effective Date and subject to Defendant's full payment of the Gross Settlement Amount, Aggrieved Employees will release all PAGA civil penalty claims pled or that could have been pled based on the factual allegations contained in the operative complaint and PAGA letters sent by Plaintiff that occurred during the PAGA Period during employment in a non-exempt position in California against Defendant.

**E. How Is My Share Of The Settlement Calculated?**

Each participating Class Member (those who do not opt out of the Settlement) and all Aggrieved Employees shall receive an "Individual Payment Amount," which is distributable to each Class Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion form) and is a portion of the PAGA Payment distributable to each Aggrieved Employee, even if they request exclusion from the class settlement.

As to participating Class Members, the class portion of the Individual Payment Amount will be determined by dividing the Net Settlement Proceeds, less the \$15,000 PAGA allocation, by the total number of weeks worked by the entire Settlement Class during the Class Period, net of opt outs, resulting in the class workweek value; and then multiplying the class workweek value by the number of weeks worked by each participating Class Member during the Class Period.

As to the Aggrieved Employees, the PAGA portion of the Individual Payment Amount will be determined by dividing the portion of the PAGA settlement amount allocated to the Aggrieved Employee (\$3,750) by the total number of weeks worked by all Aggrieved Employees during the PAGA Period, resulting in the PAGA workweek value; and then multiplying the PAGA workweek value by the number of weeks worked by each Aggrieved Employee during the PAGA Period.

For tax purposes, the class portion of each Individual Payment Amount will be apportioned (a) 20% as wages (reported on an IRS Form W-2 and subject to applicable withholdings); and (b) 80% equally as penalties and interest (reported on an IRS Form 1099, if required). The PAGA portion of each Individual Payment Amount will be apportioned 100% as penalties (reported on an IRS Form 1099, if required). All Individual Payment Amounts paid to Class Members and Aggrieved Employees will be subject to any applicable wage garnishments, liens, or other legally mandated treatment as required by law.

**According to the records of Defendant, you worked [REDACTED] weeks while employed in a non-exempt position in California from July 1, 2018 to [REDACTED] and you worked [REDACTED] weeks while employed in a non-exempt position in California from April 14, 2021 through [REDACTED]. Based on these weeks worked, you are entitled to an Individual Payment Amount of approximately \$[REDACTED]. This amount is subject to change based on the final ruling of the Court.**

Please be advised that the individual data above is presumed to be correct unless you submit documentation proving otherwise. If you disagree with the data, please submit an explanation and evidence in support of your position to the Settlement Administrator no later than [REDACTED], 2023. In the event of a dispute, the Settlement Administrator will attempt to resolve the challenge with input from the Defendant. Unresolved disputes will be presented to the Court for its review.

**THE SETTLEMENT HEARING**

The Court will conduct a final fairness hearing regarding the proposed settlement (the “Final Settlement Hearing”) on [REDACTED], at [REDACTED], in the Courtroom of [REDACTED] of the Los Angeles County Superior Court, Department [REDACTED], located at [REDACTED]. The Court will determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court’s final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members and Aggrieved Employees; (iii) whether the Settlement Class Members should be bound by the terms of the settlement; (iv) the amount of the attorneys’ fees and costs to be awarded to Plaintiff’s Attorney; and (v) the amount that should be awarded to Plaintiff as a service award. At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

### **WHAT ARE YOUR OPTIONS?**

- **OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT**

**IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE.** If you move, you must update your address with the Settlement Administrator. If you disagree with pre-printed data indicated in section E above, you must submit an explanation and/or documentation to the Settlement Administrator to justify your position, postmarked no later than [REDACTED]. The Settlement Administrator’s address is [Settlement Administrator address].

- **OPTION 2 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Settlement Hearing, you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must clearly identify the case name and number and be mailed to the Settlement Administrator at [Settlement Administrator address]. Written objections must be postmarked no later than [REDACTED].

- **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself (“opt out”) from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement, although you will be bound by the PAGA Claims. You will not be bound by a class judgment in this case, and you will have the right to file your own lawsuit against the Defendant and pursue your own claims in a separate suit. You can opt out of the Class by completely filling out and mailing the enclosed Request for Exclusion Form to the Settlement Administrator at the above-stated address, such that it is postmarked no later than [REDACTED].

### **ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?**

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed “Settlement Agreement and Release of

Claims” which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the Los Angeles County Superior Court, located at [REDACTED].

**IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS**, you may contact the Settlement Administrator at [address], [telephone number], or Harout Messrelian, Esq., Counsel for the Class, at (818) 484-6531.

**PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.**

**BY ORDER OF THE SUPERIOR COURT OF  
THE STATE OF CALIFORNIA**

# **EXHIBIT 2**

**VIA ELECTRONIC FILING**

**April 14, 2022**

California Labor & Workforce Development Agency (LWDA)  
Attn. PAGA Administrator  
800 Capitol Mall, MIC-55  
Sacramento, California 95814

**VIA U.S. CERTIFIED MAIL (RETURN RECEIPT REQUESTED)**

SENTRY INSURANCE COMPANY  
1800 NORTH POINT DRIVE  
STEVENS POINT, WI 54481

SENTRY INSURANCE COMPANY  
c/o CT CORPORATION SYSTEM  
330 N. BRAND BLVD., SUITE 700  
GLENDALE, CA 91203

**MARIO CABRAL v. SENTRY INSURANCE COMPANY**

**RE: PRIVATE ATTORNEYS GENERAL ACT NOTICE**

To Whom It May Concern:

Please be informed that our client, Mr. Mario Cabral (hereinafter “our client” or “Mr. Cabral”) seeks penalties on behalf of the State of California and all current and former non-exempt or hourly paid employees (“aggrieved employees”) who worked for SENTRY INSURANCE COMPANY (hereinafter “SENTRY”) at any of their California locations during the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”). The purpose of this letter is to comply with the statutory requirements of California Labor Code section 2699.3 and shall constitute notice of the same.

Mr. Cabral started to work at SENTRY over a decade ago. Mr. Cabral was classified as an hourly, non-exempt employee and his job title was Senior Claims Field Appraiser.

SENTRY has committed the below labor code violations against Mr. Cabral and other hourly, non-exempt employees.

In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018), Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas Security Services USA, Inc., an onsite security provider. After about a year of employment, Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff specifically alleged violations to the Labor Code requiring immediate payment of wages upon termination of employment and



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**ATTORNEYS AT LAW**

500 N. Central Avenue, Suite 840

Glendale, California 91203

Tel: (818) 484-6531

Fax: (818) 956-1983

weekly payment of wages to temporary employees. The trial court determined Huff was not a temporary employee, and therefore, lacked standing to bring the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the PAGA representative to sue for violations that the representative has personally suffered. The PAGA statute states that an “aggrieved employee” is able to file suit on behalf of themselves and others. The statute also states that an “aggrieved employee” is “any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.” Because at least one of the violations that Huff had alleged had affected him personally, the Court of Appeal denied Securitas’ motion.

In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and other employees, it allows for suits broader than the specific violations the named employee experienced. Therefore, even if the employee did not personally experience the Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is our position that Mr. Cabral can equivocally bring the following labor code violations on behalf of all other employees, including hourly, non-exempt employees and even salaried employees.

Furthermore, it is our position that SENTRY has committed the following labor code violations against our client and other hourly, non-exempt employees who worked for SENTRY at any of their California locations during the relevant PAGA period:

SENTRY did not provide Mr. Cabral and other similarly situated aggrieved employees, including hourly, non-exempt employees with the minimum wages to which they were entitled for all work performed and did not compensate her and others for all hours worked pursuant to California Labor Code sections 1194, 1197 and 1197.1. Mr. Cabral and others were not paid for all hours worked and consistently worked “off the clock” in that the company had a policy and practice of rounding down work hours to the detriment of employees, which is akin to a minimum wage violation. Moreover, to the extent Mr. Cabral and other hourly employees worked through their meal periods or their meal periods were interrupted, they were not compensated for that time, which would be akin to a minimum wage violation. Moreover, there were numerous occasions wherein Mr. Cabral would work “off the clock” hours but he would not be compensated for that time. These “off the clock” hours include working after 4:30pm (and Mr. Cabral would have emails as proof that he worked past 4:30pm), including emails, calls, working on reports and other such work. There were certainly occasions wherein Mr. Cabral would get on the road before 7:30am or get to the “home base” after 5:30pm. The company also had a policy wherein “windshield time” was not counted, meaning that Mr. Cabral and others did not get paid for “travel time” between two appointments, which would be akin to a minimum wage violation. Furthermore, and as alluded to above, the company had a practice and policy of having Mr. Cabral and others log in their hours worked. The understanding was that Mr. Cabral would put 7:30am to 4:30pm (his schedule) and log a “1 hour lunch” whether or not he took a meal period. This latter policy and practice, which was encouraged by SENTRY, resulted in Mr. Cabral and others not being paid for all hours worked and not receiving the minimum wage. This



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is so because there were numerous occasions, as discussed below, wherein Mr. Cabral and others would NOT get the one-hour meal break or would have to eat and work at the same, however, the company would automatically deduct 1-hour per day for an alleged meal period that Mr. Cabral and others did not take. The latter resulted in consistent minimum wage and overtime violations (see below).

Due to the above “off the clock” work, SENTRY also violated Labor Code §510 because it failed to pay Mr. Cabral and others overtime compensation, even though they worked more than 8 hours per day (1.5 times the regular rate of pay), 12 hours per day (2 times the regular rate of pay) and/or 40 hours per week (1.5 times the regular rate of pay) throughout their employment. Moreover, SENTRY did not factor in any bonuses or incentive payments in deciphering Mr. Cabral’s and others’ regular rate of pay for purposes of figuring out the correct overtime rate of pay. Mr. Cabral’s and others’ “off the clock” work certainly entitled them to plenty of overtime compensation, but SENTRY had a policy and practice of not paying for overtime hours. In fact, Mr. Cabral would email SENTRY management requesting overtime compensation but would be denied.

SENTRY violated Labor Code § 226.7 along with Industrial Welfare Commission Wage Order no. 4 because it failed to provide our client and other similarly situated aggrieved employees, including hourly, non-exempt employees, 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. SENTRY did not completely relieve our client of all duty during said rest periods. SENTRY did not pay to our client one additional hour of pay at our client’s regular rate of compensation for each workday that one or more statutory rest periods was not provided. Rest breaks were not authorized or enforced at the company. In fact, it was not part of SENTRY’s culture for employees such as Mr. Cabral and others to consistently take even one 10-minute rest break every day wherein they are relieved of all work duties. The latter is a function of Mr. Cabral’s job duties and the nature of his work in having to go from one appointment to another in order to do appraisals. There was no opportunity and no time to take an uninterrupted rest breaks, much less multiple rest breaks throughout the workday.

SENTRY also violated Labor Code §§ 512 and 226.7 along with Industrial Welfare Commission Wage Order No. 4 because it failed to provide our client and other similarly situated aggrieved employees, including hourly, non-exempt employees, the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment, and our client did not validly waive said meal periods. SENTRY did not completely relieve our client of all duties during said meal periods. SENTRY did not pay to our client one additional hour of pay at our client’s regular rate of compensation for each workday that one or more statutory meal periods was not provided. If SENTRY had Mr. Cabral and others sign a meal period waiver, it would not be valid and enforceable since Mr. Cabral and others generally worked more than a 6-hour shift. If SENTRY had Mr. Cabral and others sign an on-duty meal period agreement wherein Mr. Cabral agreed to work through her meal period, it would also be invalid and unenforceable because the nature of Mr. Cabral’s job does not prevent him from taking a meal period. As such, Mr. Cabral and others did not consistently receive statutory, timely meal periods during their employment. In other words, there wasn’t always an uninterrupted and timely 30-minute meal period for any employees, including Mr. Cabral, that was taken before the 5<sup>th</sup> hour worked. Mr. Cabral would rarely get an



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uninterrupted meal break before the 5<sup>th</sup> hour worked. This was so because Mr. Cabral would often eat while working or driving or while writing an estimate. This Mr. Cabral was assigned to the heavy equipment appraisals and had to rush to various appointments with traffic issues, Mr. Cabral would often be running around and would not have the time or the opportunity to take an uninterrupted meal period. Despite this, and as alluded to above, SENTRY had a policy and practice of having employees such as Mr. Cabral writing on paper that he received a “1 hour lunch” even though that was not true and in fact, was far from the truth. All SENTRY cared about was looking like they were complying with California law on paper, even though it was not the reality of the situation. When Mr. Cabral brought up the fact that he was not able to take a meal break at 11:30am like SENTRY wanted him to put down on paper and that he had taken it later, SENTRY would encourage him to “accurately” input his lunch times and that he would NOT be able to log it as being late and after the 5<sup>th</sup> hour worked. As was the case with rest periods, consistent meal breaks were definitively not part of the SENTRY’s culture. The meal periods were not always authorized and were not enforced.

In addition, the company absolutely encouraged Mr. Cabral and others to do the phone calls, emails, and reports out on the field and before returning to home base and demanded that all the work be completed. The latter, of course, militates against employees such as Mr. Cabral being able to take statutory meal and rest breaks.

Furthermore, even if SENTRY did in fact provide meal or rest period penalties to Mr. Cabral and others for late, short, interrupted, or no meal or rest periods, that does not absolve SENTRY of PAGA penalties. In Kirby v. Immoos Fire Protection, Inc. (2012) 53 Cal.4th 1244, 1256, the Court stated that “section 226.7 does not give employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour of pay” (emphasis in original). Thus, the extra hour of pay does not excuse the violation; the employer has still committed a violation even if the remedy for the violation has been paid. *See also Wert v. U.S. Bancorp* (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at \*4).

Furthermore, during the relevant time period, and due to the above-cited labor code violations, SENTRY failed to pay our client and other similarly situated aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including the minimum wages and overtime as described above as well as meal/rest break premiums. SENTRY was also in violation of California Labor Code section 226(a) by not providing access to paystubs and failing to include pertinent information on the wage statements, including but not limited to, all hours worked, gross wages earned, net wages earned, all deductions, premium payments for meal and rest breaks, overtime compensation, the correct legal name and address of employing, the correct beginning and end of the pay period, all applicable hourly rates, and all identifying employee information, among other items. As such, SENTRY did not provide our client and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

SENTRY violated Labor Code § 203 because it willfully failed to pay our client and other aggrieved employees earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation. These earned but unpaid wages



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include compensation for all hours worked including minimum wages, overtime, and premiums for the missed meal and rest breaks.

During the relevant time period, SENTRY also failed to keep accurate and complete payroll records showing the actual hours worked per day (including the time for meal periods) and the wages paid to our client and other aggrieved employees pursuant to California Labor Code sections 1174(d).

Additionally, during the relevant time period, Mr. Cabral and others incurred necessary, business-related expenses and costs that were not reimbursed by SENTRY. These costs include, but are not limited to, use of personal cell phones, personal computers, and home internet for work purposes. Accordingly, SENTRY was in violation of California Labor Code sections 2800 and 2802.

In addition, SENTRY failed to provide a suitable rest break area for employees such as Mr. Cabral and others in contravention of Industrial Welfare Commission Wage Order no. 4-2001.

In addition, Mr. Cabral would have individual claims against SENTRY for wrongful termination in violation of public policy. The company used an exam requirement (and Mr. Cabral and others were told not to prepare for the exam and just take it) as a means to terminate Mr. Cabral after 13 years of service. The company terminated Mr. Cabral in March 2022 and treated it as a disciplinary issue, however, the reality of it was that the company was trying to get rid of Mr. Cabral due to his age, which also translated into Mr. Cabral being paid more than other younger workers.

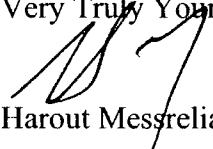
Each of the aforementioned violations, except the Labor Code section 226(a) violations, is among the enumerated serious violations set forth in Labor Code § 2699.5, for which there is no statutory right to cure.

Please take notice that, based upon the above-mentioned violations, and in addition to the penalties provided by those specific sections themselves, our client also intends to seek penalties under the following Labor Code sections which themselves are inviolable but provide for recovery of penalties for violating one or more of the above-mentioned Labor Code sections: Labor Code §§ 558, 226.3, 1197.1.

Should your agency choose not to pursue this matter, this law office intends to vigorously prosecute the aforementioned Labor Code violations on its behalf and vindicate the rights of all employees who have been subjected to these same Labor Code violations by SENTRY.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you in advance for your attention to this matter.

Very Truly Yours,



Harout Messrelian, Esq.

# **EXHIBIT 3**

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Barbara Meiers

**MESSRELIAN LAW INC.**

Harout Messrelian, Esq. (272020)

500 N. Central Ave., Suite 840

Glendale, California 91203

Telephone: (818) 484-6531

Facsimile: (818) 956-1983

Email: [hm@messrelianlaw.com](mailto:hm@messrelianlaw.com)

Attorneys for Plaintiff MARIO CABRAL

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES**

MARIO CARBRAL,

Plaintiff,

vs.

SENTRY INSURANCE COMPANY and  
DOES 1 to 25, inclusive,

Defendants.

CASE NO.: **22STCV21484**

**COMPLAINT FOR DAMAGES FOR:**

- 1) FAILURE TO COMPENSATE FOR ALL HOURS WORKED;**
- 2) FAILURE TO PAY MINIMUM WAGES;**
- 3) FAILURE TO PAY OVERTIME;**
- 4) FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;**
- 5) FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS;**
- 6) FAILURE TO PAY WAGES OWED EVERY PAY PERIOD;**
- 7) FAILURE TO PROVIDE REST BREAKS;**
- 8) FAILURE TO PROVIDE MEAL BREAKS;**
- 9) PRIVATE ATTORNEYS GENERAL ACT ("PAGA")**
- 10) FAILURE TO REIMBURSE BUSINESS EXPENSES;**
- 11) DISCRIMINATION ON THE BASIS OF AGE IN VIOLATION OF FAIR EMPLOYMENT AND HOUSING ACT (FEHA);**
- 12) FAILURE TO PREVENT DISCRIMINATION IN VIOLATION OF FEHA;**
- 13) WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;**

1 )  
2 ) **14) VIOLATION OF BUSINESS AND**  
3 ) **PROFESSIONS CODE SECTION**  
4 ) **17200**

5 )  
6 ) **JURY TRIAL DEMANDED**  
7 )  
8 )

9  
10 COMES NOW Plaintiff, MARIO CABRAL (hereinafter "Plaintiff"), and alleges as  
11 follows:  
12

13 **PARTIES, JURISDICTION, and VENUE**

14 1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the  
15 County of Los Angeles in this judicial district because Defendants SENTRY INSURANCE  
16 COMPANY and DOES 1 to 25, inclusive, (hereinafter collectively known as "SENTRY" or  
17 "Defendants"), do business in the County of Los Angeles, and because Defendants' obligations  
18 and liabilities arise therein, and because the work that was performed by Plaintiff in the County  
19 of Los Angeles is the subject of this action. Moreover, Plaintiff's damages sought herein  
20 exceed \$25,000.

21 2. Plaintiff is a male resident of the County of Los Angeles, State of California and  
22 worked for Defendants from his home office located at 304 E. Baseline Road, San Dimas, CA  
23 91773.

24 3. Plaintiff is informed and believes that at all times herein mentioned, Defendant  
25 SENTRY INSURANCE COMPANY is a Wisconsin corporation, doing business in the County  
26 of Los Angeles, State of California, and which employed Plaintiff.

27 4. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or  
28

1 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues  
2 them by these fictitious names. Plaintiff is informed and believes that each of the DOE  
3 defendants, numbers 1 to 25, reside in the State of California and are in some manner  
4 responsible for the conduct alleged herein. Upon discovering the true names and capacities of  
5 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names  
6 and capacities of these fictitiously named defendants.

7  
8 5. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of  
9 that information and belief, alleges that at all times herein mentioned, each of the remaining  
10 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and  
11 under the authority of their agency, employment, or representative capacity, with the consent  
12 of his/her codefendants.

### 13 **GENERAL ALLEGATIONS**

14 6. Plaintiff started to work at SENTRY over a decade ago. Plaintiff was classified as an  
15 hourly, non-exempt employee and his job title was Senior Claims Field Appraiser.

16  
17 7. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018),  
18 Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas  
19 Security Services USA, Inc., an onsite security provider. After about a year of employment,  
20 Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff  
21 specifically alleged violations to the Labor Code requiring immediate payment of wages upon  
22 termination of employment and weekly payment of wages to temporary employees. The trial  
23 court determined Huff was not a temporary employee, and therefore, lacked standing to bring  
24 the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court  
25 granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue  
26 was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not  
27 directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the  
28 PAGA representative to sue for violations that the representative has personally suffered. The

1 PAGA statute states that an “aggrieved employee” is able to file suit on behalf of themselves  
2 and others. The statute also states that an “aggrieved employee” is “any person who was  
3 employed by the alleged violator and against whom one or more of the alleged violations was  
4 committed.” Because at least one of the violations that Huff had alleged had affected him  
5 personally, the Court of Appeal denied Securitas’ motion.

6 8. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and  
7 other employees, it allows for suits broader than the specific violations the named employee  
8 experienced. Therefore, even if the employee did not personally experience the Labor Code  
9 violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiff’s  
10 position that Plaintiff can equivocally bring the following labor code violations on behalf of all  
11 other employees, including hourly, non-exempt employees and even salaried employees.

12 9. Furthermore, it is Plaintiff’s position that SENTRY has committed the following labor  
13 code violations against Plaintiff and other hourly, non-exempt employees who worked for  
14 SENTRY at any of their California locations during the relevant PAGA period:

15 10. SENTRY did not provide Plaintiff and other similarly situated aggrieved employees,  
16 including hourly, non-exempt employees with the minimum wages to which they were entitled  
17 for all work performed and did not compensate him and others for all hours worked pursuant to  
18 California Labor Code sections 1194, 1197 and 1197.1. Plaintiff and others were not paid for  
19 all hours worked and consistently worked “off the clock” in that the company had a policy and  
20 practice of rounding down work hours to the detriment of employees, which is akin to a  
21 minimum wage violation. Moreover, to the extent Plaintiff and other hourly employees worked  
22 through their meal periods or their meal periods were interrupted, they were not compensated  
23 for that time, which would be akin to a minimum wage violation. Moreover, there were  
24 numerous occasions wherein Plaintiff would work “off the clock” hours but he would not be  
25 compensated for that time. These “off the clock” hours include working after 4:30pm (and  
26 Plaintiff would have emails as proof that he worked past 4:30pm), including emails, calls,  
27 working on reports and other such work. There were certainly occasions wherein Plaintiff  
28

1 would get on the road before 7:30am or get to the “home base” after 5:30pm. The company  
2 also had a policy wherein “windshield time” was not counted, meaning that Plaintiff and others  
3 did not get paid for “travel time” between two appointments, which would be akin to a  
4 minimum wage violation. Furthermore, and as alluded to above, the company had a practice  
5 and policy of having Plaintiff and others log in their hours worked. The understanding was that  
6 Plaintiff would put 7:30am to 4:30pm (his schedule) and log a “1 hour lunch” whether or not  
7 he took a meal period. This latter policy and practice, which was encouraged by SENTRY,  
8 resulted in Plaintiff and others not being paid for all hours worked and not receiving the  
9 minimum wage. This is so because there were numerous occasions, as discussed below,  
10 wherein Plaintiff and others would NOT get the one-hour meal break or would have to eat and  
11 work at the same, however, the company would automatically deduct 1-hour per day for an  
12 alleged meal period that Plaintiff and others did not take. The latter resulted in consistent  
13 minimum wage and overtime violations (see below).

14 11. Due to the above “off the clock” work, SENTRY also violated Labor Code §510 because  
15 it failed to pay Plaintiff and others overtime compensation, even though they worked more than  
16 8 hours per day (1.5 times the regular rate of pay), 12 hours per day (2 times the regular rate of  
17 pay) and/or 40 hours per week (1.5 times the regular rate of pay) throughout their employment.  
18 Moreover, SENTRY did not factor in any bonuses or incentive payments in deciphering  
19 Plaintiff’s and others’ regular rate of pay for purposes of figuring out the correct overtime rate  
20 of pay. Plaintiff’s and others’ “off the clock” work certainly entitled them to plenty of overtime  
21 compensation, but SENTRY had a policy and practice of not paying for overtime hours. In fact,  
22 Plaintiff would email SENTRY management requesting overtime compensation but would be  
23 denied.

24 12. SENTRY violated Labor Code § 226.7 along with Industrial Welfare Commission Wage  
25 Order no. 4 because it failed to provide Plaintiff and other similarly situated aggrieved  
26 employees, including hourly, non-exempt employees, 10-minute rest periods for every four  
27 hours of work, or majority portion thereof, throughout their employment. SENTRY did not  
28

1 completely relieve Plaintiff of all duty during said rest periods. SENTRY did not pay to Plaintiff  
2 one additional hour of pay at Plaintiff's regular rate of compensation for each workday that one  
3 or more statutory rest periods was not provided. Rest breaks were not authorized or enforced at  
4 the company. In fact, it was not part of SENTRY's culture for employees such as Plaintiff and  
5 others to consistently take even one 10-minute rest break every day wherein they are relieved of  
6 all work duties. The latter is a function of Plaintiff's job duties and the nature of his work in  
7 having to go from one appointment to another in order to do appraisals. There was no opportunity  
8 and no time to take an uninterrupted rest breaks, much less multiple rest breaks throughout the  
9 workday.

10 13. SENTRY also violated Labor Code §§ 512 and 226.7 along with Industrial Welfare  
11 Commission Wage Order No. 4 because it failed to provide Plaintiff and other similarly situated  
12 aggrieved employees, including hourly, non-exempt employees, the requisite 30-minute,  
13 uninterrupted meal periods for every five (5) hours of work throughout their employment, and  
14 Plaintiff did not validly waive said meal periods. SENTRY did not completely relieve Plaintiff  
15 of all duties during said meal periods. SENTRY did not pay to Plaintiff one additional hour of  
16 pay at Plaintiff's regular rate of compensation for each workday that one or more statutory meal  
17 periods was not provided. If SENTRY had Plaintiff and others sign a meal period waiver, it  
18 would not be valid and enforceable since Plaintiff and others generally worked more than a 6-  
19 hour shift. If SENTRY had Plaintiff and others sign an on-duty meal period agreement wherein  
20 Plaintiff agreed to work through him meal period, it would also be invalid and unenforceable  
21 because the nature of Plaintiff's job does not prevent him from taking a meal period. As such,  
22 Plaintiff and others did not consistently receive statutory, timely meal periods during their  
23 employment. In other words, there wasn't always an uninterrupted and timely 30-minute meal  
24 period for any employees, including Plaintiff, that was taken before the 5<sup>th</sup> hour worked. Plaintiff  
25 would rarely get an uninterrupted meal break before the 5<sup>th</sup> hour worked. This was so because  
26 Plaintiff would often eat while working or driving or while writing an estimate. This Plaintiff  
27 was assigned to the heavy equipment appraisals and had to rush to various appointments with  
28 traffic issues, Plaintiff would often be running around and would not have the time or the

1 opportunity to take an uninterrupted meal period. Despite this, and as alluded to above, SENTRY  
2 had a policy and practice of having employees such as Plaintiff writing on paper that he received  
3 a “1 hour lunch” even though that was not true and in fact, was far from the truth. All SENTRY  
4 cared about was looking like they were complying with California law on paper, even though it  
5 was not the reality of the situation. When Plaintiff brought up the fact that he was not able to  
6 take a meal break at 11:30am like SENTRY wanted him to put down on paper and that he had  
7 taken it later, SENTRY would encourage him to “accurately” input his lunch times and that he  
8 would NOT be able to log it as being late and after the 5<sup>th</sup> hour worked. As was the case with  
9 rest periods, consistent meal breaks were definitively not part of the SENTRY’s culture. The  
10 meal periods were not always authorized and were not enforced.

11 14. In addition, the company absolutely encouraged Plaintiff and others to do the phone calls,  
12 emails, and reports out on the field and before returning to home base and demanded that all the  
13 work be completed. The latter, of course, militates against employees such as Plaintiff being able  
14 to take statutory meal and rest breaks.

15 15. Furthermore, even if SENTRY did in fact provide meal or rest period penalties to  
16 Plaintiff and others for late, short, interrupted, or no meal or rest periods, that does not absolve  
17 SENTRY of PAGA penalties. *In Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244,  
18 1256, the Court stated that “section 226.7 does not give employers a lawful choice between  
19 providing *either* meal and rest breaks *or* an additional hour of pay” (emphasis in original). Thus,  
20 the extra hour of pay does not excuse the violation; the employer has still committed a violation  
21 even if the remedy for the violation has been paid. *See also Wert v. U.S. Bancorp* (S.D. Cal. Mar.  
22 22, 2016, 2016 WL 1110302 at \*4).

23 16. Furthermore, during the relevant time period, and due to the above-cited labor code  
24 violations, SENTRY failed to pay Plaintiff and other similarly situated aggrieved employees all  
25 wages due to them within any time period specified by California Labor Code section 204,  
26 including the minimum wages and overtime as described above as well as meal/rest break  
27 premiums. SENTRY was also in violation of California Labor Code section 226(a) by not  
28

1 providing access to paystubs and failing to include pertinent information on the wage statements,  
2 including but not limited to, all hours worked, gross wages earned, net wages earned, all  
3 deductions, premium payments for meal and rest breaks, overtime compensation, the correct  
4 legal name and address of employing, the correct beginning and end of the pay period, all  
5 applicable hourly rates, and all identifying employee information, among other items. As such,  
6 SENTRY did not provide Plaintiff and other similarly situated aggrieved employees with  
7 complete, accurate itemized wage statements.

8 17. SENTRY violated Labor Code § 203 because it willfully failed to pay Plaintiff and other  
9 aggrieved employees earned and due wages upon separation of employment, either immediately  
10 upon involuntary termination, or within 72 hours of resignation. These earned but unpaid wages  
11 include compensation for all hours worked including minimum wages, overtime, and premiums  
12 for the missed meal and rest breaks.

13 18. During the relevant time period, SENTRY also failed to keep accurate and complete  
14 payroll records showing the actual hours worked per day (including the time for meal periods)  
15 and the wages paid to Plaintiff and other aggrieved employees pursuant to California Labor Code  
16 sections 1174(d).

17 19. Additionally, during the relevant time period, Plaintiff and others incurred necessary,  
18 business-related expenses and costs that were not reimbursed by SENTRY. These costs include,  
19 but are not limited to, use of personal cell phones, personal computers, and home internet for  
20 work purposes. Accordingly, SENTRY was in violation of California Labor Code sections 2800  
21 and 2802.

22 20. In addition, SENTRY failed to provide a suitable rest break area for employees such as  
23 Plaintiff and others in contravention of Industrial Welfare Commission Wage Order no. 4-2001.

24 21. In addition, Plaintiff would have individual claims against SENTRY for wrongful  
25 termination in violation of public policy and age discrimination based on the Fair Employment  
26 and Housing Act (FEHA).

27 22. The company used an exam requirement (and Plaintiff and others were told not to prepare  
28

1 for the exam and just take it) as a means to terminate Plaintiff after 13 years of service. The exam  
2 was extremely stressful on the employees, including Plaintiff, because it was being used as a  
3 mechanism to terminate employment. Due to the exam, Plaintiff developed a very high blood  
4 pressure reading and brought this to the attention of management, however, nothing was done to  
5 aid Plaintiff. The company terminated Plaintiff in March 2022 and treated it as a disciplinary  
6 issue and related to Plaintiff to failing the exam, however, the reality of it was that the company  
7 was trying to get rid of Plaintiff due to his age, which also translated into Plaintiff being paid  
8 more than other younger workers.

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

11 **(California Industrial Welfare Commission Order 4-2001, California Code of**  
12 **Regulations Title 8 Section 11040, and California Labor Code Section 1198)**

13 **(Plaintiff against all named defendants and all DOE defendants)**

14 23. Plaintiff re-alleges and incorporates by reference each and every allegation in  
15 paragraphs 1 through 22, inclusive, of this Complaint as though fully set forth herein.

16 24. At all times relevant herein, Defendants were required to compensate its employees for  
17 all hours worked upon reporting for work at the appointed time stated by the employer  
18 pursuant to Industrial Welfare Commission Order 4-2001, California Code of Regulations,  
19 Title 8, Section 11040.

20 25. For the three (3) years preceding filing of this action, Defendants failed to compensate  
21 Plaintiff for all hours worked.

22 26. Under the aforementioned wage order and regulations, Plaintiff is to recover  
23 compensation for all hours worked but not paid by Defendants for the three (3) years  
24 preceding the filing of this Complaint.

25 27. As a proximate result of the aforementioned violations, Plaintiff has been damaged in  
26 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of  
27 this Court.  
28

1 28. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and  
2 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is  
3 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus  
4 reasonable attorney's fees and costs of suit.

5 29. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged  
6 along with any allowable interest, penalties, attorney's fees, and costs which will equal an  
7 amount known to Plaintiff once he has obtained all of his payroll records from  
8 Defendants.

9 **SECOND CAUSE OF ACTION**

10 **FAILURE TO PAY MINIMUM WAGES**

11 **(California Labor Code Sections 1194, 1194.2, 1197)**

12 **(Plaintiff against all named defendants and all DOE defendants)**

13 30. Plaintiff re-alleges and incorporates by reference each and every allegation in  
14 paragraphs 1 through 29, inclusive, of this Complaint as though fully set forth herein.

15 31. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer  
16 to suffer or permit a California employee to work without paying wages at the minimum wage  
17 rate for all hours worked as required by the applicable Industrial Welfare Commission  
18 (hereinafter "IWC") Wage Order No. 4-2001, codified at California Code of Regulations, Title  
19 8, Section 11040, subdivision 4.

20 32. Pursuant to IWC Wage Order no. 4-2001, subdivision 2(K), at all relevant times, "hours  
21 worked" included "the time during which an employee is subject to the control of an employer,  
22 and includes all the time the employee is suffered or permitted to work, whether or not required  
23 to do so..."

24 33. During his employment, Plaintiff was regularly required as a matter of uniform  
25 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff  
26 was paid less than the minimum wage rate by Defendants for hours worked in violation of  
27 California Labor Code Section 1197 and the applicable California Industrial Wage  
28

1 Commission wage order(s).

2 34. Plaintiff was, at all relevant times, under the control of Defendants and suffered or  
3 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately  
4 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants  
5 to believe that their acts or omissions were not contrary to California law.

6 35. For all hours worked by Plaintiff for which he was paid less than the minimum wage  
7 rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum  
8 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount  
9 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,  
10 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

11 36. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged  
12 along with any allowable interest, penalties, attorney's fees, and costs according to proof at  
13 trial.

14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO PAY OVERTIME**

16 **(California Industrial Welfare Commission Order 4-2001, California Code of**  
17 **Regulations Title 8 Section 11040)**

18 **(Plaintiff against all named defendants and all DOE defendants)**

19 37. Plaintiff re-alleges and incorporates by reference each and every allegation in  
20 paragraphs 1 through 36, inclusive, of this Complaint as though fully set forth herein.

21 38. Pursuant to Industrial Welfare Commission Order No. 4-2001, California Code of  
22 Regulations, Title 8, Section 11040, for the period of Plaintiff's employment, Defendants were  
23 required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5)  
24 times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours  
25 in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12)  
26 hours in a day or hours worked in excess of eight (8) on the seventh consecutive workday in a  
27 week.  
28

1 39. Plaintiff was a non-exempt employee entitled to the protections of the California  
2 Industrial Welfare Commission Order No. 4-2001, California Code of Regulations, Title 8,  
3 Section 11040.

4 40. Plaintiff worked more than eight (8) hours in a single workday or forty (40) hours in a  
5 single workweek on numerous occasions.

6 41. Plaintiff worked more than twelve (12) hours in a single workday.

7 42. Plaintiff was entitled to the above overtime premiums.

8 43. Defendants did not pay Plaintiff premium wages of at least one and one-half times  
9 Plaintiff's regular rate of pay for hours worked past eight (8) in a day.

10 44. Defendants did not pay Plaintiff premium wages of at least one and one-half times  
11 Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

12 45. Defendants did not pay Plaintiff premium wages of at least two times Plaintiff's regular  
13 rate of pay for hours worked past twelve (12) in a day.

14 46. Plaintiff worked at least one pay period in which he was not properly paid overtime  
15 within the three (3) years prior to the initiation of this lawsuit.

16 47. Defendants know or should know the actual dates of overtime worked, the amount of  
17 overtime worked, and the amount of unpaid overtime due.

18 48. As a proximate result of Defendants' violations, Plaintiff has been damaged in an  
19 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this  
20 Court.

21 49. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of  
22 Regulations, Title 8, Sections 11040, Plaintiff is entitled to recover damages for the  
23 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus  
24 reasonable attorney's fees and costs of suit.

25 50. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged  
26 along with any allowable interest, penalties, attorney's fees, and costs according to proof at  
27 trial.  
28

**FOURTH CAUSE OF ACTION**

**FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

**(California Labor Code Section 226)**

**(Plaintiff against all named defendants and all DOE defendants)**

51. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 50, inclusive, of this Complaint as though fully set forth herein.

52. Pursuant to California Labor Code Section 226, every employer must furnish each employee an itemized statement of wages and deductions at the time of payment of wages.

53. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that accurately reflected all information required by Labor Code Section 226, including but not limited to, accurate figures for gross wages earned, net wages earned, total hours worked by the employee (regular and overtime), commission payments, all deductions, premium pay for missed rest breaks and meal breaks, and business expense reimbursement. Therefore, Defendants failed to maintain and provide accurate itemized wage statements to Plaintiff in accordance with California Labor Code Section 226(a).

54. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to the 3-year period immediately preceding the date this lawsuit was filed.

55. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has sustained damages, including loss of earnings, in an amount to be established at trial. As a further direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs and attorney's fees pursuant to statute.

56. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged

1 along with any allowable interest, penalties, attorney's fees, and costs according to proof at  
2 trial.

3 **FIFTH CAUSE OF ACTION**

4 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

5 **(California Labor Code Sections 201, 203)**

6 **(Plaintiff against all named defendants and all DOE defendants)**

7 57. Plaintiff re-alleges and incorporates by reference each and every allegation in  
8 paragraphs 1 through 56, inclusive, of this Complaint as though fully set forth herein.

9 58. Pursuant to California Labor Code Section 201(a), an employer who discharges an  
10 employee must immediately pay for all compensation due and owing.

11 59. Pursuant to California Labor Code Section 202, when an employee resigns, the  
12 employer must pay all compensation due and owing within 72 hours of resignation, or on the  
13 employee's last day of work, if the employee gives more than 72 hours notice of resignation.

14 60. Pursuant to California Labor Code Section 203, if an employer willfully fails to pay,  
15 without abatement or reduction, any wages of an employee whose employment ends, the wages  
16 of the employee shall continue as a penalty from the due date at the same rate until paid or until  
17 an action is commenced; however, the wages shall not continue for more than 30 days for  
18 failure to pay an employee owed wages.

19 61. After Plaintiff's employment with Defendants ended, Defendants willfully refused and  
20 continue to refuse to pay him unpaid wages as required by Labor Code Section 203, including  
21 premium wages for missed, late, or short meal and rest periods .

22 62. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged  
23 along with any allowable interest, penalties, attorney's fees, and costs according to proof at  
24 trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately  
25 preceding the filing of this lawsuit.

26 63. Under this cause of action, Plaintiff also prays for attorney's fees and costs under  
27 California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set  
28

1 forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

2 64. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged  
3 along with any allowable interest, penalties, attorney's fees, and costs according to proof at  
4 trial.

5 **SIXTH CAUSE OF ACTION**

6 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

7 **(California Labor Code Section 204)**

8 **(Plaintiff against all named defendants and all DOE defendants)**

9 65. Plaintiff re-alleges and incorporates by reference each and every allegation in  
10 paragraphs 1 through 64, inclusive, of this Complaint as though fully set forth herein.

11 66. California Labor Code Section 204 establishes the fundamental right of all employees  
12 in the State of California to be paid wages in a timely fashion for their work.

13 67. At all times relevant during the liability period, Defendants failed to pay Plaintiff the  
14 full amount of all owed wages when due as required by California Labor Code Section 204.

15 68. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is  
16 informed, believes, and thereon alleges, that all times relevant during the liability period,  
17 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,  
18 including overtime hours and the minimum wage as well as premiums for missed rest breaks  
19 and meal breaks.

20 69. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an  
21 amount, subject to proof, to the extent he was not paid all wages each pay period. The precise  
22 amount of unpaid wages is not presently known to Plaintiff but can be determined directly  
23 from Defendants' records or indirectly based on information from Defendants' records.

24 70. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged  
25 along with any allowable interest, penalties, attorney's fees, and costs according to proof at  
26 trial.

27 ///

1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO GIVE REST BREAKS**

3 **(Plaintiff against all named defendants and all DOE defendants)**

4 71. Plaintiff re-alleges and incorporates by reference each and every allegation in  
5 paragraphs 1 through 70, inclusive, of this Complaint as though fully set forth herein.

6 72. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 7 a. Title 8 of the California Code of Regulations Sections 11040(12)(A), which provide  
8 that every employer shall authorize and permit all employees to take rest periods,  
9 which insofar as practicable shall be in the middle of each work period. The  
10 authorized rest period time shall be based on the total hours worked daily at the rate  
11 of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
- 12 b. Title 8 of the California Code of Regulations Sections 11040(12)(B), which  
13 provides that if an employer fails to provide an employee a rest period in  
14 accordance with the applicable provisions of this order, the employer shall pay the  
15 employee one (1) hour of pay at employee's regular rate of compensation for each  
16 workday that the rest period is not provided;
- 17 c. Title 8 of the California Code of Regulations sections 11040(20)(A), which  
18 penalizes the employer \$50.00 for each initial violation, per employee, of any  
19 provision of the Wage Order, and \$100.00 for each additional violation thereafter  
20 per employee; and
- 21 d. California Labor Code section 226.7, which states that (a) no employer shall require  
22 any employee to work during any rest period mandated by an applicable order of  
23 the Industrial Welfare Commission, and (b) if an employer fails to provide an  
24 employee a rest period in accordance with an applicable order of the Industrial  
25  
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27  
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1 Welfare Commission, the employer shall pay the employee one (1) additional hour  
2 of pay at employee's regular rate of compensation for each work day that the rest  
3 period is not provided.

4 73. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute  
5 rest break after every four (4) hours of work or major fraction thereof, as required by California  
6 law.

7 74. Under this cause of action, Plaintiff prays for wages due to him under the statutes,  
8 regulations, and wage orders alleged in this cause of action along with any allowable interest,  
9 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for  
10 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

11 75. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's  
12 fees as well as interest under Labor Code section 218.6.

13 76. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged  
14 along with any allowable interest, penalties, attorney's fees, and costs according to proof at  
15 trial.  
16

## 17 **EIGHTH CAUSE OF ACTION**

### 18 **FAILURE TO GIVE MEAL BREAKS**

19 **(Plaintiff against all named defendants and all DOE defendants)**

20 77. Plaintiff re-alleges and incorporates by reference each and every allegation in  
21 paragraphs 1 through 76, inclusive, of this Complaint as though fully set forth herein.

22 78. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 23
- 24 a. California Labor Code section 512(a), which requires that employees be given a 30-  
25 minute uninterrupted meal break after five (5) hours of work, and a second  
26 uninterrupted meal break after ten (10) hours of work;  
27
- 28 b. California Labor Code section 226.7, which states that (a) no employer shall require

1 any employee to work during any meal period mandated by an applicable order of  
2 the Industrial Welfare Commission, and (b) if any employer fails to provide an  
3 employee a meal period in accordance with an applicable order of the Industrial  
4 Welfare Commission, the employer shall pay the employee one (1) additional hour  
5 of pay at the employee's regular rate of compensation for each workday that the  
6 meal period is not provided;

7  
8 c. California Industrial Welfare Commission Order No. 4 section 11(B), as codified  
9 under Title 8 of the California Code of Regulations Section 11040, which state that  
10 if an employer fails to provide an employee a meal period in accordance with the  
11 applicable provisions of the Wage Order, the employer shall pay the employee one  
12 (1) hour of pay at the employee's regular rate of compensation for each workday  
13 that the meal period is not provided;

14  
15 d. California Industrial Welfare Commission Wage Order No. 4 Section 7(A)(3), as  
16 codified under Title 8 of the California Code of Regulations Section 11040, which  
17 require an employer to maintain records documenting its employees' meal periods;

18  
19 e. California Industrial Welfare Commission wage order No. 4 Section 20(A), as  
20 codified under California Code of Regulations Section 11040, which penalizes the  
21 employer \$50.00 for each initial violation, per employee, of any provision of the  
22 Wage Order, and \$100.00 for each additional violation thereafter per employee; and

23  
24 f. California Labor Code section 1171 and 1173, which have given the California  
25 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 4 )  
26 as enforceable law.

27  
28 79. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks

1 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to  
2 take a second relieved meal break after ten (10) hours of work, as required by California law.  
3 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.  
4 4, as codified under California Code of Regulations Sections 11040 et. seq., require that  
5 employees receive uninterrupted meal periods every five (5) hours of consecutive work, and  
6 that the meal period be at least 30 minutes in length, wherein employee is relieved of all work  
7 duty. California Labor Code section 226.7 provides that employers may not require their  
8 employees to work through their meal periods. California Labor Code section 226.7 and  
9 California Code of Regulations section 11040 require that if the employer fails to provide the  
10 employee with an uninterrupted meal period, the employer must pay the employee one (1) hour  
11 of pay for each workday that the meal period is not given.  
12

13 80. Under this cause of action, Plaintiff prays for wages due to him under the statutes,  
14 regulations, and wage orders alleged in this cause of action along with any allowable interest,  
15 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for  
16 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.  
17

18 81. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's  
19 fees as well as interest under Labor Code section 218.6.

20 82. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged  
21 along with any allowable interest, penalties, attorney's fees, and costs according to proof at  
22 trial.

### 23 **NINTH CAUSE OF ACTION**

#### 24 **PRIVATE ATTORNEYS GENERAL ACT**

25 **Individual and Representative Claim for PAGA penalties under California Labor Code**  
26 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5,**  
**1194, 1197, 1198, 2802, provisions of IWC Wage Orders no. 4, including section 13)**

27 **(Against All Named Defendants and all DOE Defendants)**  
28

1 83. Plaintiff re-alleges and incorporates by reference each and every allegation in  
2 paragraphs 1 through 82, inclusive, of this Complaint as though fully set forth herein.

3 84. Pursuant to law, Plaintiff provided the required written notice to the LWDA and  
4 Defendants of the specific violations of the California Labor Code that Defendants  
5 and DOE defendants have violated and continue to violate.

6 85. Pursuant to California Labor code section 2699.3, no response was received from the  
7 LWDA within 65 days of the postmark date of the above-alleged letter.

8 86. Plaintiff therefore has exhausted all administrative remedies required of him under  
9 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this  
10 cause of action and pursue penalties in a representative action for Defendants' violations of the  
11 Labor Code.

12 87. Pursuant to California Labor Code section 2699, any provisions of the Labor Code  
13 that provides for a civil penalty to be assessed and collected by the LWDA or any of its  
14 departments, divisions, commissions, boards, agencies, or employees for violation of the code  
15 may, as an alternative, be recovered through a civil action brought by an aggrieved employee  
16 on behalf of himself or herself and other current or former employees pursuant to the  
17 procedures specified in California Labor Code section 2699.3.  
18

19 88. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged  
20 violator and had one or more of the alleged violations committed against him, and therefore is  
21 properly suited to represent the interests of other current and former employees, including all  
22 hourly, non-exempt employees who worked for Defendants in the State of California during  
23 the PAGA period at any of their locations in California.

24 89. Based on the acts alleged above, Plaintiff, on behalf of himself and others, seeks  
25 penalties under California Labor Code sections 2698 and 2699 because of Defendants'  
26 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

27 90. Plaintiff therefore has exhausted all administrative remedies required of him under  
28 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this

1 cause of action and pursue penalties in a representative action for Defendants' violations of the  
2 Labor Code.

3 91. California Labor Code section 2699 et seq. imposes penalties upon culpable  
4 Defendants for violating the Labor Code.

5 92. California Labor Code section 558 establishes a civil penalty as follows: Any  
6 employer or other person action on behalf of an employer who violates, or causes to be  
7 violated, a section of this chapter or any provision regulating hours and days of work in any  
8 order of the Industrial Welfare Commission (including the "Hours and Days of Work" section  
9 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty  
10 dollars (\$50) for each underpaid employee for each pay period for which the employee was  
11 underpaid ...; (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid  
12 employee for each pay period for which the employee was underpaid ...;

13 93. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by  
14 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not  
15 seeking individual/victim specific relief or underpaid wages under this particular cause of  
16 action.

17 94. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for  
18 the following:

19 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,  
20 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, and 2802 via 2698 and 2699  
21 and any other Labor Codes and Industrial Welfare Commission Wage Order Provisions  
22 (no. 4), including section 13, violated based on the facts alleged in this Complaint.

23 95. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,  
24 costs, civil penalties, and wages on behalf of Plaintiff and other current and former aggrieved  
25 employees as alleged herein in an amount to be shown according to proof at trial and within the  
26 jurisdictional limits of this Court.

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1 103.Plaintiff, an employee over 40 years of age, was subjected to adverse employment  
2 action based upon his age in the form of termination of his employment. These adverse  
3 employment acts were based on and substantially motivated in whole or in part by purposeful  
4 age discrimination, as prohibited by the laws of the State of California. This cause of action is  
5 brought pursuant to FEHA and the California Constitution Article 1, section 8.

6 104.In engaging in the aforementioned conduct, Defendants and DOES 1 to 25, inclusive,  
7 and each of them, aided, abetted, incited, compelled, and/or coerced unlawful employment  
8 practices in violation of the announced policy of this State against such practices. Furthermore,  
9 they failed to take immediate and appropriate corrective action to prevent this discrimination.

10 105.As a direct and proximate result of the aforementioned acts and omissions of  
11 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,  
12 loss of income (past and future), loss of employment benefits (past and future), general and  
13 compensatory damages (past and future), mental pain and anguish and emotional distress (past  
14 and future), and will continue to suffer in the future, in an amount to be proved at trial.

15 106.The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive, and  
16 each of their directors, officers and/or managing agents, constitutes malice, fraud, and  
17 oppression and was authorized, ratified, and carried on with a conscious and willful disregard  
18 of their workers' right to work in an environment in which personnel decisions and company  
19 policies are made without regard to age, so as to justify the imposition of punitive damages to  
20 punish and set an example of said Defendants.

21 107.As a proximate result of the foregoing conduct, which violated the provisions of  
22 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's  
23 fees and costs in the prosecution of this claim, in an amount to be proven at trial.

24 ///

25 ///

**TWELFTH CAUSE OF ACTION**

**FAILURE TO PREVENT DISCRIMINATION IN VIOLATION OF FEHA**

**(Plaintiff against all named defendants and all DOE defendants)**

108. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 107, inclusive, of this Complaint as thought fully set forth herein.

109. At all times herein mentioned, FEHA, California Government Code section 12940(k), was in full force and effect and was binding on Defendants. This statute states that it is an unlawful employment practice in California for an employer to “fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.”

110. During the course of Plaintiff’s employment, Defendants failed to prevent their employees from engaging in intentional actions that resulted in Plaintiff being treated less favorably and eventually being terminated because of Plaintiff’s protected status (i.e. his age). During the course of Plaintiff’s employment, Defendants failed to prevent their employees from engaging in unjustified employment practices against employees in such protected classes. During the course of Plaintiff’s employment, Defendants failed to prevent a pattern and practice by its employees of intentional discrimination on the basis of age and/or other protected status and/or protected activity.

111. Plaintiff believes and on that basis alleges that his age, and other protected status and/or protected activity was a substantial motivating factor in Defendants’ employees’ discriminating against him and in terminating his employment.

112. As a direct and proximate result of the aforementioned acts and omissions of Defendants, Plaintiff suffered general and compensatory damages, including but not limited to, loss of income (past and future), loss of employment benefits (past and future), general and

1 compensatory damages (past and future), mental pain and anguish and emotional distress (past  
2 and future), and will continue to suffer in the future, in an amount to be proved at trial.

3 113. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive, and  
4 each of their directors, officers and/or managing agents, constitutes malice, fraud, and  
5 oppression and was authorized, ratified, and carried on with a conscious and willful disregard  
6 of their workers' right to work in an environment in which personnel decisions and company  
7 policies are made without regard to age so as to justify the imposition of punitive damages to  
8 punish and set an example of said Defendants.  
9

10 114. As a proximate result of the foregoing conduct, which violated the provisions of  
11 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's  
12 fees and costs in the prosecution of this claim, in an amount to be proven at trial.

13 **THIRTEENTH CAUSE OF ACTION**

14 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

15 **(Plaintiff against All Named Defendants and DOE Defendants, and each of**  
16 **them)**

17 115. Plaintiff re-alleges and incorporates by reference each and every allegation in  
18 paragraphs 1 through 114, inclusive, of this Complaint as though fully set forth herein.

19 116. At all times during his employment with Defendant SENTRY, Plaintiff performed his  
20 duties with the utmost diligence and competence.

21 117. Plaintiff is informed and believes and thereon alleges that Defendants' decisions and  
22 actions to treat him differently and ultimately terminate his employment as alleged herein, was  
23 motivated by Plaintiff's age.

24 118. The employment of Plaintiff wrongfully terminated on or around March 8, 2022 in  
25 violation of the fundamental public policy of the State of California with respect to  
26 discriminating against an employee based on age. Moreover, Plaintiff was forced to hire an  
27 attorney to assist him to end these illegal activities. Said conduct violated statutory and  
28

1 constitutional expressions of public policy including, the Fair Employment and Housing Act  
2 (FEHA), including Government Code Section 12940 et. seq. and the California Constitution,  
3 Article 1 section 8.

4 119. As set forth above, said actions by Defendants were wrongful and in violation of the  
5 fundamental principles of the public policy of the State of California as reflected in its laws,  
6 objectives and policies. Said statutes and constitutional expressions of public policy include,  
7 but are not limited to, FEHA and the California Constitution, Article 1 section 8. These laws  
8 inure to the benefit of the public at large, and not just the private interests of the employers and  
9 employees whom they govern or protect.

10 120. As a direct and proximate result of the aforementioned acts and omissions of  
11 corporate Defendants, Plaintiff suffered general and compensatory damages, including but not  
12 limited to, loss of income (past and future), loss of employment benefits (past and future),  
13 general and compensatory damages (past and future), mental pain and anguish and emotional  
14 distress (past and future), and will continue to suffer in the future, in an amount to be proved at  
15 trial.  
16

17 121. The foregoing conduct engaged in by corporate Defendants and each of their directors,  
18 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,  
19 ratified, and carried on with a conscious and willful disregard of their workers' right to work in  
20 an environment free of retaliation due to whistleblowing, so as to justify the imposition of  
21 punitive damages to punish and set an example of said Defendants.  
22

#### 23 **FOURTEENTH CAUSE OF ACTION**

#### 24 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

25 **(California Business and Professions Code Section 17200)**

26 **(Plaintiff against All Named Defendants and all DOE defendants)**

27 122. Plaintiff re-alleges and incorporates by reference each and every allegation in  
28

1 paragraphs 1 through 121, inclusive, of this Complaint as though fully set forth herein.

2 123. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants  
3 constitutes unfair and unlawful business practices under California Business and Professions  
4 Code Section 17200, et seq.

5 124. Defendant's violations of California labor laws and FEHA constitutes a business  
6 practice because it was done repeatedly over a significant period of time in a systematic  
7 manner that was detrimental to Plaintiff and other similarly situated aggrieved employees.

8 125. For the four years preceding the filing of this action, Plaintiff has suffered damages  
9 and request damages and/or restitution of all monies and profits to be disgorged from  
10 Defendants in an amount according to proof at time of trial, but in excess of the  
11 jurisdiction of this Court.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them, as  
14 follows:

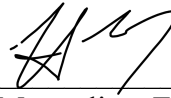
- 15 1. For compensatory damages including lost past and future wages, regular wages,  
16 overtime, and all other sums of money, including employment benefits, together  
17 with interest on said amounts, and any other economic injury to Plaintiff, according to  
18 proof;
- 19 2. For general damages according to proof;
- 20 3. For special and consequential damages to the extent allowed by law;
- 21 4. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof  
22 at trial;
- 23 5. For an award of punitive damages against corporate Defendant SENTRY  
24 INSURANCE COMPANY according to proof;
- 25 6. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount  
26 subject to proof at trial;
- 27
- 28

- 1 7. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to  
2 proof at trial;
- 3 8. For restitution and disgorgement for all unfair business practices by corporate  
4 Defendant SENTRY INSURANCE COMPANY against Plaintiff in an amount subject  
5 to proof at trial;
- 6 9. For an order enjoining Defendant SENTRY INSURANCE COMPANY from further  
7 unfair and unlawful business practices in violation of Business and Professions Code  
8 Sections 17200, et seq.;
- 9 10. For one hour of wages due to Plaintiff for each work period of more than five (5) hours  
10 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 11 11. For one hour of wages due to Plaintiff for each work period of four (4) hours or major  
12 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 13 12. For maximum civil penalties available under the Labor Code and applicable Wage  
14 Order against Defendants as described more particularly in the Complaint and  
15 representative PAGA claim;
- 16 13. For all remedies available to Plaintiff under the applicable Wage Order and the  
17 Labor Code including an award of unpaid wages, attorney's fees, costs, interest,  
18 liquidated damages, damages, penalties, and waiting time penalties according to proof  
19 to the extent permitted by law via PAGA;
- 20 14. For the imposition of civil penalties and/or statutory penalties;
- 21 15. For all interest as allowed by law;
- 22 16. For all costs and disbursements incurred in this suit;
- 23 17. Reasonable attorney's fees where available by law, including but not limited to,  
24 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5,  
25 Labor Code section 1102.5, and/or other applicable laws; and  
26 18. For such other and further relief as this Court may deem proper.
- 27  
28

1 DATED: July 1, 2022

***MESSRELIAN LAW INC.***

2  
3 By



4 Harout Messrelian, Esq.

5 Attorneys for Plaintiff Mario Cabral

6 **DEMAND FOR JURY TRIAL**

7 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.

8  
9 DATED: July 1, 2022

***MESSRELIAN LAW INC.***

10  
11 By



12 Harout Messrelian, Esq.

13 Attorneys for Plaintiff Mario Cabral

# **EXHIBIT 4**

1 KRISTA M. CABRERA, CA Bar No. 190595  
kcabrera@foley.com  
2 KEVIN JACKSON, CA Bar No. 278169  
kjackson@foley.com  
3 FOLEY & LARDNER LLP  
11988 EL CAMINO REAL, SUITE 400  
4 SAN DIEGO, CA 92130-2594  
TELEPHONE: 858.847.6700  
5 FACSIMILE: 858.792.6773

6 Attorneys for Defendant SENTRY INSURANCE  
COMPANY  
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF LOS ANGELES**  
10

11 MARIO CABRAL

12 PLAINTIFF,

13 v.

14 SENTRY INSURANCE COMPANY AND DOES 1  
TO 25, INCLUSIVE

15 DEFENDANT.  
16  
17

CASE No: 22STCV21484

ASSIGNED FOR ALL PURPOSES TO:  
HON. BARBARA A. MEIERS, DEPT. 12

**DEFENDANT SENTRY INSURANCE  
COMPANY'S ANSWER TO PLAINTIFF'S  
COMPLAINT**

CASE FILED: JULY 1, 2022

1 Defendant Sentry Insurance Company (“Defendant”), hereby answers the unverified Complaint  
2 filed by Plaintiff Mario Cabral (“Plaintiff”) as follows:

3 **GENERAL DENIAL**

4 Pursuant to the provisions of California Code of Civil Procedure § 431.30, Defendant generally  
5 and specifically denies each and every allegation, statement, matter, and purported cause of action  
6 contained in the Complaint, and further denies that Plaintiff has been damaged in the manner or sums  
7 alleged, or in any way at all, by reason of any acts or omissions of Defendant.

8 In further answer to Plaintiff’s Complaint, and as separate and distinct defenses, Defendant  
9 alleges as follows:

10 **FIRST DEFENSE**

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

12 1. The Complaint, and each and every purported cause of action set forth therein alleged  
13 against Defendant, fails to state facts sufficient to constitute a cause of action against Defendant.

14 **SECOND DEFENSE**

15 **(Failure to State a Claim Upon Which Relief Can Be Granted)**

16 2. Plaintiff’s Complaint, and each purported cause of action asserted therein, fails to state  
17 facts sufficient to state any claim upon which relief can be granted.

18 **THIRD DEFENSE**

19 **(Statute of Limitations)**

20 3. Plaintiff’s claims are time-barred, in whole or in part, by the applicable statute of  
21 limitations, including but not limited to common law; California Code of Civil Procedure sections 335,  
22 3351.1, 338, 339, 340, 343; California Business & Professions Code section 12940, 12960 et seq.,  
23 12965, and 17208; and California Labor section Code 226(a).

24 **FOURTH DEFENSE**

25 **(Failure to Mitigate)**

26 4. Plaintiff has failed to meet his burden, inasmuch as he has had, and continues to have, the  
27 ability and opportunity to mitigate the damages alleged with respect to the subject matter of this  
28 litigation, and he has failed and refused to mitigate the damages.

1 **FIFTH DEFENSE**

2 **(Failure to Exhaust)**

3 5. Plaintiff has failed to meet his burden as the Complaint is barred by his failure to exhaust  
4 all administrative remedies and/or contractual remedies and/or is in improper forum, including, but not  
5 limited to those set forth in California Labor Code section 2699.3.

6 **SIXTH DEFENSE**

7 **(Estoppel)**

8 6. Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

9 **SEVENTH DEFENSE**

10 **(Waiver)**

11 7. Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver.

12 **EIGHTH DEFENSE**

13 **(Laches)**

14 8. Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

15 **NINTH DEFENSE**

16 **(Uncertainty)**

17 9. Plaintiff claims are barred, in whole or in part, because it cannot be ascertained from the  
18 Complaint the basis of any of the allegations stated therein.

19 **TENTH DEFENSE**

20 **(No Damages or Injury)**

21 10. Plaintiff's claims are barred, in whole or in part, because he has not suffered any damage  
22 or injury by any acts, events or occurrences alleged in the Complaint, whether or not attributable to  
23 Defendant.

24 **ELEVENTH DEFENSE**

25 **(Conduct Not Unfair)**

26 11. Plaintiff's claims are barred, in whole or in part, because the wage and employment  
27 practices at issue in the Complaint are not unfair within the meaning of California Business and  
28 Professions Code section 17200. Additionally, the utility of the practices outweigh any potential harm

1 in that there were business justifications for doing so, and any alleged potential harm can be reasonably  
2 avoided.

3 **TWELFTH DEFENSE**

4 **(Unclean Hands)**

5 12. Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

6 **THIRTEENTH DEFENSE**

7 **(Conduct Not Unlawful)**

8 13. Plaintiff's claims are barred, in whole or in part, because the wage and employment  
9 practices at issue in the Complaint are not unlawful, including not being unlawful under the California  
10 Labor Code or within the meaning of California Business and Professions Code section 17200.

11 **FOURTEENTH DEFENSE**

12 **(Adequate Remedy at Law)**

13 14. Plaintiff's claims are barred, in whole or in part, because he is not entitled to a recovery  
14 of equitable relief due to the existence of an adequate remedy at law.

15 **FIFTEENTH DEFENSE**

16 **(Substantial Compliance)**

17 15. Plaintiff's claims are barred, in whole or in part, because the wage and employment  
18 practices at issue in the Complaint were not unlawful, in that Defendant fully or substantially complied  
19 with all applicable statutes and regulations, including the California Labor Code and the applicable  
20 Industrial Welfare Commission Wage Order.

21 **SIXTEENTH DEFENSE**

22 **(Accord and Satisfaction)**

23 16. Plaintiff's claims are barred, in whole or in part, by the doctrine of accord and  
24 satisfaction, and payment.

25 **SEVENTEENTH DEFENSE**

26 **(Setoff and Recoupment)**

27 17. Plaintiff's claims are barred, in whole or in part, because if any damages have been  
28 sustained, although such is specifically denied, Defendant is entitled under the equitable doctrine of

setoff and recoupment to offset all overpayments by Defendant to Plaintiff, and/or all obligations of Plaintiff owed to Defendant, against any judgment that may be entered against Defendant.

**EIGHTEENTH DEFENSE**

**(Waiting Time Penalties)**

18. Plaintiff has failed to meet his burden inasmuch as the Complaint fails to state a claim for waiting time penalties under Section 203 of the California Labor Code, the existence of which is expressly denied.

**NINETEENTH DEFENSE**

**(Conduct in Good Faith, Reasonable, Not Intentional or Willful)**

19. Plaintiff's claims are barred, in whole or in part, because Defendant's actions were based on an honest, reasonable, good faith belief in the facts as known and understood at the time and were not intentional or willful, including not being willful within the meaning of the California Labor Code. Plaintiff suffered no injuries or damages and is not entitled to damages or penalties.

**TWENTIETH DEFENSE**

**(Excessive Fines)**

20. An award of statutory and/or civil penalties under the circumstances of this case would constitute an excessive fine and otherwise would be in violation of Defendant's due process and other rights under the United States and California Constitutions.

**TWENTY-FIRST DEFENSE**

**(Lack of Standing / Plaintiff Not "Aggrieved Employee")**

21. Plaintiff has failed to meet his burden inasmuch as Plaintiff fails to satisfy the prerequisites as a representative under the California Private Attorneys General Act ("PAGA") and, therefore, lacks standing and cannot represent the interests of purported aggrieved employees as to each of the purported causes of action.

**TWENTY-SECOND DEFENSE**

**(Representative Action Unmanageable)**

22. Plaintiff has failed to meet his burden inasmuch as Plaintiff's claims for a representative PAGA action are unmanageable. See *Williams v. Superior Court*, 3 Cal. 5th 531, 559 (2017).

Accordingly, the allegations are not appropriate for representative treatment.

**TWENTY-THIRD DEFENSE**

**(Failure to Provide Proper Notice to LWDA and/or Employer)**

23. Plaintiff has failed to provide proper notice to the LWDA and/or his employer as required under Labor Code section 2699.3.

**TWENTY-FOURTH DEFENSE**

**(Underlying Claims Invalid)**

24. Plaintiff's PAGA claims on behalf of alleged aggrieved individuals must fail because of the invalidity of Plaintiff's underlying claims.

**TWENTY-FIFTH DEFENSE**

**(No Ascertainable Representative Group)**

25. Plaintiff has failed to define an ascertainable representative group of aggrieved employees.

**TWENTY-SIXTH DEFENSE**

**(Unlawful Delegation)**

26. Defendant alleges that Plaintiff's claims for penalties under PAGA are barred to the extent that private actions seeking PAGA penalties manifest an unlawful delegation of executive or other authority.

**TWENTY-SEVENTH DEFENSE**

**(No Basis For PAGA Penalties)**

27. Plaintiff has failed to meet his burden inasmuch as the relief sought under PAGA is inappropriate.

**TWENTY-EIGHTH DEFENSE**

**(Superseding Cause)**

28. Injuries or damages alleged by Plaintiff, if any, were the result of new, independent, intervening, or superseding causes that are unrelated to any conduct of Defendant. Any action on the part of Defendant was not the proximate or producing cause of any alleged injuries or damages Plaintiff claims to have suffered.

**TWENTY-NINTH DEFENSE**

**(Comparative Fault)**

29. Plaintiff did not exercise due caution or care with respect to the matters alleged in the Complaint, and if, in fact, Plaintiff suffered any damage or injury, Plaintiff contributed in whole or in part to such damage or injury, and, therefore, any remedy or recovery to which Plaintiff might otherwise be entitled must be denied or reduced accordingly.

**THIRTIETH DEFENSE**

**(Good Faith)**

30. Defendant acted in good faith and without malice or unlawful intent at all relevant times.

**THIRTY-FIRST DEFENSE**

**(Lack of Causation)**

31. Plaintiff did not suffer any damages attributable to any actions of Defendant.

**THIRTY-SECOND DEFENSE**

**(No Proximate Cause)**

32. The cause of Plaintiff's damages as alleged in the Complaint are wholly unrelated to, and were not proximately caused by, any act or omission of Defendant's.

**THIRTY-THIRD DEFENSE**

**(Plaintiff's Own Acts)**

33. Any harm, damage or injury suffered by Plaintiff is due to his own acts and omissions.

**THIRTY-FOURTH AFFIRMATIVE DEFENSE**

**(After-Acquired Evidence)**

34. To the extent Defendant subsequently acquires evidence refuting Plaintiff's claims, such after-acquired evidence shall accordingly bar Plaintiff's claims on liability or damages or shall reduce such claims or damages as provided by law.

**THIRTY-FIFTH AFFIRMATIVE DEFENSE**

**(Workers' Compensation Preemption)**

35. Plaintiff's allegations of emotional or physical injury are barred, as this Court lacks jurisdiction, and any recovery is barred by the exclusivity of remedy under California Labor Code

section 3602, *et seq.*

**THIRTY-SIXTH AFFIRMATIVE DEFENSE**

**(No Notice of Discrimination, Harassment, or Retaliation)**

36. Plaintiff's claims are barred, in whole or in part, because Defendant did not receive notice from Plaintiff that any individual allegedly had engaged in any discriminatory, harassing or retaliatory conduct directed against or towards Plaintiff based upon his alleged age, other protected characteristic, or alleged protected activity, and Plaintiff unreasonably failed to complain of any unlawful conduct and/or take advantage of the preventative or corrective opportunities available and/or otherwise avoid harm.

**THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

**(Legitimate, Nondiscriminatory & Nonretaliatory Reasons)**

37. Plaintiff has failed to meet his burden inasmuch as the conduct for which Plaintiff complains was not based on Plaintiff's alleged protected characteristics or activity, but was based on one or more legitimate, nondiscriminatory, and nonretaliatory reasons.

**THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

**(Policies Prohibiting Discrimination, Harassment, and Retaliation)**

38. Any recovery on Plaintiff's Complaint, or any purported cause of action alleged therein, is barred, in whole or in part, because Defendant maintained policies prohibiting unlawful conduct and promoting a work environment free from discrimination, harassment and retaliation.

**THIRTY-NINTH AFFIRMATIVE DEFENSE**

**(Business Judgment)**

39. Plaintiff's claims are barred, in whole or in part, because Defendant's actions with respect to Plaintiff were a legitimate exercise of Defendant's business judgment which Plaintiff cannot invade.

**FORTIETH AFFIRMATIVE DEFENSE**

**(Lack of Authorization or Ratification)**

40. Plaintiff is not entitled to recover the punitive damages alleged in the Complaint because Defendant did not authorize or ratify the acts alleged in the Complaint.

1 **FORTY-FIRST AFFIRMATIVE DEFENSE**

2 **(Avoidable Consequences Doctrine)**

3 41. Although Defendant denies that it committed or has responsibility for any act that could  
4 support the recovery of damages in this lawsuit, if any, to the extent Plaintiff was discriminated against  
5 or subjected to any other alleged unlawful employment practice, Plaintiff is barred from recovering any  
6 damages under the avoidable consequences doctrine. Defendant took reasonable steps to prevent and  
7 correct workplace discrimination, harassment and retaliation, Plaintiff unreasonably failed to utilize  
8 Defendant's preventative and corrective measures and reasonable use of Defendant's preventative and  
9 corrective measures would have prevented at least some of the harm Plaintiff allegedly suffered.

10 *Department of Health Services v. Superior Court* (McGinnis) (2000) 31 Cal.4th 1026.

11 **FORTY-SECOND AFFIRMATIVE DEFENSE**

12 **(Lack of Actual or Constructive Knowledge)**

13 42. Defendant lacked actual or constructive knowledge of the conduct alleged in the  
14 Complaint or of any alleged wrongdoing by any other persons.

15 **FORTY-THIRD AFFIRMATIVE DEFENSE**

16 **(Same Decisions)**

17 43. Any recovery on Plaintiff's Complaint, or any cause of action alleged therein, is barred  
18 because, assuming, arguendo, that discriminatory or retaliatory reasons had been a motivating factor in  
19 any employment decisions concerning Plaintiff, Defendant would have made the same employment  
20 decisions toward Plaintiff in any case for legitimate, non-discriminatory, non-retaliatory business  
21 reasons.

22 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

23 **(Legitimate Business Reasons)**

24 44. Defendant's actions were for legitimate business reasons made in good faith and were not  
25 based upon a violation of public policy or other factors protected by law, including Plaintiff's alleged  
26 age or other protected characteristic or activity.

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WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff take nothing by his Complaint;
2. That judgment be entered in favor of Defendant and against Plaintiff on all causes of action;
3. That Defendant be awarded reasonable attorneys' fees according to proof to the extent permitted by law;
4. That Defendant be awarded the costs of suit incurred herein; and
5. That the Court award Defendant such other and further relief as it deems just and proper.

**FOLEY & LARDNER LLP**  
KRISTA M. CABRERA  
KEVIN JACKSON

By: /s/ Krista M. Cabrera  
KRISTA M. CABRERA  
Attorneys for Defendant SENTRY INSURANCE  
COMPANY

PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to this action; my current business address is 555 South Flower Street, Suite 3300, Los Angeles, CA 90071-2418.

On September 20, 2022, I served the foregoing document(s) described as: **DEFENDANT SENTRY INSURANCE COMPANY'S ANSWER TO PLAINTIFF'S COMPLAINT** on the interested parties in this action as follows:

Harout Messrelian, Esq.  
Messrelian Law Inc.  
500 N. Central Avenue, Suite 840  
Glendale, CA 91203  
Telephone: 818-484-6531  
Facsimile: 818-956-1983  
Email: hm@messrelianlaw.com

Attorney for Plaintiff MARIO CABRAL

       BY ELECTRONIC MAIL

       Pursuant to C.C.P. 1010.6, et seq., I served the foregoing document via e-mail to the addressees above at the e-mail addresses listed therein.

  X   BY ELECTRONIC COURT FILING SERVICE (E-SERVICE)

  X   Pursuant to Code of Civil Procedure section 1010.6(e)(1), I personally caused each document listed above to be served by Court-approved Electronic Court Filing Service Provider by transmitting true and correct copies of each document for electronic service to the addressees above at the e-mail addresses listed therein.

       BY MAIL

       I placed the envelope(s) with postage thereon fully prepaid in the United States mail, at Los Angeles, **California**.

       I am readily familiar with the firm's practice of collection and processing correspondence for mailing with the United States Postal Service; the firm deposits the collected correspondence with the United States Postal Service that same day, in the ordinary course of business, with postage thereon fully prepaid, at Los Angeles, **California**. I placed the envelope(s) for collection and mailing on the above date following ordinary business practices.

  X   Executed on September 20, 2022, at Los Angeles, **California**.

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

  
Sara K. Villamarin

# **EXHIBIT 5**

08/09/2023

David W. Slayton, Executive Officer / Clerk of Court

By: N. Marshallian Deputy

HAROUT MESSRELIAN, ESQ. (272020)  
MESSRELIAN LAW INC.  
500 N. CENTRAL AVE., SUITE 840  
GLENDALE, CA 91203  
Telephone: 818-484-6531  
Facsimile: 818-956-1983

Attorneys for Plaintiff,  
MARIO CABRAL, and all others similarly situated

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

MARIO CABRAL, on behalf of himself, all  
others similarly situated, and the general  
public, and as an "aggrieved employee" on  
behalf of other "aggrieved employees"  
under the Labor Code Private Attorneys  
General Act of 2004,

*Plaintiff,*

vs.

SENTRY INSURANCE COMPANY and  
DOES 1 to 25, inclusive,

*Defendants.*

Case No.: 22STCV21484

**CLASS ACTION**

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR:**

1. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
2. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
3. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
4. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code §§ 201-203);
7. Failure to Pay Wages Owed Every Pay Period ( Lab. Code § 204)
8. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.; and
9. Civil Penalties Under the Private Attorneys General Act ("PAGA") (Lab. Code §§ 2698, et seq.).

**JURY TRIAL DEMANDED**

1 Plaintiff, MARIO CABRAL (hereafter "Plaintiff"), on behalf of himself and all others  
2 similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action against Defendant SENTRY  
5 INSURANCE COMPANY, a Wisconsin corporation, and Does 1-25, inclusive (collectively  
6 "Defendants") for alleged violations of the California Labor Code, Industrial Welfare  
7 Commission Order No. 4-2001 (hereafter "the Wage Order"), and the Business and Professions  
8 Code.

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to  
10 him and other similarly situated current and former California-based hourly workers, for unpaid  
11 wages and other related relief. These claims are based on Defendants' alleged failures to (1) pay  
12 all wages earned for all hours worked, (2) provide all meal and rest periods in compliance with  
13 California law, (3) indemnify Plaintiff and the below-described class for reasonable expenses  
14 incurred performing their duties, (4) provide accurate written wage statements, (5) timely pay all  
15 final wages during and upon termination of employment, and (6) fairly compete. Accordingly,  
16 Plaintiff now seeks to recover unpaid wages and related relief through this class and representative  
17 action.

18 **PARTIES**

19 3. Plaintiff MARIO CABRAL is a resident of California. At all relevant times,  
20 Plaintiff was an "employee" within the meaning of Title 8 California Code of Regulations Section  
21 11040 and an "aggrieved employee" within the meaning of Labor Code Section 2699(c).

22 4. Defendant SENTRY INSURANCE COMPANY is a corporation organized and  
23 existing under the laws of Wisconsin and is a citizen of California based on Plaintiff's information  
24 and belief.

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

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

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

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

#### 15                               **CLASS ALLEGATIONS**

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

21          10.    **Class Definition:** The Class is defined as follows: All individual Defendants  
22 employed in California in an hourly, non-exempt position at any time during the Class Period of  
23 July 1, 2018 through the date the Court grants preliminary approval of the Settlement ("Class" or  
24 "Class Members").

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

28          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.

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

4                   A.       Whether Defendants failed to provide the class with all meal and rest  
5 periods in compliance with California law;

6                   B.       Whether Defendants failed to pay all wages earned to Class Members for  
7 all hours worked at the correct rates of pay, including but not limited to, minimum and overtime  
8 wages;

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

11                   D.       Whether Defendants knowingly and intentionally failed to provide the  
12 class with accurate written wage statements;

13                   E.       Whether Defendants willfully failed to provide the Class with timely final  
14 wages;

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

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

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

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

28           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. Defendants first employed Plaintiff over a decade ago. Plaintiff was classified as an hourly, non-exempt employee and his job title was Senior Claims Field Appraiser.

19. Plaintiff and the Class Members earned their wages at an hourly rate and Defendants issued their paychecks on a bi-weekly basis. At relevant times, Plaintiff and the Class Members worked shifts in excess of eight (8) hours in one workday and/or over forty (40) hours in one work week.

20. At all relevant times, Defendants did not provide Plaintiff and the Class Members, with the minimum wages to which they were entitled for all work performed and did not compensate Plaintiff and the Class Members for all hours worked pursuant to California Labor Code Sections 1194, 1197 and 1197.1. Plaintiff and the Class Members were not paid for all hours worked and consistently worked “off the clock” in that the company had a policy and practice of rounding down work hours to the detriment of employees, which is akin to a minimum wage violation. Moreover, to the extent Plaintiff and the Class Members worked through their meal periods or their meal periods were interrupted, they were not compensated for that time, which would be akin to a minimum wage violation. Moreover, there were numerous occasions wherein Plaintiff would work “off the clock” hours but he would not be compensated for that time. These “off the clock” hours include working after 4:30 pm (and Plaintiff would have emails as proof that he worked past 4:30 pm), including emails, calls, working on reports and other such work. There were certainly occasions wherein Plaintiff would get on the road before 7:30 am or get to the “home base” after 5:30 pm. The company also had a policy wherein “windshield time”

1 was not counted, meaning that Plaintiff and the Class Members did not get paid for “travel time”  
2 between two appointments, which would be akin to a minimum wage violation. Furthermore,  
3 and as alluded to above, the company had a practice and policy of having Plaintiff and the Class  
4 Members log in their hours worked. The understanding was that Plaintiff would put 7:30 am to  
5 4:30 pm (his schedule) and log a “1 hour lunch” whether or not he took a meal period. This latter  
6 policy and practice, which was encouraged by Defendants, resulted in Plaintiff and the Class  
7 Members not being paid for all hours worked and not receiving the minimum wage. This is so  
8 because there were numerous occasions, as discussed below, wherein Plaintiff and the Class  
9 Members would NOT get the one-hour meal break or would have to eat and work at the same,  
10 however, the company would automatically deduct 1-hour per day for an alleged meal period  
11 that Plaintiff and the Class Members did not take. The latter resulted in consistent minimum wage  
and overtime violations (see below).

12 21. Due to the above “off the clock” work, Defendants failed to pay Plaintiff and the  
13 Class Members overtime compensation, even though they worked more than 8 hours per day (1.5  
14 times the regular rate of pay), 12 hours per day (2 times the regular rate of pay) and/or 40 hours  
15 per week (1.5 times the regular rate of pay) throughout their employment. Moreover, Defendants  
16 did not factor in any bonuses or incentive payments in deciphering Plaintiff’s and the Class  
17 Members’ regular rate of pay for purposes of figuring out the correct overtime rate of pay.  
18 Plaintiff’s and the Class Members’ “off the clock” work certainly entitled them to plenty of  
19 overtime compensation, but Defendants had a policy and practice of not paying for overtime  
20 hours. In fact, Plaintiff would email Defendants management requesting overtime compensation  
but would be denied.

21 22. At all relevant times, Defendants failed to provide Plaintiff and the Class  
22 Members with 10-minute rest periods for every four hours of work, or majority portion thereof,  
23 throughout their employment. Rest breaks were not authorized or enforced at the company. In  
24 fact, it was not part of Defendant’s culture for Plaintiff and the Class Members to consistently  
25 take even one 10-minute rest break every day wherein they are relieved of all work duties. The  
26 latter is a function of Plaintiff’s and the Class Members’ job duties and the nature of their work.  
27 There was no opportunity and no time to take an uninterrupted rest break, much less multiple rest  
28 breaks throughout the workday. Furthermore, Defendants failed to pay premium wages for days  
on which it failed to provide Plaintiff and the Class Members with all timely, uninterrupted rest

1 periods.

2 23. At all relevant times, Defendants failed to provide Plaintiff and the Class  
3 Members with all timely and uninterrupted meal periods pursuant to California law. Defendants  
4 often failed to provide Plaintiff and the Class Members with 30-minute meal periods before the  
5 end of their fifth work hour. Defendants had a policy and practice of having Plaintiff and the  
6 Class Members writing on paper that they received a “1 hour lunch” even though that was not  
7 true and in fact, was far from the truth. All Defendants cared about was looking like they were  
8 complying with California law on paper, even though it was not the reality of the situation. When  
9 Plaintiff brought up the fact that he was not able to take a meal break at 11:30 am like Defendants  
10 wanted him to put down on paper and that he had taken it later, Defendants would encourage him  
11 to “accurately” input his lunch times and that he would NOT be able to log it as being late and  
12 after the 5th hour worked. As was the case with rest periods, consistent meal breaks were  
13 definitively not part of the Defendant’s culture. In addition, the company absolutely encouraged  
14 Plaintiff and the Class Members to do the phone calls, emails, and reports out on the field and  
15 before returning to home base and demanded that all the work be completed. The latter, of course,  
16 militates against employees such as Plaintiff being able to take statutory meal and rest breaks.  
17 Furthermore, Defendants failed to pay premium wages for days on which it failed to provide  
18 Plaintiff and the Class Members with timely meal periods.

19 24. At all relevant times, Defendants required Plaintiff and the Class Members to use  
20 their own personal cell phones, personal computers, and home internet for work purposes.  
21 Defendants, however, failed to reimburse them for these required business expenses.

22 25. Defendants failed to record the “off the clock” wages Plaintiff and the other Class  
23 Members earned and all the “off the clock” hours they worked, as described above, on their  
24 itemized wage statements. As a result of the practices described above, Defendants failed to  
25 provide Plaintiff and the other Class Members with accurate wage statements that properly and  
26 accurately itemize Plaintiff and the other Class Members’ gross and net wages earned and the  
27 total hours worked. As a further result, Defendants failed to timely pay Plaintiff and the other  
28 Class Members all earned and unpaid wages during and upon separation from their employment.

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**FIRST CAUSE OF ACTION**

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

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

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

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

27. 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 §§ 1194, 1197, and the Wage Order.

28. Section 2 of the applicable Wage Order defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” As the California Supreme Court has explained, this definition is disjunctive, meaning time can be an “hour worked” if either (a) the employee is subject to the employer's control, or (b) the employer suffers or permits the employee to work during that time, whether or not the employee is required to do so. *Mendiola v. CPS Sec. Solutions, Inc.* (2015) 60 Cal. 4th 833, 838 (citing *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 582-83).

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

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

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

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

33. The provisions of the Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working “off-the-clock” (before punching in or after punching

1 out on a time clock) when the employer knew or reasonably should have known that employees  
2 were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

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

4 (A) Daily Overtime - General Provisions

5 (1) The following overtime provisions are applicable to  
6 employees 18 years of age or over and to employees 16 or 17  
7 years of age who are not required by law to attend school and  
8 are not otherwise prohibited by law from engaging in the  
9 subject work. Such employees shall not be employed more  
10 than eight (8) hours in any workday or more than 40 hours in  
11 any workweek unless the employee receives one and one-half  
12 (1 1/2) times such employee's regular rate of pay for all hours  
13 worked over 40 hours in the workweek. Eight (8) hours of  
14 labor constitutes a day's work. Employment beyond eight (8)  
15 hours in any workday or more than six (6) days in any  
16 workweek is permissible provided the employee is  
17 compensated for such overtime at not less than:

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

23 35. In relevant part, California Labor Code § 510 states,

24 Any work in excess of eight hours in one workday and any work in excess  
25 of 40 hours in any one workweek and the first eight hours worked on the  
26 seventh day of work in any one workweek shall be compensated at the  
27 rate of no less than one and one-half times the regular rate of pay for an  
28 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.

36. With respect to overtime wages, the regular rate of pay under California law must  
include "all remuneration for employment paid to, or on behalf of, the employee." O.L.  
2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited, to, non-  
discretionary bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal.  
App. 4th 893, 904–05. Commissions and bonuses must be included in the regular rate whether  
they are the sole source of the employee's compensation or are in addition to a guaranteed salary

1 or hourly rate. 29 C.F.R. §§778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir 1982)  
2 695 F.2d 379.

3 37. The method for calculating the regular rate on commissions or bonuses is as  
4 follows: The total commission or bonus earnings are divided by the total number of hours  
5 worked in the commission or bonus period to calculate the regular rate. (See 2002 DLSE  
6 Enforcement Policies and Interpretations Manual (rev 2009) §§ 49.2.1.2, 49.2.4 (DLSE  
7 Manual); DLSE Opn. Letter Nos. 2002-06-14-1, 1988-06-02.) The employee must then be paid  
8 an additional one-half of the regular rate for all overtime hours worked in the commission or  
9 bonus period. (See DLSE Manual, *supra*, §§ 49.2.1.2, 49.2.4; DLSE Opn. Letter Nos. 2002-06-  
10 14-1, 1988-06-02.) The full regular rate is owed for double-time hours worked in the workweek  
11 (i.e., twice the regular rate is paid for those hours). (See DLSE Manual, *supra*, §§ 49.2.1.2,  
12 49.2.4; DLSE Opn. Letter Nos. 2002-06-14-1, 1988-06-02.)

13 38. At all relevant times, Defendants compensated Plaintiff and the Class Members  
14 with an hourly rate of pay on a bi-weekly basis.

15 39. At all relevant times during the applicable limitations period, Defendants have  
16 intentionally failed, for one or more periods, to compensate Plaintiff and the Class Members for  
17 all minimum wages and for all overtime hours worked at the legal rates of pay as required under  
18 the aforementioned California law. Defendants required Plaintiff and the Class to work off the  
19 clock without pay, including during periods clocked out for “meal periods.”

20 40. Plaintiff is informed and believes and thereon alleges that, at all relevant times,  
21 Defendants have maintained a policy, practice, or a lack of a policy which resulted in  
22 Defendants’ failure to compensate Plaintiff and the Class for all hours worked at the correct  
23 rates of pay.

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

28 42. As a result of Defendants’ conduct, Plaintiff, on behalf of himself and the Class,  
seeks damages and/or restitution for unpaid wages which Defendants failed to pay them at the  
rates set forth herein, interest thereon, costs of suit and reasonable attorney’s fees pursuant to  
California Labor Code §§ 1194.

**SECOND CAUSE OF ACTION**  
**FAILURE TO PROVIDE REST BREAKS**  
**(Lab. Code §§ 226.7 and 1198)**

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

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

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

45. 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.”

46. In relevant part, Section 12 of the Wage Order states:  
Rest Periods:

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

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

47. 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.

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

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

12 49. Defendants failed to provide Plaintiff with all required rest breaks in accordance  
13 with the Wage Order. The latter is a function of Plaintiff's job duties and the nature of his work  
14 in having to go from one appointment to another in order to do appraisals. There was no  
15 opportunity and no time to take an uninterrupted rest breaks, much less multiple rest breaks  
16 throughout the workday. Plaintiff is informed and believes and thereon alleges that, at relevant  
17 times within the applicable limitations period, Defendants had a policy, practice, or a lack of a  
18 policy which resulted in Defendants not providing the class with all rest breaks required by  
19 California law.

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

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

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

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**THIRD CAUSE OF ACTION**  
**FAILURE TO PROVIDE MEAL PERIODS**  
**(Lab. Code §§ 226.7, 512, and 1198)**

**(By Plaintiff 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 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.

55. 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, 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.”

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

Meal Periods:

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

(B) 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.

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

59. During the relevant time period, Defendants failed to provide Plaintiff and the Class Members with timely, off-duty meal periods in accordance with California Labor Code § 512 and the Wage Order due to their work load and the nature of their work and job duties.

60. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing Plaintiff and the Class Members with all timely meal periods required by California Labor Code § 512 and the Wage Order.

61. Defendants failed to pay Plaintiff and the Class Members the additional wages required by California

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

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

63. 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.

#### **FOURTH CAUSE OF ACTION**

#### **FAILURE TO INDEMNIFY**

**(Lab. Code §§ 1198 & 2802)**

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

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

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

66. 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.”

67. Section 9(B) of the Wage Order states:

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.

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

69. At all relevant times, as a condition for employment, Defendants required Plaintiff and the Class Members to use their own personal cell phones, personal computers, and home internet. Defendants, however, failed to reimburse them for these required business expenses.

70. 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.

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

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

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**FIFTH CAUSE OF ACTION**  
**WAGE STATEMENT PENALTIES**  
**(Lab. Code § 226)**

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

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

7       74.     At all relevant times during the applicable limitations period, Plaintiff and the  
8 other Class Members have been employees of Defendants and entitled to the benefits and  
9 protections of California Labor Code section 226.

10       75.     Pursuant to California Labor Code section 226(a), Plaintiff and the other Class  
11 Members were entitled to receive, biweekly or at the time of each payment of wages, an accurate  
12 itemized statement showing:

- 13               (1)     Gross wages earned,
- 14               (2)     Total hours worked by the employee, except for any employee whose  
15 compensation is solely based on a salary and who is exempt from payment of overtime under  
16 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 17               (3)     The number of piece rate units earned and any applicable piece rate if the  
18 employee is paid on a piece-rate basis,
- 19               (4)     All deductions, provided that all deductions made on written orders of the  
20 employee may be aggregated and shown as one item,
- 21               (5)     Net wages earned,
- 22               (6)     The inclusive dates of the period for which the employee is paid,
- 23               (7)     The name of the employee and his or her social security number, except  
24 that by January 1, 2008, only the last four digits of his or her social security number or an  
25 employee identification number other than a social security number may be shown on the itemized  
26 statement,
- 27               (8)     The name and address of the legal entity that is the employer, and
- 28               (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.

76.     Pursuant to California Labor Code section 226(e), an employee suffering injury as

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

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

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

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

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

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

20 78. "Promptly and easily determine," as stated in California Labor Code section  
21 226(e), means a reasonable person would be able to readily ascertain the information without  
22 reference to other documents or information.

23 79. As alleged herein, Defendants failed to provide Plaintiff and the other Class  
24 Members with all meal and rest periods in compliance with California law. They also failed to  
25 provide them with premium wages on workdays they failed to provide them with one or more  
26 meal and/or rest periods in compliance with California law. Further, Defendants failed to  
27 compensate Plaintiff and the other Class Members for all hours worked. As a result, Defendants  
28 have failed to properly itemize Plaintiff and the other Class Members' gross and net wages earned,  
total hours worked, hourly rate of pay, the corresponding number of hours worked at each hourly

1 rate, and other requirements of California Labor Code § 226. As a result, Defendants have violated  
2 California Labor Code § 226.

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

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

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

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

27 **SIXTH CAUSE OF ACTION**  
28 **WAITING TIME PENALTIES**  
**(Lab. Code §§ 201-203)**

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

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

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

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

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

10          88.     By failing to pay all earned minimum, regular, overtime, and premium wages to  
11 Plaintiff and the Class Members as described above, Defendants failed to timely pay Plaintiff  
12 and the Class Members all earned and unpaid wages in violation of Labor Code section 201 or  
13 202.

14          89.     Plaintiff is informed and believes that Defendants' failures to timely pay all final  
15 wages to them and the class members have been willful in that Defendants have the ability to pay  
16 final wages in accordance with Labor Code sections 201 and 202 but have intentionally adopted  
17 policies or practice that are incompatible with those requirements.

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

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

26          92.     Pursuant to Labor Code section 203, Plaintiff seeks waiting time penalties on  
27 behalf of himself and the Class Members, in amounts subject to proof not to exceed 30 days of  
28 waiting time penalties for each class member.

**SEVENTH CAUSE OF ACTION**

**FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

**(Lab. Code § 204)**

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

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

94. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code section 204 and the Wage Order.

95. California Labor Code Section 204 establishes the fundamental right of all employees in the State of California to be paid wages in a timely fashion for their work.

96. 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.

97. Defendants paid wages to employees on regular intervals. Defendants failed to pay Plaintiff and the Class Members on such intervals for all wages earned and all hours worked.

**EIGHTH CAUSE OF ACTION**

**UNFAIR COMPETITION**

(Bus. & Prof. Code §§ 17200, et seq.)

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

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

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

100. The unlawful conduct of Defendants alleged herein amounts to and constitutes unfair competition within the meaning of California Business & Professions Code sections 17200, et seq. Due to their unfair and unlawful business practices as alleged herein, Defendants have unfairly gained a competitive advantage over other comparable companies doing business in California that comply with their legal obligations to, among other things, pay their employees premium wages for workdays in which they did not provide employees with one or more meal and rest periods, reimburse their employees for reasonable expenses incurred during the course of performing their duties, and pay them all earned wages for all minimum and overtime hours worked.

101. As a result of Defendants' unfair competition as herein alleged, Plaintiff and the other Class Members have suffered injuries in fact and lost money or property. Defendants deprived Plaintiff and the other Class Members of minimum, overtime, and premium wages and reimbursement for expenses that Plaintiff and the other Class Members incurred during the course of performing their duties.

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

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

**NINTH CAUSE OF ACTION**

**CIVIL PENALTIES UNDER PAGA**

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

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

1           105. The “Aggrieved Employees” are all members of the Class defined above who  
2 Defendants employed during the period beginning April 14, 2021 and ending on the date the  
3 Court grants preliminary approval of the Settlement.

4           106. During the applicable time period, Defendants violated California Labor Code §§  
5 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

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

9           108. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are  
10 entitled to recover civil penalties for each of the Defendants’ violations of California Labor Code  
11 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 during the  
12 applicable limitations period in the following amounts:

13           A. For violations of California Labor Code § 204, one hundred dollars  
14 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars  
15 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation  
16 (penalty amounts established by California Labor Code § 210).

17           B. For violations of California Labor Code § 226(a), two hundred fifty dollars  
18 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00)  
19 for each Aggrieved Employee for each subsequent violation (penalty amounts established by  
20 California Labor Code § 226.3).

21           C. For violations of California Labor Code §§ 510 and 512, fifty dollars  
22 (\$50.00) for each Aggrieved Employee for each initial violation and one hundred dollars  
23 (\$100.00) for each Aggrieved Employee for each subsequent violation per pay period (penalty  
24 amounts established by California Labor Code § 558).

25           D. For violations of California Labor Code § 1174, five hundred dollars  
26 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by  
27 California Labor Code § 1174.5).

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

1 established by California Labor Code § 1197.1).

2 F. For violations of California Labor Code §§ 201, 202, 203, 226.7,  
3 1194, 1198, and 2802 one hundred dollars (\$100.00) for each Aggrieved Employee per pay period  
4 for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per  
5 pay period for each subsequent violation (penalty amounts established by California Labor Code  
§ 2699(f)(2)).

6 109. Plaintiff has complied with the procedures for bringing suit specified in California  
7 Labor Code § 2699.3. By a letter dated April 14, 2022, Plaintiff filed written notice online with  
8 the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified  
9 mail to Defendants of the specific provisions of the California Labor Code alleged to have been  
10 violated, including the facts and theories to support the alleged violations. Plaintiff accompanied  
11 his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in  
12 response within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff anticipates that the  
13 LWDA will provide written notice to Plaintiff informing him that it does not intend to investigate  
14 these allegations.

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

17 **PRAYER FOR RELIEF**

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

- 20 A. An order that the action be certified as a class action;  
21 B. An order that Plaintiff be appointed class representative;  
22 C. An order that counsel for Plaintiff be appointed class counsel;  
23 D. Unpaid Wages;  
24 E. Actual Damages;  
25 F. Statutory Damages;  
26 G. Liquidated Damages;  
27 H. Restitution;  
28 I. Declaratory and injunctive relief;  
J. Equitable relief;

- 1 K. Pre-judgment interest;  
2 L. Statutory penalties;  
3 M. Civil penalties;  
4 N. Costs of suit;  
5 O. Interest;  
6 P. Reasonable attorneys' fees; and  
7 Q. Such other relief as the Court deems just and proper.

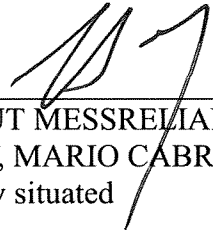
8 **DEMAND FOR JURY TRIAL**

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

11 Respectfully submitted,

12 MESSRELIAN LAW INC.

13 Dated: August 8, 2023

14 By   
15 HAROUT MESSRELIAN, Attorneys for  
16 Plaintiff, MARIO CABRAL, and all others  
17 similarly situated  
18  
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28

# **EXHIBIT 6**

1 KRISTA M. CABRERA, CA Bar No. 190595  
kcabrera@foley.com

2 KEVIN JACKSON, CA Bar No. 278169  
kjackson@foley.com

3 FOLEY & LARDNER LLP  
11988 EL CAMINO REAL, SUITE 400  
4 SAN DIEGO, CA 92130-2594  
TELEPHONE: 858.847.6700  
5 FACSIMILE: 858.792.6773

6 Attorneys for Defendant SENTRY INSURANCE  
COMPANY

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF LOS ANGELES**

10  
11 MARIO CABRAL

12 PLAINTIFF,

13 v.

14 SENTRY INSURANCE COMPANY AND DOES 1  
TO 25, INCLUSIVE

15 DEFENDANT.  
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CASE No: 22STCV21484

ASSIGNED FOR ALL PURPOSES TO:  
HON. BARBARA A. MEIERS, DEPT. 12

**DEFENDANT SENTRY INSURANCE  
COMPANY'S ANSWER AND AFFIRMATIVE  
DEFENSES TO PLAINTIFF'S FIRST  
AMENDED CLASS ACTION COMPLAINT**

CASE FILED: JULY 1, 2022  
FAC FILED: AUGUST 8, 2023

1 Defendant Sentry Insurance Company ("Defendant"), hereby answers the unverified First  
2 Amended Class Action Complaint filed by Plaintiff Mario Cabral ("Plaintiff") as follows:

3 **GENERAL DENIAL**

4 Pursuant to the provisions of California Code of Civil Procedure § 431.30, Defendant generally  
5 and specifically denies each and every allegation, statement, matter, and purported cause of action  
6 contained in the Complaint, and further denies that Plaintiff has been damaged in the manner or sums  
7 alleged, or in any way at all, by reason of any acts or omissions of Defendant.

8 In further answer to Plaintiff's Complaint, and as separate and distinct defenses, Defendant  
9 alleges as follows:

10 **AFFIRMATIVE DEFENSES**

11 **FIRST DEFENSE**

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

13 1. The Complaint, and each and every purported cause of action set forth therein alleged  
14 against Defendant, fails to state facts sufficient to constitute a cause of action against Defendant.

15 **SECOND DEFENSE**

16 **(Failure to State a Claim Upon Which Relief Can Be Granted)**

17 2. Plaintiff's Complaint, and each purported cause of action asserted therein, fails to state  
18 facts sufficient to state any claim upon which relief can be granted.

19 **THIRD DEFENSE**

20 **(Statute of Limitations)**

21 3. Plaintiff's claims are time-barred, in whole or in part, by the applicable statute of  
22 limitations, including but not limited to common law; California Code of Civil Procedure sections 335,  
23 3351.1, 338, 339, 340, 343; California Business & Professions Code section 12940, 12960 et seq.,  
24 12965, and 17208; and California Labor section Code 226(a).

25 **FOURTH DEFENSE**

26 **(Failure to Mitigate)**

27 4. Plaintiff has failed to meet his burden, inasmuch as he has had, and continues to have, the  
28 ability and opportunity to mitigate the damages alleged with respect to the subject matter of this

litigation, and he has failed and refused to mitigate the damages.

**FIFTH DEFENSE**

**(Failure to Exhaust)**

5. Plaintiff has failed to meet his burden as the Complaint is barred by his failure to exhaust all administrative remedies and/or contractual remedies and/or is in improper forum, including, but not limited to those set forth in California Labor Code section 2699.3.

**SIXTH DEFENSE**

**(Estoppel)**

6. Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

**SEVENTH DEFENSE**

**(Waiver)**

7. Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver.

**EIGHTH DEFENSE**

**(Laches)**

8. Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

**NINTH DEFENSE**

**(Uncertainty)**

9. Plaintiff claims are barred, in whole or in part, because it cannot be ascertained from the Complaint the basis of any of the allegations stated therein.

**TENTH DEFENSE**

**(No Damages or Injury)**

10. Plaintiff's claims are barred, in whole or in part, because he has not suffered any damage or injury by any acts, events or occurrences alleged in the Complaint, whether or not attributable to Defendant.

**ELEVENTH DEFENSE**

**(Conduct Not Unfair)**

11. Plaintiff's claims are barred, in whole or in part, because the wage and employment practices at issue in the Complaint are not unfair within the meaning of California Business and

Professions Code section 17200. Additionally, the utility of the practices outweigh any potential harm in that there were business justifications for doing so, and any alleged potential harm can be reasonably avoided.

**TWELFTH DEFENSE**

**(Unclean Hands)**

12. Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

**THIRTEENTH DEFENSE**

**(Conduct Not Unlawful)**

13. Plaintiff's claims are barred, in whole or in part, because the wage and employment practices at issue in the Complaint are not unlawful, including not being unlawful under the California Labor Code or within the meaning of California Business and Professions Code section 17200.

**FOURTEENTH DEFENSE**

**(Adequate Remedy at Law)**

14. Plaintiff's claims are barred, in whole or in part, because he is not entitled to a recovery of equitable relief due to the existence of an adequate remedy at law.

**FIFTEENTH DEFENSE**

**(Substantial Compliance)**

15. Plaintiff's claims are barred, in whole or in part, because the wage and employment practices at issue in the Complaint were not unlawful, in that Defendant fully or substantially complied with all applicable statutes and regulations, including the California Labor Code and the applicable Industrial Welfare Commission Wage Order.

**SIXTEENTH DEFENSE**

**(Accord and Satisfaction)**

16. Plaintiff's claims are barred, in whole or in part, by the doctrine of accord and satisfaction, and payment.

**SEVENTEENTH DEFENSE**

**(Setoff and Recoupment)**

17. Plaintiff's claims are barred, in whole or in part, because if any damages have been

sustained, although such is specifically denied, Defendant is entitled under the equitable doctrine of setoff and recoupment to offset all overpayments by Defendant to Plaintiff, and/or all obligations of Plaintiff owed to Defendant, against any judgment that may be entered against Defendant.

#### **EIGHTEENTH DEFENSE**

##### **(Waiting Time Penalties)**

18. Plaintiff has failed to meet his burden inasmuch as the Complaint fails to state a claim for waiting time penalties under Section 203 of the California Labor Code, the existence of which is expressly denied.

#### **NINETEENTH DEFENSE**

##### **(Conduct in Good Faith, Reasonable, Not Intentional or Willful)**

19. Plaintiff's claims are barred, in whole or in part, because Defendant's actions were based on an honest, reasonable, good faith belief in the facts as known and understood at the time and were not intentional or willful, including not being willful within the meaning of the California Labor Code. Plaintiff suffered no injuries or damages and is not entitled to damages or penalties.

#### **TWENTIETH DEFENSE**

##### **(Excessive Fines)**

20. An award of statutory and/or civil penalties under the circumstances of this case would constitute an excessive fine and otherwise would be in violation of Defendant's due process and other rights under the United States and California Constitutions.

#### **TWENTY-FIRST DEFENSE**

##### **(Lack of Standing / Plaintiff Not "Aggrieved Employee")**

21. Plaintiff has failed to meet his burden inasmuch as Plaintiff fails to satisfy the prerequisites as a representative under the California Private Attorneys General Act ("PAGA") and, therefore, lacks standing and cannot represent the interests of purported aggrieved employees as to each of the purported causes of action.

#### **TWENTY-SECOND DEFENSE**

##### **(Representative Action Unmanageable)**

22. Plaintiff has failed to meet his burden inasmuch as Plaintiff's claims for a representative

1 PAGA action are unmanageable. See *Williams v. Superior Court*, 3 Cal. 5th 531, 559 (2017).

2 Accordingly, the allegations are not appropriate for representative treatment.

3 **TWENTY-THIRD DEFENSE**

4 **(Failure to Provide Proper Notice to LWDA and/or Employer)**

5 23. Plaintiff has failed to provide proper notice to the LWDA and/or his employer as required  
6 under Labor Code section 2699.3.

7 **TWENTY-FOURTH DEFENSE**

8 **(Underlying Claims Invalid)**

9 24. Plaintiff's PAGA claims on behalf of alleged aggrieved individuals must fail because of  
10 the invalidity of Plaintiff's underlying claims.

11 **TWENTY-FIFTH DEFENSE**

12 **(No Ascertainable Representative Group)**

13 25. Plaintiff has failed to define an ascertainable representative group of aggrieved  
14 employees.

15 **TWENTY-SIXTH DEFENSE**

16 **(Unlawful Delegation)**

17 26. Defendant alleges that Plaintiff's claims for penalties under PAGA are barred to the  
18 extent that private actions seeking PAGA penalties manifest an unlawful delegation of executive or  
19 other authority.

20 **TWENTY-SEVENTH DEFENSE**

21 **(No Basis For PAGA Penalties)**

22 27. Plaintiff has failed to meet his burden inasmuch as the relief sought under PAGA is  
23 inappropriate.

24 **TWENTY-EIGHTH DEFENSE**

25 **(Superseding Cause)**

26 28. Injuries or damages alleged by Plaintiff, if any, were the result of new, independent,  
27 intervening, or superseding causes that are unrelated to any conduct of Defendant. Any action on the  
28 part of Defendant was not the proximate or producing cause of any alleged injuries or damages Plaintiff

claims to have suffered.

**TWENTY-NINTH DEFENSE**

**(Comparative Fault)**

29. Plaintiff did not exercise due caution or care with respect to the matters alleged in the Complaint, and if, in fact, Plaintiff suffered any damage or injury, Plaintiff contributed in whole or in part to such damage or injury, and, therefore, any remedy or recovery to which Plaintiff might otherwise be entitled must be denied or reduced accordingly.

**THIRTIETH DEFENSE**

**(Good Faith)**

30. Defendant acted in good faith and without malice or unlawful intent at all relevant times.

**THIRTY-FIRST DEFENSE**

**(Lack of Causation)**

31. Plaintiff did not suffer any damages attributable to any actions of Defendant.

**THIRTY-SECOND DEFENSE**

**(No Proximate Cause)**

32. The cause of Plaintiff's damages as alleged in the Complaint are wholly unrelated to, and were not proximately caused by, any act or omission of Defendant's.

**THIRTY-THIRD DEFENSE**

**(Plaintiff's Own Acts)**

33. Any harm, damage or injury suffered by Plaintiff is due to his own acts and omissions.

**THIRTY-FOURTH DEFENSE**

**(After-Acquired Evidence)**

34. To the extent Defendant subsequently acquires evidence refuting Plaintiff's claims, such after-acquired evidence shall accordingly bar Plaintiff's claims on liability or damages or shall reduce such claims or damages as provided by law.

**THIRTY-FIFTH DEFENSE**

**(Not Appropriate for Class Action)**

35. Plaintiff has failed to meet his burden inasmuch as Plaintiff's claims for a class action,

1 the existence of which is expressly denied, including but not limited to being overly broad and unduly  
2 vague, are matters in which individual questions predominate, and Plaintiff does not adequately  
3 represent the class alleged in the Complaint. Accordingly, the allegations are not appropriate for class  
4 action treatment.

### 5 **THIRTY-SIXTH DEFENSE**

#### 6 **(Insufficient Similarity With Others and Desire to Join Action)**

7 36. Plaintiff has failed to meet his burden inasmuch as Plaintiff cannot show a sufficient  
8 number of similarly situated individuals who have been harmed or desire to join this action (Defendant  
9 denies any exist).

### 10 **THIRTY-SEVENTH DEFENSE**

#### 11 **(Numerosity)**

12 37. Plaintiff has failed to meet his burden inasmuch as the Complaint fails, to the extent it  
13 asserts a class action, because the alleged class Plaintiff purports to represent, the existence of which is  
14 expressly denied, lacks numerosity.

### 15 **THIRTY-EIGHTH DEFENSE**

#### 16 **(Claims Not Common or Typical)**

17 38. Plaintiff has failed to meet his burden inasmuch as the claims alleged by Plaintiff are  
18 neither common to nor typical of those, if any, of the alleged class Plaintiff purports to represent, the  
19 existence of which is expressly denied.

### 20 **THIRTY-NINTH DEFENSE**

#### 21 **(Superiority)**

22 39. Plaintiff has failed to meet his burden inasmuch as a class is not maintainable for, among  
23 other reasons, failure to satisfy the requirement of superiority.

### 24 **RESERVATION OF RIGHTS**

25 Defendant has not knowingly or intentionally waived any applicable defenses and reserves the  
26 right to assert and rely on such other applicable defenses as may later become available or apparent.  
27 Defendant further reserves the right to amend its answer or defenses accordingly and/or to delete  
28

1 defenses that it determines are not applicable during the course of discovery. Nothing stated herein  
2 constitutes a concession as to whether or not Plaintiff bears the burden of proof on any issue.

3 WHEREFORE, Defendant prays for judgment as follows:

- 4 1. That Plaintiff take nothing by his Complaint;
- 5 2. That judgment be entered, with prejudice, in favor of Defendant and against Plaintiff on  
6 all causes of action;
- 7 3. That Defendant be awarded reasonable attorneys' fees according to proof to the extent  
8 permitted by law;
- 9 4. That Defendant be awarded the costs of suit incurred herein; and
- 10 5. That the Court award Defendant such other and further relief as it deems just and proper.
- 11
- 12

13 DATE: SEPTEMBER 6, 2023

**FOLEY & LARDNER LLP**  
KRISTA M. CABRERA  
KEVIN JACKSON

15  
16 By:   
17 KRISTA M. CABRERA  
18 Attorneys for Defendant SENTRY INSURANCE  
19 COMPANY  
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PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to this action; my current business address is 11988 El Camino Real, Suite 400, San Diego, CA 92130-2594.

On September 6, 2023, I served the foregoing document(s) described as: **DEFENDANT SENTRY INSURANCE COMPANY'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S FIRST AMENDED CLASS ACTION COMPLAINT** on the interested parties in this action as follows:

Harout Messrelian, Esq.  
Messrelian Law Inc.  
500 N. Central Avenue, Suite 840  
Glendale, CA 91203  
Telephone: 818-484-6531  
Facsimile: 818-956-1983  
Email: hm@messrelianlaw.com

Attorney for Plaintiff MARIO CABRAL

BY ELECTRONIC MAIL

Pursuant to C.C.P. 1010.6, et seq., I served the foregoing document via e-mail to the addressees above at the e-mail addresses listed therein.

X BY ELECTRONIC COURT FILING SERVICE (E-SERVICE)

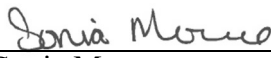
X Pursuant to Code of Civil Procedure section 1010.6(e)(1), I personally caused each document listed above to be served by Court-approved Electronic Court Filing Service Provider by transmitting true and correct copies of each document for electronic service to the addressees above at the e-mail addresses listed therein.

BY MAIL

I am readily familiar with the firm's practice of collection and processing correspondence for mailing with the United States Postal Service; the firm deposits the collected correspondence with the United States Postal Service that same day, in the ordinary course of business, with postage thereon fully prepaid, at San Diego, California. I placed the envelope(s) for collection and mailing on the above date following ordinary business practices.

X Executed on September 6, 2023, at San Diego, California.

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

  
Sonia Moreno

# **EXHIBIT 7**

Case name: Cabral v. Sentry  
Case number: 22STCV21484  
Court: LASC- Stanley Mosk  
Judge: Hon. Maurice Leiter  
Page subject: **Background**  
Authority: Various

Formula  
From Defendant  
From sample  
Extrapolation

LWDA Notice: 14-Apr-22  
65 Days after LWDA Notice: 18-Jun-22  
Complaint: 1-Jul-22  
Mediation date: 19-Apr-23

| Time Period        | Begin     | End       | Calendar Days |
|--------------------|-----------|-----------|---------------|
| UCL:               | 2-Jul-18  | 19-Apr-23 | 1,752         |
| Lab.Code sec. 203: | 2-Jul-19  | 19-Apr-23 | 1,387         |
| PAGA:              | 14-Apr-21 | 19-Apr-23 | 735           |
| Lab.Code sec. 226  | 1-Jul-21  | 19-Apr-23 | 657           |
| D Sample:          | 14-Apr-18 | 19-Jan-23 | 1,741         |

Sample Period/Class Period Ratio: 99.37%

| Subject:                         | Lab.Code sec. 226 | PAGA     | Lab.Code sec. 203 | UCL      |
|----------------------------------|-------------------|----------|-------------------|----------|
| Defendant's Population Estimate: |                   |          |                   | 120      |
| Sample Population:               |                   |          |                   | 42       |
| Sample Ratio:                    |                   |          |                   | 35.00%   |
| Defendant's workdays estimate:   | -                 | -        | -                 | 25,580   |
| Sample workdays:                 |                   |          |                   | 16,127   |
| Sample Ratio:                    |                   |          |                   | 63.05%   |
| Defendant's Workweeks Estimate:  |                   |          |                   | 5,116    |
| Sample Workweeks:                |                   |          |                   | 3,477    |
| Sample Ratio:                    |                   |          |                   | 67.96%   |
| Pay cycle:                       | Biweekly          | Biweekly | Biweekly          | Biweekly |
| Pay period per year:             | 26                | 26       | 26                | 26       |
| Defendant's Paychecks Estimate:  | 2,606             | 2,606    |                   |          |
| Estimated days per week:         | 5                 | 5        | 5                 | 5        |
| Sample hours per week:           | 39.70             | 39.70    | 39.70             | 39.70    |
| Sample hours per day:            | 7.94              | 7.94     | 7.94              | 7.94     |
| Sample hourly rate:              | \$ 35.73          | \$ 35.73 | \$ 35.73          | \$ 35.73 |

Case name: Cabral v. Sentry  
Case number: 22STCV21484  
Court: LASC- Stanley Mosk  
Judge: Hon. Maurice Leiter  
Page subject: **Meal period premium wages**  
Authority: Lab.Code secs. 226.7, 512, 1198

|                 |    |           |
|-----------------|----|-----------|
| Hourly rate:    | \$ | 35.73     |
| Violation Rate: |    | 10.60%    |
| Workdays:       |    | 25,580    |
| Total:          | \$ | 96,881.18 |

Case name: Cabral v. Sentry  
Case number: 22STCV21484  
Court: LASC- Stanley Mosk  
Judge: Hon. Maurice Leiter  
Page subject: **Rest period premium wages**  
Authority: Lab.Code secs. 226.7, 1198

|                 |    |           |
|-----------------|----|-----------|
| Hourly rate:    | \$ | 35.73     |
| Violation Rate: |    | 10.60%    |
| Workdays:       |    | 25,580    |
| Total:          | \$ | 96,881.18 |

Case name: Cabral v. Sentry  
Case number: 22STCV21484  
Court: LASC- Stanley Mosk  
Judge: Hon. Maurice Leiter  
Page subject: **Unpaid wages for off the clock work**  
Authority: Lab.Code secs. 510, 1194

Workdays: 25,580  
based on OTC work after shift  
and not being paid during  
Unpaid hours per workday: 2.00 windshield time and working  
Hourly Rate: \$ 35.73  
Overtime Rate: \$ 53.60  
Pre-Interest Unpaid Wages total: 2,741,920.20  
Interest rate: 10%  
Interest amount: 274,192.02  

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Total: 3,016,112.22

Case name: Cabral v. Sentry  
Case number: 22STCV21484  
Court: LASC- Stanley Mosk  
Judge: Hon. Maurice Leiter  
Page subject: **Waiting time penalties (untimely final wages)**  
Authority: Lab.Code sec. 203

|                            |               |
|----------------------------|---------------|
| Total Hours per day:       | 7.94          |
| Regular Hours:             | 7.94          |
| Regular Rate:              | \$ 35.73      |
| Regular wages:             | \$ 283.70     |
| Overtime Hours:            | \$ -          |
| Overtime Rate:             | \$ 53.60      |
| Overtime wages:            | \$ -          |
| Doubletime Hours:          | \$ -          |
| Doubletime Rate:           | \$ 71.46      |
| Doubletime Wages:          | \$ -          |
| Daily Wages:               | \$ 283.70     |
| Waiting Time Days:         | 30            |
| Affected former employees: | 51            |
| Total:                     | \$ 434,055.19 |

Case name: Cabral v. Sentry  
Case number: 22STCV21484  
Court: LASC- Stanley Mosk  
Judge: Hon. Maurice Leiter  
Page subject: **Unreimbursed expenses**  
Authority: Lab.Code sec. 2802

|                                   |    |           |
|-----------------------------------|----|-----------|
| Mobile Phone                      |    |           |
| Monthly mobile phone bill:        | \$ | 50.00     |
| Percentage of phone use for work: |    | 0.50      |
| Work phone use per week:          | \$ | 5.77      |
| Workweeks affected:               |    | 5,116     |
| Pre-interest total:               | \$ | 29,515.38 |
| Interest rate:                    |    | 10%       |
| Interest amount:                  | \$ | 2,951.54  |
| Total:                            | \$ | 32,466.92 |

Case name: Cabral v. Sentry  
Case number: 22STCV21484  
Court: LASC- Stanley Mosk  
Judge: Hon. Maurice Leiter  
Page subject: **Statutory "pay stub" penalties**  
Authority: Lab.Code sec. 226

|                                       |    |            |
|---------------------------------------|----|------------|
| Initial pay period penalty amount:    | \$ | 50.00      |
| Subsequent pay period penalty amount: | \$ | 100.00     |
| Affected wage statements:             |    | 2,606      |
| Affected employees:                   |    | 85         |
| Total:                                | \$ | 256,350.00 |

Case name: Cabral v. Sentry  
Case number: 22STCV21484  
Court: LASC- Stanley Mosk  
Judge: Hon. Maurice Leiter  
Page subject: **Civil Penalties (PAGA)**  
Authority: Lab.Code secs. 2698, et seq.

| Subject                                           | Lab.Code secs.   |    | Civil Penalty | Paychecks | Totals        |
|---------------------------------------------------|------------------|----|---------------|-----------|---------------|
| Unpaid minimum wage violations civil penalties    | 1194/1197/1197.1 | \$ | 100.00        | 2,606     | \$ 260,600.00 |
| Unpaid overtime wage violations civil penalties   | 510/558          | \$ | 50.00         | 2,606     | \$ 130,300.00 |
| Unprovided meal period violations civil penalties | 512/558          | \$ | 50.00         | 2,606     | \$ 130,300.00 |
| Unprovided rest period violations civil penalties | 1198/2699        | \$ | 100.00        | 2,606     | \$ 260,600.00 |
| Unreimbursed expense violations civil penalties   | 1198/2802/2699   | \$ | 100.00        | 2,606     | \$ 260,600.00 |
| Untimely wages violations civil penalties         | 201-204/210      | \$ | 100.00        | 2,606     | \$ 260,600.00 |
| Faulty wage statement violations civil penalties  | 226/1198/2699    | \$ | 250.00        | 2,606     | \$ 651,500.00 |

**Total Civil Penalties** \$ 1,954,500.00

Case name: Cabral v. Sentry  
Case number: 22STCV21484  
Court: LASC- Stanley Mosk  
Judge: Hon. Maurice Leiter  
Page subject: **Totals**  
Authority: Various

|                                                   |           |                     |
|---------------------------------------------------|-----------|---------------------|
| Meal period premium wages                         | \$        | 96,881.18           |
| Rest period premium wages                         | \$        | 96,881.18           |
| Unpaid wages for off the clock work               | \$        | 3,016,112.22        |
| Unreimbursed expenses                             | \$        | 32,466.92           |
| Waiting time penalties (untimely final wages)     | \$        | 434,055.19          |
| Statutory "pay stub" penalties                    | \$        | 256,350.00          |
| Unpaid minimum wage violations civil penalties    | \$        | 260,600.00          |
| Unpaid overtime wage violations civil penalties   | \$        | 130,300.00          |
| Unprovided meal period violations civil penalties | \$        | 130,300.00          |
| Unprovided rest period violations civil penalties | \$        | 260,600.00          |
| Unreimbursed expense violations civil penalties   | \$        | 260,600.00          |
| Untimely wages violations civil penalties         | \$        | 260,600.00          |
| Faulty wage statement violations civil penalties  | \$        | 651,500.00          |
| <b>Grand Total:</b>                               | <b>\$</b> | <b>5,887,246.69</b> |

# **EXHIBIT 8**

## CASE NAME: CABRAL V. SENTRY

**Date:** June 1, 2023

**Requesting Attorney:** Janis Lopez

**Plaintiff or Defense:** Plaintiff

**Firm Name:** Messrelian Law Inc.

**Telephone:** (818) 484-4653

**Email:** janis@messrelianlaw.com

### All-In Settlement

**Class Size:** 121

**Opt-Out Rate:** 1.5%

**No. of Checks Issued:** 119

**Postage Total:** \$174.97

**Grand Total:** \$11,084.43

**DISCOUNTED FLAT FEE: \$10,000.00**

The services and numbers reflected herein are an estimate provided by counsel. If the actual services and number are different, our cost estimate will change accordingly.

The attached Terms and Conditions are included as part of our cost proposal. By accepting our costs proposal for this matter, you are thereby agreeing to the Terms and Conditions.

## CASE SETUP

Upon Intake of the Data, CPT will Scrub all Records to a Useable Format to Reduce Duplicates, Anomalies and Increase the Success Rate of

Deliverability of the Class Notice. Class Members will be Assigned a Unique Mailing ID which will be Used Throughout Administration.

| 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        |
| <b>TOTAL</b>                          |            |              | <b>\$245.00</b> |

## DIRECT MAIL NOTICE

To Ensure Mailing to the Most Current Address Possible, CPT will Perform an Address Update via NCOA and Further Skip Trace if Necessary. CPT will Mail a Full-Length Notice & 1-Page Exclusion Form.

| ADMINISTRATIVE TASKS                     | UNIT PRICE | PIECES/HOURS | COST ESTIMATE   |
|------------------------------------------|------------|--------------|-----------------|
| Project Manager: Format Documents        | \$95.00    | 2            | \$190.00        |
| National Change of Address Search (NCOA) | \$135.00   | 1            | \$135.00        |
| XML Lex ID Skip Trace                    | \$0.85     | 12           | \$10.20         |
| Print & Mail Notice Packets              | \$1.00     | 121          | \$121.00        |
| First-Class Postage (up to 1 oz.)*       | \$0.60     | 121          | \$72.60         |
| <b>TOTAL</b>                             |            |              | <b>\$528.80</b> |

\*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

## PROCESS RETURNED UNDELIVERABLE MAIL

Based On CPT's Historical Data, 5% of the Notices will be Returned Undeliverable. Upon Receipt, CPT will Perform a Skip Trace in an Attempt to Obtain a Current Address; Thus, 70% of the Undeliverable Notice Packets are Remailled.

| ADMINISTRATIVE TASKS               | UNIT PRICE | PIECES/HOURS | COST ESTIMATE  |
|------------------------------------|------------|--------------|----------------|
| Clerical Staff                     | \$60.00    | 1            | \$60.00        |
| Update Undeliverable Mail Database | \$0.50     | 6            | \$3.00         |
| Skip Trace for Best Address        | \$1.00     | 5            | \$5.00         |
| Print & Remail Notice Packets      | \$1.00     | 4            | \$4.00         |
| First-Class Postage (up to 1 oz.)  | \$0.60     | 4            | \$2.40         |
| <b>TOTAL</b>                       |            |              | <b>\$74.40</b> |

## 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            | \$3.63          |
| Print & Mail Deficiency/Dispute Notices    | \$1.50     | 1            | \$1.50          |
| First-Class Postage (up to 1 oz.)          | \$0.60     | 1            | \$0.60          |
| Review & Process Deficiency Responses      | \$10.00    | 1            | \$10.00         |
|                                            |            | <b>TOTAL</b> | <b>\$320.73</b> |

## 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     | 25           | \$75.00         |
|                                  |            | <b>TOTAL</b> | <b>\$375.00</b> |

## SSN VERIFICATION

Verify SSN for Validity with IRS / IRS Backup Withholdings

| ADMINISTRATIVE TASKS                     | UNIT PRICE | PIECES/HOURS | COST ESTIMATE   |
|------------------------------------------|------------|--------------|-----------------|
| Programming: SSN Selection               | \$150.00   | 1            | \$150.00        |
| Department Manager: Analysis & Reporting | \$95.00    | 3            | \$285.00        |
| IRS SSN Verification                     | \$0.10     | 119          | \$11.92         |
|                                          |            | <b>TOTAL</b> | <b>\$446.92</b> |

## 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 Cashed and Conducts Monthly Account Reconciliations for the QSF.

| ADMINISTRATIVE TASKS                       | UNIT PRICE | PIECES/HOURS | COST ESTIMATE     |
|--------------------------------------------|------------|--------------|-------------------|
| Programming: Calculation Totals            | \$150.00   | 3            | \$450.00          |
| Project Supervisor: Review of Distribution | \$150.00   | 3            | \$450.00          |
| Project Manager: Correspondence w/Parties  | \$95.00    | 2            | \$190.00          |
| Programming: Setup & Printing of Checks    | \$150.00   | 3            | \$450.00          |
| Obtain EIN, Setup QSF/Bank Account         | \$150.00   | 3            | \$450.00          |
| Print & Mail Notice, Checks & W2/1099      | \$2.50     | 119          | \$297.96          |
| First-Class Postage (up to 1 oz.)*         | \$0.60     | 119          | \$71.51           |
|                                            |            | <b>TOTAL</b> | <b>\$2,359.47</b> |

\*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.)           | \$0.60     | 9            | \$5.40        |
| Re-Issue Checks as Required                 | \$5.00     | 6            | \$30.00       |
| First-Class Postage (up to 1 oz.)           | \$0.60     | 6            | \$3.60        |
| Project Supervisor: Reconcile Uncashed Chk  | \$150.00   | 1            | \$150.00      |
| Programming: Weekly & Final Reports         | \$150.00   | 2            | \$300.00      |
| Project Supervisor: Final Declaration       | \$150.00   | 2            | \$300.00      |
| Project Manager: Account Files Sent to Atty | \$95.00    | 2            | \$190.00      |
| CA Tax Preparation*                         | \$600.00   | 1            | \$600.00      |
| Annual Tax Reporting to IRS*                | \$1,000.00 | 1            | \$1,000.00    |
| QSF Annual Tax Reporting                    | \$500.00   | 1            | \$500.00      |
| TOTAL                                       |            |              | \$4,616.50    |

\*CPT will file Federal and California taxes in accordance to current state and federal regulations. Additional charges will apply if the Settlement/Order/parties require(s) multiple state tax filings.

## SCO ESCHEATMENT PROCESSING

| Escheatment Processing to the State Controller Unclaimed Property Division / Uncashed Check Rate 21% |            |              |               |
|------------------------------------------------------------------------------------------------------|------------|--------------|---------------|
| ADMINISTRATIVE TASKS                                                                                 | UNIT PRICE | PIECES/HOURS | COST ESTIMATE |
| UPEnterprise Reporting Services                                                                      | \$0.15     | 25           | \$3.75        |
| Project Manager: SCO Fall Reporting                                                                  | \$95.00    | 2            | \$190.00      |
| Project Supervisor: Review of SCO Reports                                                            | \$150.00   | 1            | \$150.00      |
| Certified Mail Report to SCO                                                                         | \$8.53     | 1            | \$8.53        |
| Check Reissues for Winter/Spring QTR                                                                 | \$5.00     | 3            | \$15.00       |
| First-Class Postage (up to 1 oz.)                                                                    | \$0.60     | 3            | \$1.80        |
| 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                                                                                                |            |              | \$2,117.61    |

**GRAND TOTAL \$11,084.43**

# 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 9**



#### CASE ASSUMPTIONS

|                       |            |
|-----------------------|------------|
| Class Members         | 121        |
| Opt Out Rate          | 1%         |
| Opt Outs Received     | 1          |
| Total Class Claimants | 120        |
| Subtotal Admin Only   | \$6,500.00 |

**Not-to-Exceed Total \$6,500.00**

**For 121 Members**

Pricing Good for Scope of Estimate Only

**June 1, 2023**

### Case: Mario Cabral v. Sentry Opt-Out Administration

Phoenix Contact: Jodey Lawrence  
 Contact Number: 800-523-5773  
 Email: Jodey@phoenixclassaction.com

Requesting Party: Janis Lopez  
 Firm: Messrelian Law  
 Contact Number: (818) 484-6531  
 Email: janis@messrelianlaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly. Estimate is based on 121 Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

| Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS) |          |             |                    |
|---------------------------------------------------------------------|----------|-------------|--------------------|
| Administrative Tasks:                                               | Rate     | Hours/Units | Line Item Estimate |
| Programming Manager                                                 | \$100.00 | 2           | \$200.00           |
| Programming Database & Setup                                        | \$100.00 | 2           | \$200.00           |
| Toll Free Setup*                                                    | \$143.34 | 1           | \$143.34           |
| Call Center & Long Distance                                         | \$2.00   | 16          | \$32.00            |
| NCOA (USPS)                                                         | \$50.00  | 1           | \$50.00            |
| <b>Total</b>                                                        |          |             | <b>\$625.34</b>    |

\* Up to 120 days after disbursement

| Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Spanish Translation / Reporting |          |             |                    |
|-----------------------------------------------------------------------------------------------|----------|-------------|--------------------|
| Project Action                                                                                | Rate     | Hours/Units | Line Item Estimate |
| Notice Packet Formatting                                                                      | \$100.00 | 2           | \$200.00           |
| Data Merge & Duplication Scrub                                                                | \$0.50   | 121         | \$60.50            |
| Notice Packet & Opt-Out Form                                                                  | \$2.00   | 121         | \$242.00           |
| Estimated Postage (up to 2 oz.)*                                                              | \$0.64   | 121         | \$77.44            |
| Static Website                                                                                | \$200.00 | 1           | \$200.00           |
| <b>Total</b>                                                                                  |          |             | <b>\$779.94</b>    |

\* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



# PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

## Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

| Project Action:             | Rate    | Hours/Units | Line Item Estimate |
|-----------------------------|---------|-------------|--------------------|
| Case Associate              | \$55.00 | 3           | \$165.00           |
| Skip Tracing Undeliverables | \$2.00  | 24          | \$48.40            |
| Remail Notice Packets       | \$2.00  | 24          | \$48.40            |
| Estimated Postage           | \$0.64  | 24          | \$15.49            |
| Programming Undeliverables  | \$50.00 | 2           | \$100.00           |
| Total                       |         |             | \$377.29           |

## Database Programming / Processing Opt-Outs, Deficiencies or Disputes

| Project Action:                     | Rate     | Hours/Units | Line Item Estimate |
|-------------------------------------|----------|-------------|--------------------|
| Programming Claims Database         | \$135.00 | 2           | \$270.00           |
| Non Opt-Out Processing              | \$200.00 | 1           | \$200.00           |
| Case Associate                      | \$55.00  | 3           | \$165.00           |
| Opt-Outs/Deficiency/Dispute Letters | \$5.00   | 6           | \$30.25            |
| Case Manager                        | \$75.00  | 2           | \$150.00           |
| Total                               |          |             | \$815.25           |

## Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

| Project Action:            | Rate     | Hours/Units | Line Item Estimate |
|----------------------------|----------|-------------|--------------------|
| Programming Calculations   | \$135.00 | 2           | \$270.00           |
| Disbursement Review        | \$135.00 | 2           | \$270.00           |
| Programming Manager        | \$95.00  | 2           | \$190.00           |
| QSF Bank Account & EIN     | \$100.00 | 2           | \$200.00           |
| Check Run Setup & Printing | \$125.00 | 2           | \$250.00           |
| Mail Class Checks *        | \$2.00   | 120         | \$239.58           |
| Estimated Postage          | \$0.64   | 120         | \$76.67            |
| Total                      |          |             | \$1,496.25         |

\* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



# PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

| Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations                                                           |          |             |                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------|----------|-------------|--------------------|
| Project Action:                                                                                                                                        | Rate     | Hours/Units | Line Item Estimate |
| Case Supervisor                                                                                                                                        | \$125.00 | 4           | \$500.00           |
| Remail Undeliverable Checks<br>(Postage Included)                                                                                                      | \$1.50   | 24          | \$35.94            |
| Case Associate                                                                                                                                         | \$50.00  | 4           | \$200.00           |
| Reconcile Uncashed Checks                                                                                                                              | \$75.00  | 4           | \$300.00           |
| Conclusion Reports                                                                                                                                     | \$100.00 | 2           | \$200.00           |
| Case Manager Conclusion                                                                                                                                | \$85.00  | 2           | \$170.00           |
| Final Reporting & Declarations                                                                                                                         | \$125.00 | 2           | \$250.00           |
| IRS & QSF Annual Tax Reporting *<br>(1 State Tax Reporting Included)                                                                                   | \$750.00 | 1           | \$750.00           |
| Total                                                                                                                                                  |          |             | \$2,405.94         |
| * All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility. |          |             |                    |
| Estimate Total:                                                                                                                                        |          |             | \$6,500.00         |



# PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

## **TERMS AND CONDITIONS**

**Provisions:** The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

**Data Conversion and Mailing:** The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

**Claims:** PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

**Payment Terms:** All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

### **Tax Reporting Requirements**

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

# **EXHIBIT 10**

**Case Name: Mario Cabral v. Sentry Settlement**

**Tuesday, June 6, 2023**

Requesting Attorneys Name:

**Janis Lopez**

E-Mail

[janis@mecomssrelianlaw.com](mailto:janis@mecomssrelianlaw.com)

ILYM Contact

Michael Sutherland

E-Mail

[msutherland@ilymgroup.com](mailto:msutherland@ilymgroup.com)

Contact Number

321.223.5067

**ESTIMATE FOR ADMINISTRATION SOLUTIONS**

| ASSUMPTIONS                                |     |
|--------------------------------------------|-----|
| Total Number of Class Members              | 121 |
| Estimated Percentage of Undeliverable Mail | 20% |
| Spanish Translation                        | No  |
| NCOA                                       | Yes |
| Case Duration (Years)                      | 1   |

| Activity                                       | Rate Type | Unit Cost | Volume | Amount   |
|------------------------------------------------|-----------|-----------|--------|----------|
| CASE STARTUP                                   |           |           |        |          |
| Initial Setup - Import and Formatting of Data* | Hourly    | \$150.00  | 2      | \$300.00 |
| Programming of Class Database                  | Hourly    | \$175.00  | 2      | \$350.00 |

*\*ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.*

**Subtotal                      \$650.00**

| PROJECT MANAGEMENT                                    |          |          |   |          |
|-------------------------------------------------------|----------|----------|---|----------|
| Project Manager (Case notification and maintenance)   | Hourly   | \$120.00 | 3 | \$360.00 |
| Staff Hours for Processing Response and Returned Mail | Hourly   | \$70.00  | 3 | \$210.00 |
| Report Processing                                     | Hourly   | \$70.00  | 2 | \$140.00 |
| NCOA                                                  | Flat Fee | \$50.00  | 1 | \$50.00  |
| Toll-Free Customer Support                            | Flat Fee | \$75.00  | 1 | \$75.00  |
| Status Reports                                        | Flat Fee | \$500.00 | 1 | Waived   |

**Subtotal                      \$835.00**

# ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

| Activity | Rate Type | Unit Cost | Volume | Amount |
|----------|-----------|-----------|--------|--------|
|----------|-----------|-----------|--------|--------|

| NOTIFICATION/MAILING                        |           |          |     |          |
|---------------------------------------------|-----------|----------|-----|----------|
| Fulfillment of Notices                      | Per Piece | \$2.00   | 121 | \$242.00 |
| USPS First Class 1oz Postage                | Per Piece | \$0.60   | 121 | \$72.60  |
| Remails (Forward/Skip Trace Undeliverables) | Per Piece | \$3.00   | 24  | \$72.60  |
| Storage, Photocopies, Deliveries            | Flat Fee  | \$250.00 | 1   | \$250.00 |

**Subtotal \$637.20**

| DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)      |           |            |     |            |
|----------------------------------------------------------|-----------|------------|-----|------------|
| Distribution Setup & Management                          | Hourly    | \$150.00   | 2   | \$300.00   |
| Account Reconciliation & Distribution Reporting          | Hourly    | \$125.00   | 2   | \$250.00   |
| Check, Print & Mail (Including W2/1099 Stub & Release)** | Per Check | \$1.50     | 121 | \$181.50   |
| USPS First Class 1oz Postage                             | Per Piece | \$0.60     | 121 | \$72.60    |
| Remails (Forward/Skip Trace Undeliverables)              | Per Piece | \$2.00     | 12  | \$24.20    |
| Preparation of Taxes*                                    | Hourly    | \$120.00   | 5   | \$600.00   |
| Annual Filing of Tax Return*                             | Per Year  | \$1,250.00 | 1   | \$1,250.00 |

*\*\*Additional Bank fees may apply*

**Subtotal \$2,678.30**

| CASE CONCLUSION                 |        |          |   |          |
|---------------------------------|--------|----------|---|----------|
| Data Manager Final Reporting    | Hourly | \$100.00 | 1 | \$100.00 |
| Project Manager Final Reporting | Hourly | \$120.00 | 1 | \$120.00 |
| Declaration                     | Hourly | \$125.00 | 1 | \$125.00 |

**Subtotal \$345.00**

**Total Case Estimate: \$5,249.00**

**Capped Fee: \$4,995.00**

## **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 supercedes 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 11**