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GENARO REYES VILLAGRA, and all others similarly situated
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

(*UNLIMITED JURISDICTION*)

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

Plaintiff(s),

vs.

INNOVATIVE PRODUCE, INC., a California corporation; and DOES 1–50, inclusive,

Defendant(s).

Case No.: 22CV02747
[Consolidated with 22CV02744]

DECLARATION OF DAVID SPIVAK IN SUPPORT OF PLAINTIFF GENARO REYES VILLAGRA'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Hearing Date: May 21, 2024
Hearing Time: 8:30 a.m.
Hearing Dept.: 2, The Honorable James F. Rigali

Action filed: July 18, 2022
Trial Date: Not Set

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DECLARATION OF DAVID SPIVAK IN SUPPORT OF PLAINTIFF GENARO REYES VILLAGRA'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I, DAVID SPIVAK, declare as follows:

2. I am an attorney duly licensed to practice law in the State of California and am an attorney of record for Plaintiff Genaro Reyes Villagra ("Plaintiff") in his lawsuit against Defendant Innovative Produce, Inc. ("Defendant"). Plaintiff and Defendant are collectively referred to as the "Parties."

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 and Class Notice (the "Settlement") is attached hereto as **Exhibit 1.** The Settlement Class consists of all persons directly employed by Defendant in California and classified as a non-exempt employee who worked during the Class Period. Settlement, para. 1.5. The "Class Period" means the period from July 18, 2018 through the order preliminarily approving this Settlement. *Id.*, para 1.13. "Aggrieved Employee" means a person directly employed by Defendant in California and classified as a non-exempt employee who worked during the PAGA Period. *Id.*, para. 1.4. "PAGA Period" means the period from July 18, 2021 to the order preliminarily approving this Settlement. *Id.*, para. 1.33. The "PAGA Period" begins July 18, 2021 and ends on the date of the order preliminarily approving the Settlement. *Id.* The Settlement is written, signed by all necessary Parties, and attached to this declaration as stated above.

The Release Provisions

5. **Released Persons.** Under the Settlement, the release to be given by the participating Class Members (other than the Class Representative) is limited to the Defendant named in the Operative Complaint, together with its officers, directors, employees, and agents. "Released Parties" means: Defendant together with its present and former parents, subsidiaries, affiliated entities, commonly owned or controlled entities, its present and former owners, board members, officers, directors, trustees, shareholders, members, partners, employees, agents, insurers, attorneys, representatives, heirs, executors, administrators, successors and assigns, and any individual or entity to whom liability for the Released Claims, as defined herein, could be assigned pursuant to Labor Code §558.1, or on a joint-employer, alter-ego, or other vicarious liability theory. Settlement, para. 1.43.

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

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

8. **PAGA Release.** Under the Settlement, Plaintiff releases all claims for civil penalties that could have been sought by the Labor Commissioner for the violations identified in Plaintiff's pre-filing letter to the LWDA; Plaintiff does not release the claim for wages or damages of any Aggrieved Employee unless such Aggrieved Employee is a participating Class Member. The PAGA Release states as follows: All Participating Class Members and all Aggrieved Employees (who shall not have the right to opt out) shall be bound by a release, as of the Effective Date, of all claims alleged in the Operative Complaint or any of Plaintiff's PAGA Notice(s), or which could have been alleged based on the facts alleged in the Operative Complaint or any of Plaintiff's PAGA Notice(s), and which arose during the Class Period and PAGA Period. The Released Class Claims shall include all claims alleged by Plaintiff in the Operative Complaint, or which could have been alleged by Plaintiff in the Operative Complaint based on the facts stated in the Operative Complaint, including any and all claims or causes of action regarding unpaid wages, including but not limited to failure to pay minimum wages, straight time wages, overtime compensation, and interest; failure to timely pay regular and final wages; failure to provide compliant meal, rest, and/or recovery periods; failure to pay premiums at all or at the correct rate for any violation of meal and rest obligations; claims arising from invalid meal period waivers; payment for all hours worked; wage statements and paystubs, including wage statements and paystubs furnished or available in physical, electronic, or other forms; failure to keep accurate records; unfair business practices related thereto; and any and all related penalties, including recordkeeping penalties, wage statement penalties, minimum wage penalties, waiting time penalties, and other statutory or civil penalties associated with any of the foregoing. Such Released Class Claims shall include, but are not limited to those claims arising under California Labor Code sections 201, 202, 203, 204, 204b, 207, 208, 210, 218.5, 218.6, 221, 225.5, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, and 2699 *et seq.*, and/or those arising under the applicable Industrial Welfare

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Commission Wage Order(s) (including but not limited to subsections 3, 4, 5, 7, 8, 9, 11, 12, 13, 18, and 20 of the applicable Wage Order(s), such as IWC Wage Order 14-2001 [including the provisions of the California Code of Regulations codifying the applicable Wage Order(s)]), 8 C.C.R. §3395, California Business Professions Code 17200 *et seq.* (including, without limitation, §§17200 through 17208); the California Civil Code §§ 3287 and 3289; California Code of Civil Procedure § 1021.5, and any related claims under the provisions of the Fair Labor Standards Act (29 USC §§201 *et seq.*) ("Released Claims"). Any Non-Participating Class Member shall only be bound by claims for civil penalties released under PAGA as provided in paragraph 6.3 of the Settlement and shall not be deemed to release any individual claims for which recovery under PAGA is not permitted. Settlement, para. 6.3.

No Reversion

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

Taxes

10. The Settlement provides that Defendant will separately pay the employer's share of any applicable payroll taxes. 10.00% 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. 90.00% 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 employee taxes owed on their Individual Class Payment. Settlement, para. 3.2.5.

11. The Settlement provides as follows with regard to the tax treatment of settlement shares: 10.00% 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. 90.00% 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

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responsibility and liability for any employee taxes owed on their Individual Class Payment. Settlement, para. 3.2.5.

Factual and Procedural Background

12. **Plaintiff's Employment with Defendant.** Defendant is an agricultural business. Defendant employed Plaintiff as a farm worker in California from about June 15, 2017 until August 5, 2021.

13. **LWDA Notices.** On April 20, 2022, Plaintiff notified Defendant and the California Labor and Workforce Development Agency ("LWDA"), pursuant to the California Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* ("PAGA"), of alleged Labor Code violations committed by Defendant. A true and correct copy of the letter to the LWDA dated April 20, 2022 is attached hereto as **Exhibit 2.** On October 6, 2023, Plaintiff submitted a supplemental letter to the LWDA and Defendant notifying them of Defendant's failures to comply with the meal and rest period provisions of the Labor Code. A true and correct copy of the letter to the LWDA dated October 6, 2023 is attached hereto as **Exhibit 3.**

14. **Lawsuit.** On July 18, 2022, Plaintiff filed a Class Action Complaint in the Santa Barbara County Superior Court, Case No. 22CV02744, against Defendant on behalf of himself and all others similarly situated, alleging causes of action on a class-wide basis for: (1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 221, 510, 1194, 1197, and 1198); (2) Wage Statement Penalties (Lab. Code § 226); (3) Waiting Time Penalties (Lab. Code §§ 201-203); and (4) Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*). On July 18, 2022, Plaintiff filed his Complaint against Defendant under PAGA in this Court, Case No. 22CV02747 ("PAGA Complaint"). On September 1, 2022, Defendant filed an answer to Plaintiff's PAGA Complaint. On February 21, 2024, Plaintiff filed his First Amended Complaint, which differs from Plaintiff's original Class Action Complaint in the following respects: causes of action and supporting facts are added for unprovided or non-compliant meal periods and unprovided or non-compliant rest breaks and recovery periods on behalf of Plaintiff and the Class; additional allegations and supporting facts are added with respect to the causes of action for failure to pay all wages earned for all hours worked and other compensable hours at the correct rates of pay and wage statement penalties; Plaintiff's counsel's contact information is updated; a common question is added pertaining to the new causes of action; Plaintiff's Unfair Competition cause of action is revised to add the new Labor Code violation(s); Plaintiff has added a derivative PAGA

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cause of action based on the meal and rest period violations and the allegations and cause(s) of action in Plaintiff's PAGA Complaint. The First Amended Complaint is the operative complaint in the Action (the "Operative Complaint"). Defendant filed an answer on March 28, 2024. Defendant denies all of Plaintiff's allegations and strongly contends that its wage and hour policies, practices, and procedures are fully compliant with all applicable laws. A true and correct copy of the Class Action Complaint filed on July 18, 2022 is attached hereto as **Exhibit 4.** A true and correct copy of Plaintiff's PAGA Complaint filed on July 18, 2022 is attached hereto as **Exhibit 5.** A true and correct copy of Defendant's Answer to Plaintiff's PAGA Complaint dated September 1, 2022 is attached hereto as **Exhibit 22.** A true and correct copy of Plaintiff's First Amended Complaint filed on February 21, 2024 is attached hereto as **Exhibit 6.** A true and correct copy of Defendant's Answer to Plaintiff's First Amended Complaint dated March 28, 2024 is attached hereto as **Exhibit 7.**

15. **Investigation.** On September 08, 2022, Plaintiff requested that Defendant informally disclose documents and data to enable Plaintiff to prepare for settlement discussions, including the number of putative class members and aggrieved employees and the number of paychecks and workweeks for the various limitations periods applicable to Plaintiff's claims. Plaintiff also requested a reasonable, randomly selected sample of Defendant's time, payroll, and expense records, and related personnel records. *Id.* Finally, Plaintiff requested Defendant's written policies applicable to the claims at hand and asked Defendant to identify any and all comparable claims against it.

16. The Parties thereafter engaged in an informal, voluntary exchange of information in the context of privileged settlement discussions to facilitate an early mediation. Defendant produced Plaintiff's entire personnel file (including policies and agreements he signed and acknowledged) and copies of its relevant company written policies.

17. **Sampling.** Defendant contends that it employed 126 putative class members during the period of July 18, 2018 to July 18, 2023. Settlement, para. 9. Defendant produced the records of 17.46% of the putative class members for the period of July 18, 2018 to July 18, 2023. There were records for 22 employees in the sample. Plaintiff chose the sample. The sample was randomly selected. The sample consisted of timesheets and pay stubs, and related records.

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18. **Plaintiff's Data Analyst.** Plaintiff retained Billy Bonilla, a data analyst, to analyze the sample. Plaintiff also employed the Raosoft[6] Sample Size calculator (http://www.raosoft.com/samplesize.html) to determine if the sample size selected is statistically reliable. *Bell v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715 and *Duran v. U.S. Bank* (2014) 59 Cal.4th 1. The *Bell* court found a relative margin of error of 32.4 percent was unacceptable whereas the *Duran* court found a relative margin of error of 43.3 percent was unacceptable. Using a margin of error of 32%, a confidence level of 95%, and a population size of 126, the Raosoft Sample Size Calculator recommended a sample of 9. A true and correct copy of the results from the Raosoft Sample Size Calculator are attached as **Exhibit 8** (Raosoft Sample Size Calculator results print-out). Thus, the sample population that Plaintiff's data analyst evaluated is statistically reliable. *Id.*

19. **Mediation.** On July 18, 2023, following much of the foregoing informal discovery and exchange of information, the Parties participated in a mediation session presided over by Mediator Scott Radovich, an experienced class action mediator. During the mediation, the Parties had a full day of productive negotiations and reached agreement on a class-wide settlement after the mediation session. During the mediation sessions, each side, represented by his/its respective counsel, recognized the risk of an adverse result in the Action and agreed to settle the Action and all other matters covered by this Agreement pursuant to the terms and conditions of this Agreement.

Similar Actions

20. **Relevant Litigation and Claims.** I am not aware of any class, representative, or other collective action in any other court, in this, or any other jurisdiction, that asserts claims similar to those asserted in this action, on behalf of the class or group of individuals, some or all of whom would also be members of the class to find in this action. I have made a reasonable inquiry of the other members of my law firm and my counsel to determine

[6] Raosoft advertises, "Raosoft, Inc. produces EZSurvey for the Internet, InterForm, SurveyWin, EZReport and Rapid Report innovative survey software programs for information gathering and analysis. The family of survey software supports data collection and reporting for any form-based data. Support is for web-surveys and forms, email distribution, diskette, PDA, laptop or pen-based: all types of distribution." The Raosoft webpage advertises that it is "database web survey software for gathering information." http://www.raosoft.com/ . It also advertises, "The parameters of the sample size calculation are something that you choose." http://www.raosoft.com/suggestreading.html.

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whether they are aware of any such similar actions. Based on these inquiries, I am aware of no such similar actions. Defendant disclosed that there have not been any comparable claims against it.

Uncashed Checks

21. **Unclaimed Property Fund**. The Settlement provides for the disposition of uncashed checks as follows: For any Class Member 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 thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). Settlement, para. 4.1.7. In my view, sending funds represented by uncashed checks to the Unclaimed Property Fund instead of a *cy pres* recipient is the best way to insure that the Class Members and Aggrieved Employees actually receive their portions of the Settlement.

Ascertainable and Numerous Class

22. **Ascertainability**. 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 above-defined 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 settlement process. Therefore, the Settlement Class is ascertainable.

23. **Numerosity**. The Settlement Class has sufficiently numerous members to render joinder impractical. No set number is required as a matter of law to maintain a class action. The California Supreme Court has upheld a class of as few as 10 individuals. Defendant estimates that there are approximately 126 Class Members for the Class Period of July 18, 2018 to the date of the order preliminarily approving the Settlement. 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. Additionally, there are 67 Aggrieved Employees for the PAGA Period of July 18, 2021 to the date of the order preliminarily approving the Settlement.

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Predominant Common Questions

24. 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 that all Class Members were subject to the same or similar operations and employment policies, practices, and procedures. The claims arise from Defendant's alleged policy-driven failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to issue proper wage statements, failure to timely pay wages during employment and upon termination of employment, failure to maintain required payroll records, and related labor law violations, all of which Plaintiff claims constitute unfair business practices and give rise to PAGA penalties. Plaintiff asserts that common questions include, but are not limited to: (1) Whether Defendant failed to pay all wages earned to Class Members for all hours worked at the correct rates of pay; (2) Whether Defendant failed to provide the Class with all meal and rest periods in compliance with California law; (3) Whether Defendant failed to pay the Class one additional hour of pay on workdays it failed to provide the Class with one or more meal or rest periods in compliance with California law; (4) Whether Defendant knowingly and intentionally failed to provide the Class with accurate wage statements; (5) Whether Defendant willfully failed to provide the Class with timely final wages; and (6) Whether Defendant engaged in unfair competition within the meaning of Business and Professions Code sections 17200, *et seq*., with respect to the Class.

Typicality

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

Adequacy

26. 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

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the class's interests. In other words, where the plaintiff has adequate counsel, the plaintiff may represent the entire class absent any disabling conflicts of interest that might hinder the plaintiff's ability to represent the class.

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

Background of Class Counsel

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

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

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

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

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

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

b. *Jorge Guzman v. Department of Justice*, United States District Court, Central District of California (the Honorable Lourdes Baird presiding), 1999. Plaintiffs Special Agent for the Immigration and Naturalization Service alleged racial discrimination, retaliation, and police brutality by agents of the Office of the Inspector General. Jury found the defendants liable. Case settled shortly before the damages phase. *See* "U.S. to Pay $400,000 to INS Agent in Bias Suit; Courts: Complaint Says He Suffered 10 Years of Harassment on the Job Because He Is Latino, Including Falsified Charges" by Patrick J. McDonnell, *Los Angeles Times*, January 21, 1999.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

m. *Montes v. Branam Enterprises, Inc.*, Los Angeles Superior Court, Case No. BC442608 (appointed Class Counsel and granted final approval by the court of class action settlement on behalf of concert rigging employees).

n. *Nardone v. Sequoia Beverage Company, LP*, Tulare County Superior Court, Case No. VCU-248370 (appointed Class Counsel and granted final approval of class action settlement by the court on behalf of hourly employees).

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

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

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

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

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

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t. *Valdez v. Healthcare Services Group, Inc.*, Los Angeles Superior Court, Case No. BC462917 (appointed Class Counsel and granted final approval by the court of class action settlement on behalf of service account manager employees).

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

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

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

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

Class Action Treatment Is Superior

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

The Settlement Is Presumptively Fair

37. The Class Settlement here satisfies all of the *Kullar* factors. The Settlement resulted from thorough, arms' length negotiations between experienced counsel with the assistance of a respected mediator after sufficient discovery was exchanged to assess the relative

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

Exposure & Risk Analysis

38. On July 18, 2022, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for failure to pay wages, failure to issue proper wage statements, failure to timely pay wages during and at the conclusion of employment, unfair competition, and related claims. On July 18, 2022, Plaintiff filed another lawsuit against Defendant under PAGA. On September 1, 2022, Defendant filed an answer to Plaintiff's PAGA Complaint. February 21, 2024, Plaintiff filed a First Amended Complaint alleging causes of action against Defendant for failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest and recovery periods, failure to issue proper wage statements, failure to timely pay wages during and at the conclusion of employment, failure to maintain required payroll records, unfair competition, and related allegations. The First Amended Complaint is the Operative Complaint in the Action (the "Operative Complaint"). Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint, and denies any and all liability for the causes of action alleged. Settlement, para. 2.1. Plaintiff prepared "damages" estimates in advance of the mediation. Plaintiff determined Defendant's maximum possible exposure for restitution and penalties to be approximately $9,993,418.65 (consisting of $1,372,251.14 in unpaid wages, $1,372,251.14 in liquidated damages, $0.00 in missed meal period premium wages, $0.00 in missed rest break premium wages, $689,950.00 for wage statement penalties, $215,866.37 for waiting time penalties, and $6,343,100.00 for civil penalties under PAGA). True and correct copies of the spreadsheets I prepared for mediation of this Action are collectively attached to this declaration as **Exhibit 9.**

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39. The estimates are in essence "home run" projections that omit data points that will undoubtedly reduce the maximum possible damages award and do not factor in any of the risks involved in litigating this Action. Plaintiff calculated the damages based on the number of workweeks and pay periods provided by Defendant, Plaintiff's reports, and the sample data. *Id*. Plaintiff also considered the possibility that Defendant could launch a *Pick Up Stix* campaign and pursue individual release agreements from the Class Members. Defendant also represented that it had interviewed Defendant's current employees regarding Plaintiff's claims, all of whom would provide declarations, under penalty of perjury, that were favorable to Defendant with respect to the relevant factual issues at issue in Plaintiff's action. Plaintiff's Counsel applied discounts to the maximum possible exposure to account for all other risks discussed below. While it is difficult to assign anything but crudely-determined percentages of risk to any of the claims, it is safe to say that the risk that a *Pick Up Stix* campaign would preclude recovery for such employees is substantial and alone justifies a significant discount because Defendant would likely by trial have gathered releases from the majority of the Class Members.

40. My initial estimates do not realistically account for the risks outlined below or the risk that a class will not be certified. Therefore, I believe a class settlement for $150,000.00 is fair and reasonable.

41. **Risks Associated with the Arbitration Agreements.** The arbitration agreements entered into between Defendant on the one hand, and the Class Members, on the other, present a significant risk to the success of Plaintiff's class action litigation. According to Defendant, the majority of the Class entered into arbitration agreements with Defendant. As the arbitration agreements in question restrict potential litigants from bringing class actions against Defendant, Plaintiff would be effectively barred from pursuing claims on behalf of the Class in Court. Thus, there is a significant risk the Court could determine that those Class Members who have not entered into arbitration agreements with Defendant do not constitute a sufficiently numerous class to justify class action treatment. As such, by continuing to trial on class-wide claims, Plaintiff would run the high risk of suffering defeat due to the existence of the arbitration agreements. Moreover, the arbitration agreements would pose danger to any class certification motion brought by Plaintiff. Because different defenses would apply to some Class Members and not others – i.e., the existence of signed arbitration agreements – there is a risk that the Court could determine that Plaintiff's claims present too many individualized inquiries to justify class certification.

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

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

44. **Risks Associated with the Meal Period Claims.** There are risks to Plaintiff's meal period claim. Plaintiff does not attribute any value to this claim in view of Plaintiff's investigation, which shows Defendant provided meal periods as required by law. Defendant contends that, to establish a violation for missed meal periods, a plaintiff must do more than show that a meal break was not taken. *Brinker*, 53 Cal. 4th at 1004. So long as an employer provides

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employees with a "reasonable opportunity" to take a duty-free meal period, it has no further duty to "police meal breaks and ensure no work thereafter is performed." *Id.* at 1040-41. *Id.* Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the employee from taking a proper break, or otherwise failed to release the employee of all control. *Id*. "Thus, the crucial issue with regard to the meal break claim is the reason that a particular employee may have failed to take a meal break." *Washington v. Joe's Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. *Id.*

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

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

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

48. **Further Risks Associated with the Waiting Time Penalties Claims**. Without proof of willful behavior, Plaintiff will be unable to recover these penalties.

49. **Risks Associated with the PAGA Claim.** As the Operative Complaint makes clear, Plaintiff predicates his PAGA claim on the same Labor Code violations as his other claims. Plaintiff's "damages" spreadsheet, Exhibit 9, states the length of the relevant time period for the PAGA claim and the number of employees allegedly employed during that time period. Plaintiff's "damages" spreadsheet, Exhibit 9, also states the total amount of civil penalties for which Defendant is potentially liable if all allegations are proven. As I state above in connection with Plaintiff's claims for statutory penalties with regard to proof of Defendant's intent, knowledge, and willfulness, there are serious risks to proving Defendant acted intentionally, knowingly, and willfully in violating the rights of Class Members under the Labor Code. Plaintiff calculated the agreed-upon amount of civil penalties by considering the risks outlined above and that the Settlement already provides substantial payments for the Labor Code violations that the civil penalties claim is predicated on.

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

51. This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and required a significant discount for settlement purposes. For mediation purposes, Plaintiff's counsel estimated a maximum possible exposure of approximately $6,343,100.00 in civil penalties. This estimate did not take into account any of the risks discussed above and assumed a

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violation for every single pay period. *Id.* Plaintiff's counsel also assessed multiple penalties for the same pay period for the same alleged violations of different Labor Code provisions and derivative violations. Although two federal district court decisions held that "stacking" PAGA penalties in this fashion may be appropriate to determine the amount in controversy for purposes of removal jurisdiction, Plaintiff's counsel is not aware of any California state courts awarding plaintiffs multiple PAGA penalties for the same violation for the same pay period under different Labor Code provisions. This may be because the PAGA does not provide for what many employers characterize as claim splitting and not merely stacking.

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

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

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

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

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

[8] In 2012, I tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. A true and correct copy of the first amended complaint in *Ghrdilyan* is attached as **Exhibit 10**. The plaintiff sought in excess of $9 million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M. Sohigian awarded approximately $325,000 in civil penalties under the PAGA. A true and correct copy of the judgment transcript in *Ghrdilyan* is attached as **Exhibit 11**, 19:8-20:19. Also, on October 24, 2017, the Los Angeles Superior Court awarded a prevailing

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

54. **Risks Associated with a *Pick Up Stix* Campaign.** An employer enjoys the right to settle a putative class member's disputed wage claims individually, without the consent or involvement of class counsel. (*See Chindarah v. Pick Up Stix, Inc.* 171 Cal. App. 4th 796 (2009). As discussed above, Defendant may launch a "pick off" settlement campaign to pursue individual release agreements from the Class Members, thereby potentially narrowing the size of the Settlement Class – 126 members – until it is no longer numerous enough for class certification. *Id.* Plaintiff, then, may not have sufficient number of employees to represent. This led to a significant reduction of claim value in settlement negotiations.

55. While the evidence gathered through Plaintiff's discovery supports the merits of the claims asserted in this lawsuit, Plaintiff and his counsel recognize that continued litigation presents significant risks that support a downward departure from Defendant's estimated liability exposure. In view of the risks, the Settlement reflects my estimate of the total amount of damages, monetary penalties, or other relief that the Class could reasonably expect to be awarded at trial, taking into account the likelihood of prevailing and other attendant risks. It also represents a fair, adequate, and reasonable compromise amount for these claims and warrants preliminary approval.

56. Above, Plaintiff lists the maximum amounts recoverable in this action. However, based on the difficulties of proof, Defendant's defenses, and the other attendant risks I identify above, I estimate the *likely* awards at trial should Plaintiff prevail to be the following amounts:

a. Unpaid wages with interest in the amount of $2,058,376.72;

b. Meal period premium wages with interest in the amount of $0.00;

PAGA plaintiff, represented by very experienced counsel, civil penalties totaling only $50.00. *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828. A similar result could occur here.

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c. Rest period premium wages with interest in the amount of $0.00;

d. Statutory pay stub penalties in the amount of $344,975.00;

e. Waiting time penalties in the amount of $107,933.18; and

f. Civil penalties in the amount of $511,550.00.

The total of these amounts is $3,022,834.90.

Allocation of the PAGA Payment

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

Attorneys' Fees and Costs

58. I intend to request Class Counsel Attorneys' Fees of up to one-third of the GSA and Class Counsel's litigation costs incurred in prosecuting this Action, which I currently estimate to be approximately $4,182.52 and will be no more than $12,000.00 at the conclusion of matters related to the Settlement. In view of my efforts and risks in pursuing this case, these amounts are well within the range of reasonableness and thus warrant this Court's preliminary approval. In addition, based on my experience in wage and hour class action matters, fee awards of approximately one-third of the settlement fund are routinely approved as reasonable. I have been awarded attorneys' fees equaling approximately one-third of the fund in several recent wage and hour class actions, including: *Alvarez v. Gary Grace Enterprises, LP*, Marin County Superior Court, Case No. CIV1002553 (one-third of fund); *Calderon v. Greatcall, Inc.*, San Diego Superior Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of fund); *Butler v. Lexxiom, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1001579 (one-third of fund); *Perez v. Southwest Dealer Services, Inc.*, Los Angeles County Superior Court, Case No. BC439253 (one-third of fund); *O'Brien v. Optima Network Services, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1107056 (one-third of fund); *Noyd v. The Cristcat Group, et al.*, Los Angeles County Superior Court, Case No. BC439558 (one-third of fund); *Huynh v. Carefusion Resources, LLC, et al*, San Diego Superior Court, Case No. 37-2009-00103277-CU-OE-CTL (one-third of fund); *Cunningham v. DPI Specialty Foods West, Inc.*, Los Angeles Superior Court, Case No.

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BC465017 (one-third of fund); *Stucker v. L'Oreal USA S/D, Inc.,* Los Angeles Superior Court, Case No. BC456080 (one-third of fund); *Valdez v. Healthcare Services Group, Inc*., Los Angeles Superior Court, Case No. BC462917 (one-third of fund); *Hernandez, et al v. HSBC*, U.S. District Court, Central District of California, Case No. 10-CV-4753 (one-third of fund); *Sandoval, et al. v. Thrifty Payless, Inc., et al.*, Los Angeles Superior Court, Case No. BC431249 (one-third of fund); *Alafa v. Custom Built Personal Training, Inc*., Tulare County Superior Court, Case No. VCU-245496 (one-third of fund); *Nardone v. Sequoia Beverage Company, LP*, Tulare Superior Court, Case No. VCU-248370 (one-third of fund); *Rosen v. Image Transfer*, Los Angeles Superior Court, Case No. BC511702 (one-third of fund); *Tucker v. Maly's West, Inc*., Los Angeles Superior Court, Case No. BC483920 (one-third of fund); *King v. Build.com*, Butte Superior Court, Case No. 159985 (one-third of fund); *Clifford v. Anderson Hay & Grain*, Los Angeles Superior Court, Case No. BC517625 (one-third of fund); *Nichols, et al. v. Vitamin Shoppe*, Contra Costa Superior Court, Case No. CIVMSC13-01136 (one-third of fund); *Clarke v. Insight Global*, U.S. District Court, Southern District of California, Case No. 13-CV-0357 (one-third of fund); *Fischer, et al. v. National Distribution Centers LP, et al*., Riverside Superior Court, Case No. RIC1114952 (one-third of fund); *Shaw, et al. v. Interthinx, Inc.,* United States District Court for the District of Colorado, Case No. 13-CV-01229-REB-BNB (one-third of fund); *Ogbuehi v. Comcast of California/ Colorado/ Florida/ Oregon, Inc.,* United States District Court, Eastern District of California, Case No. EDCV13-00672-KJM-KJN (one-third of fund); *Lynch, et al. v. American Guard Services,* Los Angeles Superior Court, Case No. BC462681 (one-third of fund); *Volney-Parris v. Southern California Edison Company,* Los Angeles Superior Court, Case No. BC493038 (one-third of fund); *Hidalgo, et al. v. Sun Hill,* Los Angeles Superior Court, Case No. BC480808 (one-third of fund); *Martin, et al. v. Aukeman Dairy, et al.,* Kern Superior Court, Case No. S-1500-CV-282679 (one-third of fund); *Linder, et al. v. Warehouse Services, Inc.,* San Bernardino Superior Court, Case No. CIVDS1500146 (one-third of fund).

59. The amount of fees and costs requested are commensurate with (1) the risk Class Counsel took in bringing the case, (2) the extensive time, effort and expense dedicated to the case, (3) the skill and determination Class Counsel have shown, (4) the results Class Counsel achieved, (5) the value Class Counsel achieved for the Class, and (6) the other cases Class Counsel turned down to devote time to this matter. Class Counsel also interviewed and obtained information from putative class members, met and conferred with Defendant's counsel on numerous

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occasions, reviewed and analyzed hundreds of pages of data and documents provided by Defendant and obtained through other sources, researched applicable law, and provided estimates of "damages" for purposes of settlement discussions, among other tasks.

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

61. Plaintiff has agreed in writing to authorize 75% of the Class Counsel Fees Payment to be issued to The Spivak Law Firm and 25% of the Class Counsel Fees Payment to be issued to Benowitz Law Corporation. Also, Plaintiff has agreed in writing to authorize The Spivak Law Firm and Benowitz Law Corporation to receive reimbursement of their respective litigation expenses upon successful resolution of this action. A true and correct copy of the fully executed retainer agreement is attached hereto as **Exhibit 12.**

Class Representative Service Payment

62. The Settlement provides that Plaintiff may seek a Class Representative Service Payment of $10,000.00. This amount is entirely reasonable given Plaintiff's efforts in this Action and the risks he undertook on behalf of Class Members. Here, Plaintiff has devoted many hours advancing the interests of the Settlement Class. Plaintiff has done this by, among other things, retaining experienced counsel, providing them with information about his work history with Defendant and Defendant's policies and practices with respect to the wage and hour claims at issue, assisting counsel in identifying witnesses, participating in mediation, and being actively involved in the settlement process to ensure a fair result for the Settlement Class as a whole. In doing this, Plaintiff has been exposed to significant risks, including the risk of an order to pay Defendant's attorneys' fees and costs if this action had been unsuccessful (*See* Labor Code §§ 218.5-218.6). The efforts and risks that Plaintiff undertook on behalf of the Settlement Class shows that the proposed Class Representative Service Payment is fair, adequate, and reasonable, and thus warrants preliminary approval. Plaintiff Genaro Reyes Villagra's declaration, filed concurrently with mine, provides further information supporting his request for the Class Representative Service Payment.

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63. Plaintiff began his investigation and retention of attorneys to pursue the claims at issue on approximately August 07, 2021. Awarding Plaintiff 3.33% of the GSA is entirely reasonable given Plaintiff's efforts in this case undertaken on behalf of absent Class Members. In this case, Plaintiff has devoted several hours of his time advancing the interests of the Class Members and also expects to devote additional hours of his time with Class Counsel overseeing the administration of the Settlement if the Court grants final approval of the Settlement. Plaintiff has done this by, among other things, retaining experienced counsel, providing them with extensive information about his work history with Defendant and Defendant's policies and practices with respect to the wage and hour claims at issue, assisting them in contacting absent Class Members to gather information, participating in a full day of mediation, foregoing pursuit of his individual claims in favor of a fair class-wide resolution, and being actively involved in the settlement process to ensure a fair result for the Class Members as a whole.

64. As Class Representative, Plaintiff agreed to (1) consider the interests of the Class just as he would consider his own interests and, in some cases, to put the interests of the Class before his own interests; (2) actively participate in the lawsuit, as necessary, by, among other things, answering interrogatories, producing documents to Defendants, and giving deposition and trial testimony if requested; (3) travel to give such testimony; (4) recognize and accept that any resolution of the lawsuit by dismissal or settlement, is subject to court approval, and must be designed in the best interest of the Class as a whole; (5) follow the progress of the lawsuit and provide all relevant facts to Class Counsel; (6) champion many other people with similar claims and injuries because of the importance of the case and that necessity that all Class Members benefit from the lawsuit; and (7) fight for a resolution in which the individual recovery to each Class Member, including Plaintiff, may be relatively small. Plaintiff agreed to shoulder all of these responsibilities in exchange for a proportionate share of funds made available for distribution to the Class Members. Plaintiff had no guarantee of a Class Representative Service Payment. This justifies the Class Representative Service Payment sought.

65. In taking the actions outlined above, Plaintiff has exposed himself to significant risks, including the risk that he could have been ordered to pay Defendant's attorneys' fees and costs if this Action had been unsuccessful (*see* Lab. Code §§ 218.5-218.6), as well as the risk that he could, in the future, face a potentially hostile work environment and worsened career prospects for suing a prior employer for wage and hour violations and serving as the Plaintiff in a class

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action lawsuit. Additionally, Plaintiff has exposed himself to the risk that he could end up receiving less than Defendant would have paid him at the beginning of the Action via a C.C.P. § 998 offer or other individual settlement offer to drop his class allegations. On many occasions, California courts have ordered wage and hour plaintiffs and would-be class representatives to pay outrageous fee and/or cost awards for unsuccessful claims. A few examples are:

a. *Zalewa v. Tempo Research Corp.*, No. B238142, 2013 WL 766535 (CA 2nd Dist. March 1, 2013) (court awarded the employer $2,210,360 in attorney's fees to be paid by employee for employee's unsuccessful suit for unpaid bonuses). A true and correct copy of the court's order is attached to this declaration as **Exhibit 13**.

b. *Cun v. Café Tiramisu LLC*, No. A131241, 2011 WL 5979937 (CA 1st Dist. Nov. 30, 2011) (court ordered the employee to pay $36,612.50 in attorney's fees and costs to employer for unsuccessful suit for unpaid wages). A true and correct copy of the court's order is attached to this declaration as **Exhibit 14**.

c. *Csaszi v. Sharp Healthcare*, No. D038558, 2003 WL 352422 (CA 4th Dist. Feb. 18, 2003) (court ordered the employee to pay $20,269 in attorney's fees and costs to the employer for unsuccessful suit for unpaid wages and overtime). A true and correct copy of the court's order is attached to this declaration as **Exhibit 15**.

d. *Villalobos v. Guertin*, No. CIV. S–07–2778 LKK/GGH, 2009 WL 4718721 (U.S.D.C. Eastern Dist. Dec. 3, 2009) (court ordered plaintiff's counsel to pay $21,180 in attorney's fees and $1,525.80 in costs to defense counsel for unpaid wages). A true and correct copy of the court's order is attached to this declaration as **Exhibit 16**.

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

66. As I explain further below, Plaintiff's individual share of the Net Settlement Amount will be less than that of some absent participating Class Members. Under the Settlement, participating Class Members will receive a *pro rata* distribution of the Settlement proceeds

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

67. The average putative class member in this case would be unlikely to pursue individually the claims Plaintiff brought against Defendant because such claims would be too small to justify the cost and the risk. A putative class member will be unlikely to find an attorney who is willing to pursue an individual's claims because the claims are too small to justify the hundreds of hours of legal work necessary to prove each claim. Only the class action vehicle, which allows for the aggregation of hundreds of risky small dollar value claims, makes such claims advantageous for an attorney to pursue on a contingency basis, and there can be no class action without a class member assuming the great fiduciary responsibilities of a class representative. This Court should allow the Class Representative Service Payment requested because to do otherwise would discourage employees (and attorneys) from bringing class actions in the first place.

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

69. Plaintiff faced the risk that he could face worsened career prospects for suing a former employer for wage and hour violations and serving as the Plaintiff in a class action lawsuit. Because he filed a lawsuit in the California Superior Court, a public record now exists that Plaintiff sued his employer for Labor Code violations – a fact that won't be lost on prospective employers considering him for a job. Common sense dictates that an employer will think twice

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about hiring someone who sued his last employer. Legal experts have recognized this fact. Attached to this declaration as **Exhibit 17** is a true and correct copy of the article "Employees: Better Think Twice Before Suing Your Employer (Four Reasons Why)." Attached to this declaration as **Exhibit 18** is a true and correct copy of the article "What to Expect If You Sue Your Employer." California even has laws to address this risk: Labor Code § 1102.5 prohibits retaliation against employees who speak up about Labor Code violations and Labor Code § 98.6 prohibits discrimination against employees who bring Labor Code violations to the attention of the Labor Commissioner. Thus, the risk to Plaintiff's future employment shows that the Class Representative Service Payment sought is fair, adequate, and reasonable, and warrants preliminary approval of the Court.

70. Class Counsel depended on Plaintiff's input to prosecute this lawsuit. Plaintiff made this case possible for a number of reasons. First, Plaintiff challenged his employers on an unlawful practice that led to Defendant paying a large percentage of the unpaid wages in question plus interest to the remainder of its employees. Plaintiff provided Class Counsel with detailed descriptions of how Defendant's business operates, the hours and scheduling of employees, and the nature of the work Class Members performed.

71. By agreeing to settle the case in the best interest of the Class Members, Plaintiff has given up the right to pursue individual claims and recover substantially more in unpaid wages, interest, waiting time penalties, pay stub penalties, and civil penalties that he will release as part of the Settlement. Plaintiff did not seek an individual settlement for his claims at all, instead choosing to prosecute the claims on behalf of the Class Members.

72. In view of the risks, Plaintiff achieved a result the Class can be proud of. There were significant risks (outlined in the preliminary approval motion) to any award on behalf of the Class Members and still Plaintiff achieved a settlement of $150,000.00. This outstanding result calls for significant awards to Plaintiff for making the result possible. If the Court is disinclined to award Plaintiff all or part of the Class Representative Service Payment requested, Class Counsel request that the Court allocate the difference to Plaintiff from Class Counsel's requested attorney fee award.

Class Member and Aggrieved Employee Settlement Share Estimates

73. Above, Plaintiff estimates Plaintiff's anticipated Individual Class Payment.

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74. **Individual Class Payments.** At $15.88 per hour (the average Class Member's hourly wage), the average estimated Individual Class Payment to Participating Class Members is the equivalent of over 31 hours of unpaid wages (the primary remedies sought) ($507.94 / $15.88 = 31.99 hours). Thus, this is a result the Class can be proud of in view of the significant risks.

75. Plaintiff estimates that there are 14,193 Pay Periods for the Class Period. So, each Pay Period has a value of approximately $4.51 ($64,000.00 Net Settlement Amount / 14,193 Pay Periods = $4.51). Plaintiff had 79 Pay Periods during the Class Period. Based on this, it is anticipated that Plaintiff Genaro Reyes Villagra will receive an Individual Class Payment of approximately $356.29 as a participating Class Member (79 Pay Period x $4.51 = $356.29) while the average estimated Individual Class Payment to participating Class Members will be approximately $507.94. Some Class Members – those who worked more Pay Periods during the Class Period – will receive more, and some less. The highest possible Individual Class Payment to a participating Class Member (i.e., to those who qualify for all Pay Periods in the Class Period) will be approximately $643.06. The lowest possible Individual Class Payment to a participating Class Member (i.e., to those who qualify for only one Pay Period in the Class Period) will be approximately $4.51. Some Class Members – those who worked more Pay Periods during the Class Period – will receive more, and some less.

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

77. **Individual PAGA Payments.** I estimate that the average Aggrieved Employee Individual PAGA Payment will be $14.93. *Id.* Plaintiff's Individual PAGA Payment, his individual share of 25% of the PAGA Penalties, will be less than that of some absent Aggrieved Employees. Under the Settlement, each Aggrieved Employee will receive a *pro rata* distribution of 25% of the PAGA Penalties proportionate to the number of paychecks he or she had with Defendant during the PAGA Period, compared to the total of all paychecks of all Aggrieved Employees during the PAGA Period, as reflected by Defendant's records. Plaintiff estimates that there are 4,093 Aggrieved Employee paychecks for the PAGA Period. So, each Aggrieved Employee paycheck from the PAGA Period has a value of approximately $0.24 (25%

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of $4,000.00 in PAGA Penalties / 4,093 Aggrieved Employee paychecks = $0.24). It is anticipated that Plaintiff Genaro Reyes Villagra will receive an Individual PAGA Payment of approximately $0.48 as an Aggrieved Employee (2 paychecks during the PAGA Period x $0.24 paycheck value = $0.48) while the average estimated Individual PAGA Payment to an Aggrieved Employee will be approximately $14.93 ($1,000.00, 25% of PAGA Penalties / 67 Aggrieved Employees = $14.93 average Individual PAGA Payment). Some Aggrieved Employees – those who had more paychecks during the PAGA Period – will receive more, and some less. The highest possible Individual PAGA Payment to an Aggrieved Employee (i.e., to those who qualify for all paychecks in the PAGA Period) will be approximately $15.77. The lowest possible Individual PAGA Payment to an Aggrieved Employee (i.e., to those who qualify for only one paycheck in the PAGA Period) will be approximately $0.24.

Proposed Preliminary Approval Order

78. Plaintiff files a proposed Preliminary Approval Order with this declaration. The proposed Preliminary Approval Order includes the Notice Packet. The Notice Packet consists of the Class Notice (Exhibit A to the Preliminary Approval Order), the Election Not to Participate in Settlement form (Exhibit B to the Preliminary Approval Order), the Pay Period Dispute form (Exhibit C to the Preliminary Approval Order), and the Objection form (Exhibit D to the Preliminary Approval Order) in English with Spanish translations. Based on my investigation, the Class Members all understand English, Spanish, or both. The Notice Packet does not include any other forms. The Settlement Agreement is not attached to the proposed Preliminary Approval Order. I have carefully reviewed both the terms and the terminology of the proposed Preliminary Approval Order and accompanying Notice Packet to confirm that the various documents are internally consistent, consistent with each other, and consistent with the Settlement Agreement.

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

80. **Exclusion Form.** The proposed Preliminary Approval Order provides that the Class Notice shall be accompanied by the Election Not to Participate in Settlement form (Exhibit B to the Preliminary Approval Order), the Pay Period Dispute form (Exhibit C to the Preliminary Approval Order), and the Objection form (Exhibit D to the Preliminary Approval

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Order) in English with Spanish translations. Based on my investigation, the Class Members all understand English, Spanish, or both. The proposed Preliminary Approval Order provides that any exclusion form shall be submitted to the Administrator rather than filed with the Court. The proposed Preliminary Approval Order does not require the Class Member to send copies of the exclusion form to counsel, but requires the Administrator to do so. The proposed Preliminary Approval Order provides that the Administrator shall file a declaration concurrently with the filing of Plaintiff's motion for final approval with a copy of every exclusion form received by the Administrator.

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

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

83. **Final Approval Hearing Date.** The proposed Preliminary Approval Order provides a proposed date for the Final Approval Hearing. The proposed Preliminary Approval Order requires the Administrator to give notice to any objecting party of any continuance of the hearing of the motion for final approval.

84. **No Injunction Against Filing Claims.** Neither the proposed Preliminary Approval Order nor the Class Notice purports to enjoin the Class Members from filing any actions or administrative claims or proceedings pending the final hearing on the Settlement, or for any other period.

85. **No Claim Form.** The Settlement does not require a claim form.

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The Notice Packet

86. The Settlement requires distribution of the Notice by First Class U.S. mail only. Settlement, para. 4.1.5. Although there are current employee Class Members, it is uncertain whether Defendant's records of their contact information include email addresses, and Class Members, who perform all of their work away from a desk, are not in a position to check their emails. As such, notice by mail alone is fair, adequate, and reasonable. The Notice Packet (attached as Exhibits A, B, C, and D to the Settlement) provides Class Members with all pertinent information that they need to fully evaluate their options and exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among other things: (1) what the Settlement is about; (2) who is a Settlement Class Member; (3) how Class Counsel will be paid; (4) how to submit an exclusion request not to be bound by the Settlement; (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how payments to Class Members will be calculated; (8) how the disputes will be resolved; and (9) the estimated settlement shares for each Class Member. Additionally, the Notice will include the number of eligible Pay Periods a Class Member had during the Class Period. Accordingly, the Notice should be approved because it describes the Settlement with sufficient clarity and specificity to explain to Class Members what this action is about, their rights under the Settlement, and how to exercise those rights. As such, the Parties' proposed Notice fully complies with California Rules of Court 3.766(d) and 3.769(f) and will allow Class Members to make informed responses to the proposed Settlement.

87. The Settlement does not require Class Members to submit claims to participate.

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

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

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

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

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

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

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

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

96. The Election Not To Participate form (i) instructs the Class Member seeking exclusion that the exclusion form must be mailed or delivered to the Administrator, (ii) states the name and address of the Administrator, and (iii) states the date by which the exclusion form must be mailed or otherwise delivered.

97. The information required to be provided by a Class Member on the Election Not To Participate form does not exceed the minimum information necessary to (i) identify the person as a Class Member and (ii) contact the person to clarify any uncertainties.

98. The Election Not To Participate form indicates that exclusion from the Class Settlement will not result in exclusion from the PAGA portion of the Settlement.

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Administrator Duties

99. The duties of the Settlement Administrator are spelled out in the Settlement and in the bid provided by ILYM Group, Inc., a true and correct copy of which is attached hereto as **Exhibit 19**.

Administration Costs

100. With regard to the settlement administration costs provision (Settlement, para. 3.2.3), it is reasonable. Before agreeing to ILYM Group, Inc., the Parties sought and reviewed bids from other reputable third-party administrators, which provided higher bids. A true and correct copy of the bid from Phoenix is attached hereto as **Exhibit 20.** A true and correct copy of the bid from CPT Group is attached hereto as **Exhibit 21.** The bid provided by ILYM Group, Inc. was the lowest. Thus, the settlement administration costs provision should be given preliminary approval.

PAGA Provisions of the Settlement

101. The memorandum of points and authorities that accompanies this declaration explains the terms of the provisions of the Settlement that apply to PAGA and civil penalties.

102. The Settlement provides that 25% of the PAGA Penalties shall be distributed among all Aggrieved Employees, even those who opt out of the Class Settlement. *See* Settlement, paras. 3.2.7, 3.2.8, and 4.1.5.

103. The Settlement releases only those claims described in the notice sent by Plaintiff to the LWDA, and only to the extent that they are alleged in the Operative Complaint. The Settlement states as follows with regard to the release of the PAGA claim: All Participating Class Members and all Aggrieved Employees (who shall not have the right to opt out) shall be bound by a release, as of the Effective Date, of all claims alleged in the Operative Complaint or any of Plaintiff's PAGA Notice(s), or which could have been alleged based on the facts alleged in the Operative Complaint or any of Plaintiff's PAGA Notice(s), and which arose during the Class Period and PAGA Period. The Released Class Claims shall include all claims alleged by Plaintiff in the Operative Complaint, or which could have been alleged by Plaintiff in the Operative Complaint based on the facts stated in the Operative Complaint, including any and all claims or causes of action regarding unpaid wages, including but not limited to failure to pay minimum wages, straight time wages, overtime compensation, and interest; failure to timely pay regular and final wages; failure to provide compliant meal, rest, and/or recovery periods; failure

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to pay premiums at all or at the correct rate for any violation of meal and rest obligations; claims arising from invalid meal period waivers; payment for all hours worked; failure to issue proper wage statements and paystubs, including wage statements and paystubs furnished or available in physical, electronic, or other forms; failure to keep accurate records; unfair business practices related thereto; and any and all related penalties, including recordkeeping penalties, wage statement penalties, minimum wage penalties, waiting time penalties, and other statutory or civil penalties associated with any of the foregoing. Such Released Class Claims shall include, but are not limited to those claims arising under California Labor Code sections 201, 202, 203, 204, 204b, 207, 208, 210, 218.5, 218.6, 221, 225.5, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, and 2699 *et seq.*, and/or those arising under the applicable Industrial Welfare Commission Wage Order(s) (including but not limited to subsections 3, 4, 5, 7, 8, 9, 11, 12, 13, 18, and 20 of the applicable Wage Order(s), such as IWC Wage Order 14-2001 [including the provisions of the California Code of Regulations codifying the applicable Wage Order(s)]), 8 C.C.R. §3395, California Business Professions Code §§17200 *et seq.* (including, without limitation, §§17200 through 17208); the California Civil Code sections 3287, and 3289; California Code of Civil Procedure section 1021.5, and any related claims under the provisions of the Fair Labor Standards Act (29 USC §§201 *et seq.*) ("Released Claims"). Any Non-Participating Class Member shall only be bound by claims for civil penalties released under PAGA as provided in this section and shall not be deemed to release any individual claims for which recovery under PAGA is not permitted. Settlement, para. 6.3.

104. The PAGA Release is limited to the Defendant named in the Operative Complaint, together with its present and former parents, subsidiaries, affiliated entities, commonly owned or controlled entities, its present and former owners, board members, officers, directors, trustees, shareholders, members, partners, employees, agents, insurers, attorneys, representatives, heirs, executors, administrators, successors and assigns, and any individual or entity to whom liability for the Released Claims, as defined in the Settlement, could be assigned pursuant to Labor Code §558.1, or on a joint-employer, alter-ego, or other vicarious liability. *See* Settlement, para. 1.43 ("Released Parties").

105. The Settlement releases only those claims described in the notice sent by Plaintiff to the LWDA, and only to the extent that they are alleged in the Operative Complaint. The Settlement states: All Participating Class Members and all Aggrieved Employees

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(who shall not have the right to opt out) shall be bound by a release, as of the Effective Date, of all claims alleged in the Operative Complaint or any of Plaintiff's PAGA Notice(s) , or which could have been alleged based on the facts alleged in the Operative Complaint or any of Plaintiff's PAGA Notice(s), and which arose during the Class Period and PAGA Period. The Released Class Claims shall include all claims alleged by Plaintiff in the Operative Complaint, or which could have been alleged by Plaintiff in the Operative Complaint based on the facts stated in the Operative Complaint, including any and all claims or causes of action regarding unpaid wages, including but not limited to failure to pay minimum wages, straight time wages, overtime compensation, and interest; failure to timely pay regular and final wages; failure to provide compliant meal, rest, and/or recovery periods; failure to pay premiums at all or at the correct rate for any violation of meal and rest obligations; claims arising from invalid meal period waivers; payment for all hours worked; wage statements and paystubs, including wage statements and paystubs furnished or available in physical, electronic, or other forms; failure to keep accurate records; unfair business practices related thereto; and any and all related penalties, including recordkeeping penalties, wage statement penalties, minimum wage penalties, waiting time penalties, and other statutory or civil penalties associated with any of the foregoing. Such Released Class Claims shall include, but are not limited to those claims arising under California Labor Code sections 201, 202, 203, 204, 204b, 207, 208, 210, 218.5, 218.6, 221, 225.5, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 et seq., and 2699 et seq., and/or those arising under the applicable Industrial Welfare Commission Wage Order(s) (including but not limited to subsections 3, 4, 5, 7, 8, 9, 11, 12, 13, 18, and 20 of the applicable Wage Order(s), such as IWC Wage Order 14-2001 [including the provisions of the California Code of Regulations codifying the applicable Wage Order(s)]), 8 C.C.R. §3395, California Business Professions Code 17200 et seq. (including, without limitation, §§17200 through 17208); the California Civil Code sections 3287, and 3289; California Code of Civil Procedure section 1021.5, and any related claims under the claims under the provisions of the Fair Labor Standards Act (29 USC §§201, et seq.) ("Released Claims"). Any Non-Participating Class Member shall only be bound by claims for civil penalties released under PAGA as provided in this section and shall not be deemed to release any individual claims for which recovery under PAGA is not permitted. Settlement, para. 6.3.

///

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Notice of Settlement to the LWDA

106. Pursuant to Labor Code § 2699(l)(2), Plaintiff has provided notice of this Settlement to the LWDA with the filing and service of this motion. A true and correct copy of Plaintiff's submission with the LWDA and a confirmation email is attached hereto as **Exhibit 23.**

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

Executed on Thursday, April 25, 2024 at Los Angeles, California.

DAVID SPIVAK,
Declarant

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EXHIBIT 1

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Attorneys for Plaintiff(s),
GENARO REYES VILLAGRA, and all others similarly situated
(Additional attorneys for parties on following page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

(*UNLIMITED JURISDICTION*)

GENARO REYES VILLAGRA, on behalf of himself and all others similarly situated, and as an "aggrieved employee" on behalf of other "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004, *Plaintiff(s),* vs. INNOVATIVE PRODUCE, INC., a California corporation; and DOES 1–50, inclusive, *Defendant(s).*	Case No. 22CV02744 **CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE** Action filed: July 18, 2022 Dept: 2, The Honorable James F. Rigali

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ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

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GENARO REYES VILLAGRA, and all others similarly situated

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INNOVATIVE PRODUCE, INC.

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This Class Action and PAGA Settlement Agreement ("Agreement") is made by and between plaintiff Genaro Reyes Villagra ("Plaintiff") and defendant Innovative Produce, Inc. ("Innovative Produce, Inc."). The Agreement refers to Plaintiff and Defendant collectively as "Parties," or individually as "Party."

1. DEFINITIONS.

1.1. "Action" means the Plaintiff's class action and PAGA lawsuits alleging wage and hour violations against Innovative Produce, Inc. captioned "Genaro Reyes Villagra, on behalf of himself, and all others similarly situated, and as an 'aggrieved employee' on behalf of other 'aggrieved employees' under the Labor Code Private Attorneys General Act of 2004, *Plaintiff(s)*, vs. Innovative Produce, Inc., a California corporation; and DOES 1 through 50, inclusive, *Defendant(s),"* Case No. 22CV02744 initiated on July 18, 2022 and pending in Superior Court of the State of California, County of Santa Barbara, which the Court consolidated with Case No. 22CV02747 on September 21, 2023.

1.2. "Administrator" means ILYM Group, Inc., 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 Employee" means a person directly employed by Defendant in California and classified as a non-exempt employee who worked during the PAGA Period.

1.5. "Class" means all persons directly employed by Defendant in California and classified as a non-exempt employee who worked during the Class Period..

1.6. "Class Counsel" means David G. Spivak of The Spivak Law Firm and Louis M. Benowitz of Benowitz Law Corporation.

1.7. "Class Counsel Fees Payment" and "Class Counsel Litigation Expenses Payment" mean the amounts allocated to Class Counsel for reasonable attorneys' fees and statutorily recoverable costs, respectively, incurred to prosecute the Action.

1.8. "Class Data" means Class Member the Class Member's name, last-known

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mailing address, Social Security number, and number of Class Pay Periods and PAGA Pay Periods.

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

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

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

1.12. "Class Pay Period" means any Pay Period during which a Class Member worked for Defendant for at least one day during the Class Period.

1.13. "Class Period" means the period from July 18, 2018 to the order preliminarily approving this Settlement.

1.14. "Class Representative" means the named Plaintiff in the Operative Complaint in the Action seeking Court approval to serve as a Class Representative.

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 Santa Barbara.

1.17. "Defendant" means named Defendant Innovative Produce, Inc.

1.18. "Defense Counsel" means Ian B. Wieland and Michael J. Conway II of Sagaser Watkins & Wieland PC.

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

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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. "Gross Settlement Amount" means $150,000.00 which is the total amount Defendant agrees to pay under the Settlement, subject to (voluntary) increase as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator's Expenses.

1.24. "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Class Pay Periods worked by the Participating Class Member.

1.25. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked by the Aggrieved Employee.

1.26. "Judgment" means the judgment entered by the Court based upon the Final Approval.

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

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

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

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

1.31. "Notice Packet" means the Class Notice (Exhibit A), the Request for Exclusion

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form (Exhibit B), the Pay Period Dispute form (Exhibit C), and the Objection form (Exhibit D) in English with Spanish translations.

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

1.33. "PAGA Period" means the period from July 18, 2021 to the order preliminarily approving this Settlement.

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

1.35. "PAGA Notice" means Plaintiff's April 20, 2022 and October 6, 2023 letters to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

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

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

1.38. "Plaintiff" means Genaro Reyes Villagra, the named plaintiff in the Action.

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

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

1.41. "Released Class Claims" means the claims being released as described in Paragraph 6.3 below.

1.42. "Released PAGA Claims" means the claims being released as described in Paragraph 6.3 below that arise and/or are assertable under PAGA.

1.43. "Released Parties" means: Defendant together with its present and former parents, subsidiaries, affiliated entities, commonly owned or controlled entities, its present and former owners, board members, officers, directors, trustees, shareholders, members, partners, employees, agents, insurers, attorneys, representatives, heirs, executors, administrators, successors and assigns, and any individual or entity to whom liability for the Released Claims, as defined herein, could be assigned pursuant to Labor Code §558.1, or on a joint-employer, alter-ego, or other vicarious liability theory.

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1.44. "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. A Request for Exclusion form is attached as Exhibit B.

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

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

2. RECITALS.

2.1. On July 18, 2022, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and related claims. On July 18, 2022, Plaintiff filed another lawsuit against Defendant under PAGA. On ___, 2024, Plaintiff filed a First Amended Complaint alleging causes of action against Defendant for failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest and recovery periods, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and related allegations. The First Amended Complaint is the Operative Complaint in the Action (the "Operative Complaint.") Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.

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

2.3. On July 18, 2023, the Parties participated in an all-day mediation presided over by Mr. Scott Radovich which led to this Agreement to settle the Action.

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

2.5. The Court has not granted class certification.

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

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant promises to pay $150,000.00 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.1.3 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 Defendant.

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

3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than $10,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member and Aggrieved Employee). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less

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than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment and agrees to hold Defendant harmless, and indemnify Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than one-third, which is currently estimated to be $50,000.00 and a Class Counsel Litigation Expenses Payment of not more than $12,000.00. Defendant will not oppose requests for these payments provided that do not exceed these amounts and such expenses claimed are recoverable under statute. 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 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 assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and agrees to hold Defendant harmless, and indemnify Defendant, 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 $10,000.00 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 less than $10,000.00, 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 Class Pay Periods worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Class Pay Periods.

3.2.5. Tax Allocation of Individual Class Payments. 10.00% of each Participating Class

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Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 90.00% 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 employee taxes owed on their Individual Class Payment.

3.2.6. 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.

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

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

3.2.9. 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.

4.1.1. Class Size. Based on a review of its records through the date of mediation, Defendant estimates there are 126 Class Members who collectively worked a total of 14,193 Pay Periods.

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

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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. Defendant 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 Defendant 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.

4.1.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 60 days after the Effective Date.

4.1.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, 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.

4.1.5. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members 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 Settlement Payments to all Participating Class Members (including those for whom Notice Packet 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 Notice Packet was returned undelivered). The Administrator may send Participating Class Members a single check combining the

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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.

4.1.6. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 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, as requested by the Class Member prior to the void date.

4.1.7. For any Class Member 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 thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

4.1.8. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions, bonuses, vacation plans, sick leave plans, PTO plans, regular rate of pay calculations, or other benefit plan) beyond those specified in this Agreement.

6. RELEASES OF CLAIMS. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds employer payroll taxes owed on the Wage Portion of the Individual Class Payments as calculated and directed by the Administrator, Plaintiff, Class Members, 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, as of the Effective Date, generally release and discharge Released Parties from all claims, transactions, or occurrences that occurred between or involving the parties through the date of Plaintiff's execution of this Agreement ("Plaintiff's Release"). Plaintiff's Release does not extend to any

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claims or actions to enforce this Agreement, or to any claims for unemployment benefits, disability benefits, social security benefits, or 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. Plaintiff understands and agrees that by signing this Agreement he is giving up any and all legal claims he has or may have against the Released Parties through his execution of his Agreement, expressly including claims under the federal Age Discrimination in Employment Act ("ADEA"). Plaintiff is advised to consult with legal counsel regarding the waiver contained herein generally and specifically as to the waiver of claims under the ADEA. Plaintiff understands and agrees that he has been advised in writing of his right to consult with an attorney before signing this Agreement. Plaintiff has twenty-one (21) days to consider this Agreement, although he may sign it at any time prior to the expiration of the twenty-one (21) days. Plaintiff may revoke this Agreement at any time during the seven (7) days after he signs the Agreement. This Agreement shall not become effective until the seven (7) day revocation period has passed.

6.2 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.**

6.3 Release by Participating Class Members and Aggrieved Employees: All Participating Class Members and all Aggrieved Employees (who shall not have the right to opt out) shall be bound by a release, as of the Effective Date, of all claims alleged in the Operative Complaint or any of Plaintiff's PAGA Notice(s) , or which could have been alleged based on the facts alleged in the Operative Complaint or any of Plaintiff's PAGA Notice(s), and which

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arose during the Class Period and PAGA Period. The Released Class Claims shall include all claims alleged by Plaintiff in the Operative Complaint, or which could have been alleged by Plaintiff in the Operative Complaint based on the facts stated in the Operative Complaint, including any and all claims or causes of action regarding unpaid wages, including but not limited to failure to pay minimum wages, straight time wages, overtime compensation, and interest; failure to timely pay regular and final wages; failure to provide compliant meal, rest, and/or recovery periods; failure to pay premiums at all or at the correct rate for any violation of meal and rest obligations; claims arising from invalid meal period waivers; payment for all hours worked; wage statements and paystubs, including wage statements and paystubs furnished or available in physical, electronic, or other forms; failure to keep accurate records; unfair business practices related thereto; and any and all related penalties, including recordkeeping penalties, wage statement penalties, minimum wage penalties, waiting time penalties, and other statutory or civil penalties associated with any of the foregoing. Such Released Class Claims shall include, but are not limited to those claims arising under California Labor Code sections 201, 202, 203, 204, 204b, 207, 208, 210, 218.5, 218.6, 221, 225.5, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 et seq., and 2699 et seq., and/or those arising under the applicable Industrial Welfare Commission Wage Order(s) (including but not limited to subsections 3, 4, 5, 7, 8, 9, 11, 12, 13, 18, and 20 of the applicable Wage Order(s), such as IWC Wage Order 14-2001 [including the provisions of the California Code of Regulations codifying the applicable Wage Order(s)]), 8 C.C.R. §3395, California Business Professions Code 17200 et seq. (including, without limitation, §§17200 through 17208); the California Civil Code sections 3287, and 3289; California Code of Civil Procedure section 1021.5, and any related claims under the claims under the provisions of the Fair Labor Standards Act (29 USC §§201, et seq.) ("Released Claims"). Any Non-Participating Class Member shall only be bound by claims for civil penalties released under PAGA as provided in this section and shall not be deemed to release any individual claims for which recovery under PAGA is not permitted.

6.4 Construction. The Parties intend that this release be construed as broadly as possible. The release excludes the release of claims not permitted by law.

6.5 Resolution of Good Faith Dispute. The parties warrant and represent that the releases for Participating Class Members and Aggrieved Employees resolve, pursuant to Labor

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Code §§206 and 206.5, and applicable case law (including but not limited to *Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796) a good faith dispute regarding any and all wages, if any, owed to Participating Class Members / Aggrieved Employees through their last day of employment with Defendant within the Class Period and PAGA Period.

7. **MOTION FOR PRELIMINARY APPROVAL.** Plaintiff shall prepare and file a motion for preliminary approval ("Motion for Preliminary Approval"). Defendant shall not oppose the motion, to the extent consistent with this Agreement. A Preliminary Approval Order form is attached as Exhibit E.

7.1 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 Notice Packet; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; and (vi) 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)). In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

7.2 Responsibilities of Counsel. Class Counsel is responsible for expeditiously

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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.

7.3 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. However, no party shall be obligated to consent to any material change (including but not limited to changes to the Gross Settlement Amount or the releases set forth herein) in the Agreement, whether or not such material change is caused or requested by the Court.

8. SETTLEMENT ADMINISTRATION.

8.1 Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. Settlement Administrators to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. Settlement Administrators agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. 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 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.

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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, Aggrieved Employees, Class Pay Periods, and PAGA 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 Notice Packet with Spanish translation substantially in the forms attached to this Agreement as **Exhibits A, B, C, and D**. 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 Class Pay Periods and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Notice Packets, 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 Notice Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice Packet 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 Notice Packet to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Notice Packet to Class Members whose Notice Packet is returned by the USPS a second time.

8.4.4 The deadlines for Class Members' written objections, Challenges to Class Pay Periods and/or PAGA Pay Periods (disputes), 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 Notice Packet.

8.4.5 If the Administrator, Defendant 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 Notice Packet, 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

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rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

8.5 Requests for Exclusion (Opt-Outs).

8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members whose Notice Packet 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. A Request for Exclusion form, attached as Exhibit B, may be used for this purpose but is not required.

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

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

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Aggrieved Employees are eligible for an Individual PAGA Payment.

8.6 Challenges to Calculation of Pay Periods. Each Class Member shall have 60 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members whose Notice Packet is re-mailed) to challenge the number of Class Pay Periods and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. This is also known as a dispute. A Pay Period Dispute form, attached as Exhibit C, may be used for this purpose but is not required. 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 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 Pay Periods 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 Pay Periods and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination 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 Notice Packet (plus an additional 14 days for Class Members whose Notice Packet was re-mailed). An The Objection form attached as Exhibit D may be used for this purpose but is not required.

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

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otherwise.

8.8.1 Email Address and Toll-Free Number. The Administrator will establish and maintain and use 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 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; (c) copies of all Requests for Exclusion documentation submitted (whether valid or invalid). Upon request, the Administrator may provide summary information regarding the information described in this paragraph to Class Counsel, but shall not provide any personal identifying information (e.g., names and contact information) to Class Counsel.

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: Notice Packets mailed or re-mailed, Notice Packets returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Class Pay Periods 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 include 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 Class Pay Period and/or PAGA 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 challenges over the calculation of Class Pay Periods 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

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for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of the Notice Packets, the Notice Packets returned as undelivered, the re-mailing of Notice Packets, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List, except that any personal identifying information (e.g., names and contact information) shall be redacted from any copies of the Requests for Exclusion forms or other documentation. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

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

9. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE. Based on its records, Defendant estimates that, as of the date of the parties' mediation, (1) there were 126 Class Members and 14,193 total Pay Periods during the Class Period. If the number of Class Members exceeds 126 by 10% or the number of Pay Periods worked by Class Members exceeds 14,193 by 10% or more, whichever figure is more favorable Defendant, by the date of preliminary approval ("the Pro Rata Increase Threshold"), the GSA will increase pro rata per additional class member above 137 (e.g., 126 + [.1 * 126]) or additional workweek above 15,612 (e.g., 14,193 + [.1 * 14,193]), whichever figure Defendant elects to use, but only to the extent Defendant does not choose a date earlier than the date of preliminary approval to avoid any pro rata increase. If the Pro Rata Increase Threshold is triggered, Defendant shall have the exclusive right to choose an earlier date than the date of preliminary approval as the end of the Class Period and PAGA Period so to avoid triggering any pro rata increase.

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10. DEFENDANT'S RIGHT TO WITHDRAW. If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10.00% of the total number of all Class Members, Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendant 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, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than 21 days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect. Termination of the Agreement may be achieved by Defense Counsel providing written notice to Class Counsel of Defendant's intent to terminate the settlement.

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 7 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 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, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph. However, no party shall be

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obligated to consent to any material change in the Agreement, whether or not such material change is caused or requested by the Court.

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 Class Counsel Litigation Expenses Payment reflected 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. However, no party shall be obligated to consent to any material change in the Agreement, whether or not such material change is caused or requested by the reviewing Court.

12. AMENDED JUDGMENT. If any amended judgment is required under Code of Civil

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Procedure section 384, the Parties will work together in good faith to jointly submit and 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 Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant'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, Defendant reserves the right to contest certification of any class for any reasons, Defendant 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 Defendant'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, Defendant 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. Thereafter, Class Counsel further agrees to keep this Settlement confidential. Class Counsel shall not disclose this Settlement to current or former employees of the Released Parties, to the media, or on any websites, blogs, social media, and/or online platforms. Exceptions to Class Counsel's obligation

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of confidentiality are (i) disclosures necessary to comply with the law, judicial processes, or for financial planning or tax preparation purposes; (ii) to the extent needed to enforce this Agreement. Nothing herein shall prevent Class Counsel from disclosing this settlement for purposes of describing its qualifications as counsel in other cases or as required by a court, nor shall any terms herein preclude Class Counsel from communicating with and fulfilling its obligations to Class Members.

13.3 Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant 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, any with 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.

13.4 Nothing in this paragraph shall be construed to restrict Defendant's or Defense Counsel's ability to communicate with Class Members in accordance with applicable ethical obligations, including for the purposes of notifying Class Members regarding this settlements and its procedures.

13.5 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. Nothing in this paragraph shall be construed to restrict Defendant's or Defense Counsel's ability to communicate with Class Members in accordance with applicable ethical obligations, including for the purposes of notifying Class Members regarding this settlements and its procedures.

13.6 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.

13.7 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

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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 Mr. Scott Radovich and/or the Court for resolution. However, no party shall be obligated to consent to any material change in the Agreement, whether or not such material change is caused or requested by the Court or the reviewing Court.

13.8 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 and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

13.9 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant 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.

13.10 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.

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

13.12 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.

13.13 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.

13.14 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.

13.15 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 Defendant in connection with the mediation, other settlement negotiations, or in

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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 Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.

13.16 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.

13.17 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.

13.18 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:
David G. Spivak, Esq.
The Spivak Law Firm
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
david@spivaklaw.com

To Defendant:
Ian B. Wieland, Esq.
Michael Joseph Conway, II Esq.
Sagaser Watkins & Wieland PC
5260 N Palm Ave
Ste 400
Fresno, CA 93704-2217
mikec@sw2law.com; ian@sw2law.com

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

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

Dated: February 29, 2024 By: Genaro R.V

GENARO REYES VILLAGRA

Dated: February 26, 2024 By: George J. Adam

GEORGE ADAM, President
Innovative Produce, Inc.

THE SPIVAK LAW FIRM

Dated: February 29, 2024 By: David Spivak

DAVID G. SPIVAK, Attorneys for Plaintiff, GENARO REYES VILLAGRA, and all others similarly situated

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BENOWITZ LAW CORPORATION

Dated: February 29, 2024

By: _____

LOUIS M. BENOWITZ, Attorneys for Plaintiff, GENARO REYES VILLAGRA, and all others similarly situated

SAGASER WATKINS & WIELAND PC

Dated: February 28, 2024

By: _____

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Abogados para el Demandante,
GENARO REYES VILLAGRA, y otros en una situación similar
(Los abogados adicionales para las partes se encuentran en la siguiente página)

CORTE SUPERIOR DEL ESTADO DE CALIFORNIA

PARA EL CONDADO DE SANTA BARBARA

(*JURISDICCIÓN ILIMITADA*)

GENARO REYES VILLAGRA, en nombre de él mismo y otros en una situación similar, como un "empleado agraviado" bajo la Ley General de Abogados Privados del 2004 del Código de Trabajo,

El Demandante,

vs.

INNOVATIVE PRODUCE, INC., una corporación de California, y DOES 1–50, inclusive,

Los Demandados.

Caso No. 22CV02744

ACUERDO DE ARREGLO DE ACCIÓN DE DEMANDA COLECTIVA Y BAJO LA PAGA Y AVISO COLECTIVO

La acción se presentó el:	18 de Julio del 2022
Dep:	2, El Honorable James F. Rigali

LOS ABOGADOS ADICIONALES PARA EL DEMANDANTE

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Abogados para el Demandado,
INNOVATIVE PRODUCE, INC.

Este Acuerdo de Arreglo de Acción de Demanda Colectiva y Bajo la PAGA (el "Acuerdo") se celebre por y entre el demandante Genaro Reyes Villagra (el "Demandante") y el demandado Innovative Produce, Inc. ("Innovative Produce, Inc."). El Acuerdo se refiere al Demandante y al Demandado colectivamente como las "Partes" o individualmente como la "Parte".

1. <u>DEFINICIONES</u>.

1.1. La "Acción" significa las demandas de acción colectiva y bajo la PAGA del Demandante que alegan violaciones a los salaries y pagos por hora en contra de Innovative Produce, Inc., titulada "Genaro Reyes Villagra, en nombre de él mismo y todos los demás en una situación similar, como un "empleado agraviado" en nombre de otros "empleados agraviados" bajo la Ley General de Abogados Privados del 2004 del Código de Trabajo, *los Demandantes*, v. Innovative Produce, Inc., una corporación de California; y DOES 1 al 50, inclusive, *los Demandados*", Caso No. 22CV02744, iniciado el 18 de Julio del 2022 y pendiente en la Corte Superior del Estado de California, Condado de Santa Barbara, la cual la Corte consolidó con el Caso No. 22CV02747 el 21 de Septiembre del 2023.

1.2. El "Administrador" significa ILYM Group, Inc., la entidad neutral que las Partes han acordado en designar para administrar el Acuerdo.

1.3. El "Pago de los Gastos de Administración" significa el monto que se le pagará al Administrador del Monto Bruto del Acuerdo para reembolsar los honorarios y gastos razonables en cumplimiento con la propuesta "sin exceso" del Administrador presentada a la Corte en conexión con la Aprobación Preliminar del Acuerdo.

1.4. Un "Empleado Agraviado" significa una persona directamente empleada por el Demandado en California y clasificado como un empleado no exento quien trabajó durante el Periodo bajo la PAGA.

1.5. El "Grupo" significa todas las personas directamente empleadas por el Demandado en California y clasificados como empleados no exentos quienes trabajaron durante el Periodo del Grupo.

1.6. Los "Abogados del Grupo" significa David G. Spivak de The Spivak Law Firm y Louis M. Benowitz de Benowitz Law Corporation.

1.7. El "Pago de los Honorarios de los Abogados del Grupo" y el "Pago de los Gastos de Litigación de los Abogados del Grupo" significan los montos distribuidos a los Abogados del Grupo por honorarios y costos recuperables estatutarios razonables de los abogados, respectivamente, incurridos para poder litigar la Acción.

1.8. Los "Datos del Grupo" significan el nombre del Miembro del Grupo, su última dirección conocida, su número de Seguro Social y el número de Periodos de Pago del Grupo y Periodos de Pago bajo la PAGA.

1.9. El "Miembro del Grupo" o el "Miembro del Grupo del Acuerdo" significa un miembro del Grupo, ya sea como Miembro Participante del Grupo y un Miembro No Participante del Grupo (incluyendo un Miembro No Participante del Grupo quien califica como un Empleado Agraviado).

1.10. La "Búsqueda de la Dirección del Miembro del Grupo" significa una investigación y búsqueda del Administrador para la dirección actual de correo del Miembro del Grupo usando todos los recursos, métodos y medios razonablemente disponibles, incluyendo pero sin limitación a la base de datos Nacional de Cambio de Domicilio (National Change of Address), rastros y contacto directo por el Administrador con los Miembros del Grupo.

1.11. El "Aviso Colectivo" significa EL AVISO APROBADO POR LA CORTE DEL ACUERDO DE ACCIÓN DE DEMANDA COLECTIVA Y FECHA DE AUDIENCIA PARA APROBACIÓN FINAL POR LA CORTE, para ser enviado por correo a los Miembros del Grupo en inglés con una traducción en español en el formulario, sin una variación material, según se adjunta como Anexo A e incorporado por referencia dentro de este Acuerdo.

1.12. El "Periodo de Pago del Grupo" significa cualquier Periodo de Pago durante el cual un Miembro del Grupo trabajó para el Demandado por al menos un día durante el Periodo del Grupo.

1.13. El "Periodo del Grupo" significa el periodo entre el 18 de Julio del 2018 hasta la orden que aprueba preliminarmente este Acuerdo.

1.14. El "Representante del Grupo" significa el Demandante nombrado en el Reclamo Operativo en la Acción que busca aprobación de la Corte para servir como Representante del Grupo.

1.15. Un "Pago por Servicio al Representante del Grupo" significa el pago al Representante del Grupo por iniciar la Acción y por brindar los servicios en apoyo de la Acción.

1.16. La "Corte" significa la Corte Superior de California, Condado de Santa Barbara.

1.17. El "Demandado" significa el Demandado nombrado, Innovative Produce, Inc.

1.18. Los "Abogados de la Defensa" significa Ian B. Wieland y Michael J. Conway II de Sagaser Watkins & Wieland PC.

1.19. La "Fecha Efectiva" significa la fecha para cuando ambas de las siguientes haya ocurrido: (a) la Corte ingrese un Juicio con una Orden Otorgando la Aprobación Final del Acuerdo; y (b) el Juico es definitivo. El Juicio es definitivo cuando ocurra lo último de lo siguiente: (a) si ningún Miembro Participante del Grupo objeta al Acuerdo, el día en el que la Corte ingrese un Juicio; (b) si uno o más Miembros Participantes del Grupo objetan al Acuerdo, el día siguiente después de la fecha límite para presentar un aviso de apelación del Juicio; o (c) si una apelación oportuna del Juicio se ha presentado, el día después de que la corte de apelaciones afirme el Juicio y emita un remittitur.

1.20. La "Aprobación Final" significa la orden de la Corte otorgando aprobación final del Acuerdo de Arreglo.

1.21. La "Audiencia de Aprobación Final" significa la audiencia de la Corte sobre la Moción para Aprobación Final del Acuerdo de Arreglo.

1.22. El "Juicio Definitivo (o Final)" signfica el Juicio Ingresado por la Corte tras Otorgar la Aprobación Final del Acuerdo de Arreglo.

1.23. El "Monto Bruto del Acuerdo" significan los $150,000.00 el cual es el monto total que el Demandado está de acuerdo en pagar bajo el Acuerdo, sujeto a un aumento (voluntario) según se brinda por el Párrafo 9 a continuación. El Monto Bruto del Acuerdo será usado para pagar los Pagos Individuales del Grupo, los Pagos Individuales bajo la PAGA, el Pago a la LWDA bajo la PAGA, los Honorarios de los Abogados del Grupo, los Gastos de los Abogados del Grupo, el Pago por Servicio al Representante del Grupo y los Gastos del Administrador.

1.24. El "Pago Individual del Grupo" significa la porción prorrateada del Miembro Participante del Grupo del Monto Neto del Acuerdo calculado según el número de periodos de Pago bajo la PAGA trabajados por el Miembro Participante del Grupo.

1.25. El "Pago Individual bajo la PAGA" significa la porción prorrateada del Empleado Agraviado del 25% de las Penalidades bajo la PAGA calculadas según el número de Periodos de Pago bajo la PAGA trabajadas por el Empleado Agraviado.

1.26. El "Juicio" significa el juicio ingresado por la Corte basado sobre la Aprobación Final.

1.27. La "LWDA" significa la Agencia de Desarrollo de Trabajo y Fuerza Laboral de California, la agencia titulada bajo el Código de Trabajo sección 2699, subd. (i).

1.28. El "Pago a la LWDA bajo la PAGA" significa el 75% de las Penalidades bajo la PAGA pagadas a la LWDA bajo el Código de Trabajo sección 2699, subd. (i).

1.29. El "Monto Neto del Acuerdo" significa el Monto Bruto del Acuerdo, menos los siguientes pagos según los montos aprobados por la Corte: Los Pagos Individuales bajo la PAGA, el Pago a la LWDA bajo la PAGA, el Pago por Servicio al Representante del Grupo, el Pago por los Honorarios de los Abogados del Grupo, el Pago por los Gastos de Litigación de los Abogados del Grupo y el Pago de los Gastos de Administración.

1.30. Un "Miembro No Participante del Grupo" significa cualquier Miembro del Grupo quien opta por retirarse del Acuerdo de Arreglo al enviar al Administrador una Solicitud para Exclusión válida y oportuna.

1.31. El "Paquete de Aviso" significa el Aviso Colectivo (Anexo A), el formulario de Solicitud para Exclusión (Anexo B), el formulario de Disputas de los Periodos de Pago (Anexo C), y el formulario de Objeción (Anexo D) en inglés con traducciones al español.

1.32. El "Periodo de Pago bajo la PAGA" significa cualquier Periodo de Pago durante el cual un Empleado Agraviado trabajó para el Demandado por al menos un día durante el Periodo bajo la PAGA.

1.33. El "Periodo bajo la PAGA" significa el periodo entre el 18 de Julio del 2021 hasta la fecha de la orden que preliminarmente aprueba este Acuerdo.

1.34. La "PAGA" significa la Ley General de Abogados Privados (Código de Trabajo §§ 2698. Y siguientes).

1.35. El "Aviso bajo la PAGA" significa las cartas del 20 de Abril del 2022 y el 6 de Octubre del 2023 del Demandante para el Demandado y a la LWDA que brinda un aviso en cumplimiento al Código de Trabajo sección 2699.3, subd. (a).

1.36. Las "Penalidades bajo la PAGA" significan el monto total de penalidades civiles bajo la GAGA a ser pagadas del Monto Bruto del Acuerdo, distribuidos en 25% para los Empleados Agraviados ($1,000.00) y 75% a la LWDA ($3,000.00) en liquidación de los reclamos bajo la PAGA.

1.37. Un "Miembro Participante del Grupo" significa un Miembro del Grupo quien no presentó una Solicitud para Exclusión válida y oportuna del Acuerdo de Arreglo.

1.38. El "Demandante" se refiere a Genaro Reyes Villagra, el demandante nombrado en la Acción.

1.39. La "Aprobación Preliminar" significa la Orden que Otorga Aprobación Preliminar del Acuerdo por parte de la Corte.

1.40. La "Orden de Aprobación Preliminar" significa la Orden propuesta que Otorga Aprobación Preliminar y Aprobación del Acuerdo bajo la PAGA. Un formulario de Orden de Aprobación Preliminar se adjunta como Anexo E.

1.41. Los "Reclamos Exonerados del Grupo" significan los reclamos que son exonerados según se describe en el Párrafo 6.3 a continuación.

1.42. Los "Reclamos Exonerados bajo la PAGA" significa los reclamos siendo exonerados según se describen en el Párrafo 6.3 a continuación que surgen de y/o son pronunciables bajo la PAGA.

1.43. Las "Partes Exoneradas" significa: el Demandado en conjunto con matrices, subsidiarias, entidades afiliadas, entidades de propiedad común o controladas actuales y anteriores, sus propietarios, miembros de la junta directiva, oficiales, directores, fideicomisarios, accionistas, miembros, socios, empleados, agentes, aseguradores, abogados, representantes, herederos, albaceas, administradores, sucesores y cesionarios actuales y anteriores, y cualquier individuo o entidad a quien la responsabilidad por los Reclamos Exonerados, según se define dentro de la presente, se le puede asignar en cumplimiento con el Código de Trabajo §558.1, o un empleador conjunto, alter ego u otra teoría de responsabilidad vicaria.

1.44. Una "Solicitud para Exclusión" significa la presentación de un Miembro del Grupo de una solicitud por escrito de ser excluido del Acuerdo Colectivo firmado por el Miembro del Grupo. Un formulario de Solicitud para Exclusión ha sido adjuntado como Anexo B.

1.45. La "Fecha Límite de Respuesta" significan los 60 días después de que el Administrador envíe por correo el Aviso a los Miembros del Grupo y a los Empleados Agraviados y deberá ser la última fecha en la que los Miembros del Grupo pueden: (a) enviar por fax, correo electrónico o correo las Solicitudes para Exclusión del Acuerdo de Arreglo o (b)

enviar fax, correo electrónico o correo su Objeción del Acuerdo. Los Miembros del Grupo a quienes se les reenvíe los Paquetes de Aviso después de haber sido retornados al Administrador como no entregados en su destino deberán tener 14 días calendario adicionales después de que la Fecha Límite de Respuesta ha expirado.

1.46. El "Acuerdo de Arreglo" significa la provisión de la Acción ejecutada por este Acuerdo y el Juicio.

2. CONSIDERANDOS.

2.1. El 18 de Julio del 2022, el Demandante inició esta Acción al presentar un Reclamo alegando causas de acción en contra del Demandado por fallar en pagar salarios, deducciones no autorizadas e ilegales de salarios, fallar en brindar periodos de comida, fallar en autorizar y permitir periodos de descanso, fallar en indemnizar los gastos de negocios, fallar en emitir los estados de cuenta de salarios apropiados, fallar en pagar los salarios de manera oportuna, fallar en mantener los registros de nómina de pago requeridos, y los reclamos relacionados. El 18 de Julio del 2022, el Demandante presentó otra demanda en contra del Demandado bajo la PAGA. El _____ del 2024, el Demandante presentó el Primer Reclamo Enmendado, alegando las causas de acción en contra del Demandado por fallar en pagar salarios, deducciones no autorizadas e ilegales de salarios, fallar en brindar periodos de comida, fallar en autorizar y permitir periodos de descanso y recuperación, fallar en emitir estados de cuenta de salarios adecuados, fallar en pagar salarios de manera oportuna, fallar en mantener los registros de nómina de pago requeridos y alegaciones relacionadas. El Primer Reclamo Enmendado es el Reclamo Operativo, niega cualquier falla en el cumplimiento de las leyes identificadas en el Reclamo Operativo y niega cualquier y toda responsabilidad por las causas de acción alegadas.

2.2. En cumplimiento con el Código de Trabajo sección 2699.3 subd. (a), el Demandante dio aviso escrito oportuno al Demandado y a la LWDA al enviar el Aviso bajo la PAGA.

2.3. El 28 de Julio del 2023, las Partes participaron en una mediación de todo un día presidido por el Sr. Scott Radovich, lo cual llevó a que este Acuerdo liquidara la Acción.

2.4. Antes de la mediación, el Demandante obtuvo, a través de un descubrimiento informal, el número de empleados comparables, el número de semanas de trabajo, el número de

periodos de pago, las tasas promedio de pago, una muestra registros de tiempo, una muestra de registros de nómina de pago, las políticas escritas e información relacionada. La investigación del Demandante fue insuficiente para poder satisfacer el criterio de aprobación de la corte que se establece en *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal. App. 4º 1794, 1801 y *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4º 116, 129-130 ("*Dunk/Kullar"*).

2.5. La Corte no otorgó certificación colectiva.

2.6. Las Partes, los Abogados del Grupo y los Abogados de la Defensa representan que ellos no están al tanto de cualquier asunto pendiente o acción que asegura que los reclamos serán extinguidos o afectados por el Acuerdo.

3. TÉRMINOS MONETARIOS.

3.1. El Monto Bruto del Acuerdo. Salvo que disponga de lo contrario por el Párrafo 9 a continuación, el Demandado promete pagar $150,000.00 y no más como el Monto Bruto del Acuerdo y de pagar por separada cualquier y todo impuesto de nómina de pago por el lado del empleador debido sobre las Porciones de Salarios de los Pagos Individuales del Acuerdo. El Demandado no tiene la obligación de pagar el Monto Bruto del Acuerdo (o cualquier impuesto de nómina de pago) previo a la fecha límite establecida en el Párrafo 4.1.3 de este Acuerdo. El Administrador desembolsará el Monto Bruto del Acuerdo entero sin preguntar o requerir que los Miembros Participantes del Grupo o Empleados Agraviados presenten cualquier reclamo como una condición de pago. Ninguna parte del Monto Bruto del Acuerdo se revertirá al Demandado.

3.2. Los Pagos del Monto Bruto del Acuerdo. El Administrador hará y deducirá los siguientes pagos del Monto Bruto del Acuerdo, por los montos especificados por la Corte en la Aprobación Final:

3.2.1. Al Demandante: Un Pago por Servicio al Representante del Grupo para el Representante del Grupo de no más de $10,000.00 (además de cualquier Pago Individual del Grupo y cualquier Pago Individual bajo la PAGA al Representante del Grupo a los que se tiene derecho de recibir como Miembro Participante del Grupo y Empleado Agraviado). El Demandado no se opondrá a la solicitud del Demandante por un Pago por Servicio al Representante del Grupo que no se exceda de este monto. Como parte de la moción del Pago de los Honorarios de los Abogados del Grupo y el Pago de los Gastos de Litigación del Grupo, el

Demandante buscará aprobación de la Corte para cualquier Pago por Servicio al Representante del Grupo a no más tardar 16 días hábiles de la corte previo a la Audiencia de Aprobación Final. Si la Corte aprueba el Pago por Servicio al Representante del Grupo por un monto menor al solicitado, el Administrador retendrá el restante en el Monto Neto del Acuerdo. El Administrador pagará el Pago por Servicio al Representante del Grupo utilizando el Formulario 1099 del IRS. El Demandante asume la responsabilidad plena y completa por los impuestos de empleado debidos en el Pago por Servicio al Representante del Grupo y está de acuerdo en eximir de responsabilidad al Demandado de cualquier disputa o controversia en relación a cualquier división o participación en cualquier de estos Pagos.

3.2.2. A los Abogados del Grupo: Un Pago por Honorarios Legales a los Abogados del Grupo de no más de un tercio, el cual se estima que es actualmente de $50,000.00 y un pago por Gastos de Litigación a los Abogados del Grupo de no más de $12,000.00. El Demandado no se opondrá a la solicitud por estos pagos provisto que no excedan estos montos y que dichos gastos reclamados sean recuperables bajo el estatuto. El Demandante y/o los Abogados del Grupo presentarán una moción del Pago de los Honorarios de los Abogados del Grupo y el Pago de los Gastos de Litigación del Grupo a no más tardar 16 días hábiles de la corte previo a la Audiencia de Aprobación Final. Si la Corte aprueba el Pago de los Honorarios Legales a los Abogados del Grupo y/o el Pago de los Gastos de Litigación a los Abogados del Grupo por montos menores a los solicitados, el Administrador distribuirá el restante al Monto Neto del Acuerdo. Las Partes Exoneradas no tendrán ninguna responsabilidad para con los Abogados del Grupo o cualquier otro Abogado del Demandante que surja de cualquier reclamo a cualquier porción del Pago de los Honorarios de los Abogados del Grupo y/o el Pago de los Gastos de Litigación de los Abogados del Grupo. El Administrador pagará el Pago de los Honorarios de los Abogados del Grupo y el Pago de los Gastos de los Abogados del Grupo utilizando uno o más Formularios 1099 del IRS. Los Abogados del Grupo asumen responsabilidad plena y completa por los impuestos debidos sobre el Pago de los Honorarios de los Abogados del Grupo y el Pago de los Gastos de Litigación de los Abogados del Grupo y está de acuerdo en eximir al Demandado de responsabilidad de cualquier disputa o controversia en relación a cualquiera de estos Pagos.

3.2.3. Al Administrador: Un Pago de los Gastos del Administrador que no excederán los $10,000.00 excepto si se muestra causa en buena fe y según sea aprobado por la Corte.

Según la medida que los Gastos de Administración sean menores o que la Corte apruebe un pago menor a los $10,000.00, el Administrador retendrá el restante en el Monto Neto del Acuerdo.

3.2.4. Para Cada Miembro Participante del Grupo: Un Pago Individual del Grupo calculado por (a) dividir el Monto Neto del Acuerdo por el número total de Periodos de Pago del Grupo trabajados por todos los Miembros Participantes del Grupo durante el Periodo del Grupo y (b) multiplicando el resultado por los Periodos de Pago del Grupo de cada Miembro Participante del Grupo.

3.2.5. Distribución Fiscal de Impuestos de los Pagos Individuales del Grupo. El 10.00% de los Pagos Individuales del Grupo de cada Miembro Participante del Grupo será distribuido a la liquidación de los reclamos salariales (la "Porción de Salarios"). Las Porciones de Salarios están sujetas a retención de impuestos y serán reportados en el Formulario W-2 del IRS. El 90.00% de cada Pago Individual del Grupo de cada Miembro Participante del Grupo será distribuido a la liquidación de los reclamos por intereses y penalidades (la "Porción No Salarial"). Las Porciones No Salariales no están sujetas a retenciones de impuestos y serán reportados en el Formulario 1099 del IRS. Los Miembros Participantes del Grupo asumen responsabilidad plena y completa por todos los impuestos de empleados debidos en sus Pagos Individuales del Grupo.

3.2.6. El Efecto de los Miembros No Participantes del Grupo en el Cálculo de los Pagos Individuales del Grupo. Los Miembros No Participantes del Grupo no recibirán los Pagos Individuales del Grupo. El Administrador retendrá los montos iguales a sus Pagos Individuales del Grupo en el Monto Neto del Acuerdo para su distribución a los Miembros Participantes del Grupo bajo una base prorrateada.

3.2.7. A la LWDA y a los Empleados Agraviados: Las Penalidades bajo la PAGA por un monto de $4,000.00 a ser pagados del Monto Bruto del Acuerdo, con un 75% ($3,000.00) distribuidos *al* Pago bajo la PAGA a la LWDA y un 25% ($1,000.00) distribuidos a los Pagos Individuales bajo la PAGA.

3.2.8. El Administrador calculará cada Pago Individual bajo la PAGA al (a) dividir el monto de la porción del 25% de las Penalidades bajo la PAGA ($1,000.00) de los Empleados Agraviados por el número total de Periodos de Pago bajo la PAGA por todos los Empleados Agraviados durante el Periodo bajo la PAGA y (b) multiplicando el resultado por cada Periodo

de Pago bajo la PAGA de cada Empleado Agraviado. Los Empleados Agraviados asumen responsabilidad plena y completa por todo impuesto debido en su Pago Individual bajo la PAGA..

3.2.9. Si la Corte aprueba las Penalidades bajo la PAGA por un monto menor al solicitado, el Administrador distribuirá el restante el Monto Neto del Acuerdo. El Administrador reportará los Pagos Individuales bajo la PAGA en los Formularios 1099 del IRS.

4. FINANCIAMIENTO Y PAGOS DEL ACUERDO.

4.1.1. Tamaño del Grupo. Basado en la revisión de sus registros hasta la fecha de la mediación, el Demandado estima que hay 126 Miembros del Grupo quienes colectivamente trabajaron un total de 14,193 Periodos de Pago.

4.1.2. Datos del Grupo. A no más tardar 15 días después de que la Corte otorgue Aprobación Preliminar del Acuerdo, el Demandado simultáneamente entregará los Datos del Grupo al Administrador, en la forma de una hoja de trabajo de Microsoft Excel. Para proteger los derechos de privacidad de los Miembros del Grupo, el Administrador deberá mantener los Datos del Grupo en confidencialidad, utilizando los Datos del Grupo únicamente para los propósitos de este Acuerdo de Arreglo y para ningún otro propósito, y restringir el acceso a los Datos del Grupo a los empleados del Administrador quienes necesitan tener acceso a los Datos del Grupo para tal efecto y trabajar bajo este Acuerdo. El Demandado tiene la responsabilidad continua de notificar inmediatamente a los Abogados del Grupo si descubre que los Datos del Grupo omitieron información de identificación de un miembro del grupo y de brindar los Datos del Grupo correctos y actualizados tan pronto como sea razonablemente factible. Sin extensión de la fecha límite para la cual el Demandado debe enviar los Datos del Grupo al Administrador, las Partes y sus abogados expeditamente utilizarán sus mejores esfuerzo, en buena fe, para reconstruir o de forma similar resolver cualquier problema relacionado con Datos del Grupo faltantes u omitidos.

4.1.3. Financiamiento del Monto Bruto del Acuerdo. El Demandado deberá financiar completamente el Monto Bruto del Acuerdo y de financiar también los montos necesarios para poder pagar la porción de impuestos de nómina de pago del Demandado al enviar los fondos al Administrador a no más tardar 60 días después de la Fecha Efectiva.

4.1.4. Los Pagos del Monto Bruto del Acuerdo. Dentro de 14 días después de que el

Demandado financie el Monto Bruto del Acuerdo, el Administrador enviará cheques para todos los Pagos Individuales del Grupo, todos los Pagos Individuales bajo la PAGA, el Pago bajo la PAGA a la LWDA, el Pago por Gastos de Administración, el Pago por Honorarios Legales a los Abogados del Grupo, el Pago de los Gastos de Litigación a los Abogados del Grupo y el Pago por Servicio al Representante del Grupo. El desembolso del Pago de los Honorarios Legales a los Abogados del Grupo y el Pago por Servicio al Representante del Grupo no deberán preceder el desembolso de los Pagos Individuales del Grupo y los Pagos Individuales bajo la PAGA.

4.1.5. El Administrador emitirá cheques por los Pagos Individuales del Grupo y/o los Pagos Individuales bajo la PAGA y los enviará a los Miembros del Grupo a través de Correo de Primera Clase d ellos Estados Unidos con envíos postales prepagados. La cara de cada cheque deberá establecer prominentemente la fecha (no menor a 180 días después de la fecha en que se envía por correo) en la que el cheque será anulado. El Administrador cancelará todos los cheques que no sean cobrados para la fecha de anulación. El Administrador enviará cheques por los Pagos Individuales del Acuerdo a todos los Miembros Participantes del Grupo (incluyendo aquellos para quienes el Paquete de Aviso se retornó sin entregar en la dirección de envío). El Administrador enviará los cheques por los Pagos Individuales bajo la PAGA a todos los Empleados Agraviados incluyendo a los Miembros No Participantes del Grupo quienes califiquen como Empleados Agraviados (incluyendo aquellos para quienes el Paquete de Aviso se retornó sin entregar en la dirección de envío). El Administrador puede enviar a los Miembros Participantes del Grupo un solo cheque que combina el Pago Individual del Grupo y el Pago Individual bajo la PAGA. Antes de enviar cualquier cheque, el Administrador debe actualizar las direcciones de envío del destinatario utilizando la Base de Datos Nacional de Cambio de Domicilio.

4.1.6. El Administrador debe conducir una Búsqueda de Dirección del Miembro del Grupo para todos los Miembros del Grupo cuyos cheques se retornaron sin entregar sin una dirección de reenvío de USPS. Dentro de 7 días de haber recibido el cheque devuelto, el Administrador debe reenviar por correo los cheques a la dirección de reenvío de USPS provista o a una dirección asegurada a través de la Búsqueda de Dirección del Miembro del Grupo. El Administrador no deberá tomar ninguna acción adicional para entregar cheques a los Miembros del Grupo cuyos cheques reenviados por correo son retornados como sin entregar en la

dirección de destino. El Administrador deberá prontamente enviar un cheque de reemplazo a cualquier Miembro del Grupo cuyo cheque original se perdió o extravió, según se solicite por el Miembro del Grupo previo a la fecha de anulación.

4.1.7. Para cualquier Miembro del Grupo cuyo cheque del Pago Individual del Grupo o un cheque de un Pago Individual bajo la PAGA esté sin cobrar o cancelado después de la fecha de anulación, el Administrador deberá transferir esos fondos representados por dichos cheques al Fondo de Propiedad Sin Reclamar del Contralor de California, bajo el nombre del Miembro del Grupo, por ende así no se deja un "residuo sin pagar" sujeto a los requisitos del Código de Procedimientos Civiles de California Sección 384, subd. (b).

4.1.8. El pago de los Pagos Individuales del Grupo y los Pagos Individuales bajo la PAGA no deberán obligar al Demandado a conferir ningún beneficio adicional o de hacer un pago adicional a los Miembros del Grupo (tales como contribuciones al plan 401(k), bonos, planes de vacaciones, planes de licencias por enfermedad, planes de tiempo libre con compensación, cálculos de tasas regulares de pago, o cualquier otro plan de beneficios) más allá de lo que se especifica en este Acuerdo.

6. EXONERACIÓN DE RECLAMOS. Efectivo a partir de la fecha en que el Demandado financia plenamente el Monto Bruto del Acuerdo y financie los impuestos de nómina de pago del empleador debidos sobre la Porción de Salarios de los Pagos Individuales del Grupo según se calcula y se instruyen por el Administrador, el Demandante, los Miembros del Grupo y los Abogados del Grupo exonerarán los reclamos en contra de todas las Partes Exoneradas de la siguiente forma:

6.1 Exoneración del Demandante. El Demandante y sus cónyuges, representantes, agentes, abogados, herederos, administradores, sucesores y albaceas pasados y presentes, a partir de la Fecha Efectiva, de forma general exoneran y descargan a las Partes Exoneradas de todos los reclamos, transacciones u ocurrencias que ocurrieron entre o que involucran a las partes a través de la fecha de la ejecución del Demandante de este Acuerdo (la "Exoneración del Demandante"9. La Exoneración del Demandante no se extiende a cualquier reclamo o acción para poder obligar este Acuerdo o cualquier reclamo por beneficio de desempleo, beneficio por discapacidad, beneficios de seguros social o beneficios de compensación de trabajadores que surgieron en cualquier momento o que se basan en las ocurrencias fuera del Periodo del Grupo.

El Demandante reconoce que el Demandante puede descubrir hechos o una ley diferente de, o además de los hechos o la ley que el Demandante conoce hoy o cree que son verdaderos pero está de acuerdo, sin embargo, que la Exoneración del Demandante deberá ser y permanecerá efectiva en todos los aspectos, sin importar dicho hecho diferente o adicional o el descubrimiento de los mismos por parte del Demandante. El Demandante entiende y está de acuerdo que al firmar este Acuerdo, él está entregando cualquier y todo reclamo legal que él tiene o que puede tener en contra de las Partes Exoneradas a través de la ejecución de este Acuerdo, expresamente incluyendo los reclamos bajo la Ley Federal Contra la Discriminación por Edad en el Empleo ("ADEA", por sus siglas del inglés, Age Discrimination in Employment Act). Se le ha hecho saber al Demandante a consultar con abogados legales en relación a la renuncia de responsabilidad que se contiene de forma general dentro de la presente y específicamente en cuanto a la renuncia de responsabilidad bajo la ADEA. El Demandante entiende y está de acuerdo que se le ha aconsejado por escrito de su derecho de consultar con un abogado antes de firmar este Acuerdo. El Demandante tiene veintiún (21) días para poder considerar este Acuerdo, aunque puede firmarlo en cualquier momento antes del vencimiento de los veintiún (21) días. El Demandante puede revocar este Acuerdo en cualquier momento durante los siete (7) días después de haber firmado el Acuerdo. Este Acuerdo no se volverá efectivo hasta siete (7) días después de que ha pasado el periodo de revocación.

6.2 Renuncia de Derechos del Demandante bajo el Código Civil de California Sección 1542. Para propósitos de la Exoneración del Demandante, el Demandante expresamente renuncia y descarga las disposiciones, derechos y beneficios, de haber alguno, de la Sección 1542 del Código Civil de California, el cual dice:

> **Una exoneración general no se extiende a los reclamos que el acreedor o la parte que exonera no sabe o sospecha que existe en su favor al momento de ejecutar la exoneración, y que si es conocido por él o ella hubiese afectado materialmente su liquidación con el deudor o la Parte Exonerada.**

6.3 Exoneración por los Miembros Participantes del Grupo y los Empleados Agraviados: Todos los Miembros Participantes del Grupo y todos los Empleados Agraviados (quienes no deberán tener derecho a optar por retirarse) deberán estar vinculados por la

exoneración, a partir de la Fecha Efectiva, de todos los reclamos alegados en el Reclamo Operativo o cualquier Aviso bajo la PAGA del Demandante, o que pudo haber sido alegado basado en los hechos alegados en el Reclamo Operativo o cualquier Aviso bajo la PAGA del Demandante, que surgió durante el Periodo del Grupo o Periodo bajo la PAGA. Los Reclamos Exonerados del Grupo deberán incluir todos los reclamos alegados por el Demandante en el Reclamo Operativo basado en los hechos establecidos en el Reclamo Operativo, incluyendo cualquier y todo reclamo o causa de acción en relación a los salarios sin pagar, incluyendo pero sin limitación al fallar en pagar salario mínimos, salarios por tiempo directo, compensación por horas extra e intereses; fallar en pagar oportunamente los salarios regulares y finales; fallar en brindar periodos de comida, descanso y/o periodos de recuperación; fallar en pagar primas en lo absoluto o a la tasa correcta por cualquier violación de las obligaciones de los periodos de comida y de descanso; reclamos que surgen de las renuncias inválidas de los periodos de comida; pago por todas las horas trabajadas; estados de cuenta y talonarios de pago de salarios, incluyendo estados de cuenta y talonarios de pago producidos o disponibles en medios físicos, electrónicos o de otro tipo; fallar en mantener registros exactos; prácticas de negocios injustas relacionados a lo mismo; y cualquier y toda penalidad, incluyendo penalidades por mantenimiento registro, penalidades por estados de cuenta de salarios, penalidades por salarios mínimos, penalidades por tiempos de espera y otras penalidades estatutarias o civiles con cualquiera de lo anterior. Dichos Reclamos Exonerados del Grupo deberán incluir, pero sin limitación a esos reclamos que surgen bajo el Código de Trabajo de California secciones 201, 202, 203, 204, 204b, 207, 208, 210, 218.5, 218.6, 221, 225.5, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 y siguientes, y 2699 siguientes, y/o esas que surjan bajo las Órdenes de Salarios de La Comisión de Bienestar Industrial (incluyendo pero sin limitación a las subsecciones 3, 4, 5, 7, 8, 9, 11, 12, 13, 18, y 20 de las Órdenes de Salarios Aplicables tal como la Orden de Salarios 14-2001 de la IWC [incluyendo las disposiciones del Código de Regulaciones de California que codifica las Órdenes de Salarios aplicables]), 8 C.C.R. §3395, Código de Negocios y Profesiones de California 17200 y siguientes (incluyendo, sin limitación la §§17200 hasta la 17208); el Código Civil de California secciones 3287 y 3289; el Código de Procedimiento Civil de California sección 1021.5 y cualquier reclamo relacionado bajo los reclamos bajo las disposiciones de la Ley de Estándares Justos de Trabajo (del inglés, Fair Labor Standards Act, 29 USC §§201, y

siguientes) (los "Reclamos Exonerados"). Cualquier Miembro No Participante del Grupo deberá estar vinculado únicamente por las penalidades civiles exoneradas bajo la PAGA según se suministra en esta sección y no deberá ser considerada como que exonera cualquier reclamo individual para la cual no se permite recuperación bajo la PAGA.

6.4 Interpretación. Las Partes tienen la intención de que esta exoneración se interprete de la forma más amplia posible. La exoneración excluye la exoneración de reclamos que no se permiten bajo la ley.

6.5 Resolución de Disputa en Buena Fe. Las partes garantizan y representan que las exoneraciones para los Miembros Participantes del Grupo y Empleados Agraviados resuelven, en cumplimiento con el Código de Trabajo §§206 y 206.5, y la ley aplicable al caso (incluyendo peros in limitación a *Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal. App. 4o 796) una disputa en buena fe en relación a cualquier y todo salario, de haber alguno, debido a los Miembros Participantes del Grupo / Empleados Agraviados a lo largo de su último día de empleo con el Demandado dentro del Periodo del Grupo y Periodo bajo la PAGA.

7. MOCIÓN PARA APROBACIÓN PRELIMINAR. El Demandante deberá preparar y presentar una moción de aprobación preliminar (la "Moción de Aprobación Preliminar"). El Demandado no deberá oponerse a la moción, según la medida que sea consistente con este Acuerdo. Un formulario de Orden de Aprobación Preliminar se adjunta como Anexo E.

7.1 Responsabilidades del Demandante. El Demandante preparará y entregará a los Abogados de la Defensa, todos los documentos necesarios para obtener la Aprobación Preliminar, incluyendo: (i) un borrador del aviso y memorándum en apoyo de la Moción de Aprobación Preliminar que incluyen un análisis del Acuerdo bajo *Dunk/Kullar* y una solicitud para aprobación del Acuerdo bajo la PAGA bajo el Código de Trabajo Sección 2699, subd. (f)(2); (ii) un borradore propuesto de la Orden que Otorga Aprobación Preliminar y Aprobación del Acuerdo bajo la PAGA; (iii) un borrador propuesto del Paquete de Avisos; (iv) una declaración firmada del Administrador adjuntando la propuesto "sin exceso" por administrar del Acuerdo y de dar fe de su deseo de servir; su competencia; procedimientos operativos para proteger la seguridad de los Datos del Grupo; los montos de la cobertura del seguro por cualquier violación en la seguridad de los datos, desfalco de los fondos u otro abuso de autoridad; todos los hechos relevantes a cualquier conflicto de interés real o potencial con los

Miembros del Grupo y/o el Administrador; (v) una declaración firmada de cada bufete de los Abogados del Grupo dando fe de su competencia de representar a los Miembros del Grupo y (vi) su transmisión oportuna a la LWDA de todos los documentos necesarios bajo la PAGA (el aviso inicia de las violaciones (Código de Trabajo sección 2699.3, subd. (a)), el Reclamo Operativo (Código de Trabajo sección 2699, subd. (1)(1)), este Acuerdo (el Código de Trabajo sección 2699, subd. (1)(2)). En sus declaraciones, la Declaración del Demandante y de los Abogados del Grupo deberán afirmar que ellos no están informados de cualquier otro asunto pendiente o acción que afirme los reclamos que serán extinguidos o afectados adversamente por el Acuerdo de Arreglo.

7.2 Responsabilidades de los Abogados. Los Abogados del Grupo son responsables por finalizar y presentar expeditamente la Moción para Aprobación Preliminar a no más tardar 30 días después de la ejecución completa de este Acuerdo; obteniendo una fecha de audiencia oportuna para la Moción de Aprobación Preliminar; y por comparecer en la Corte para abogar en favor de la Moción de Aprobación Preliminar. Los Abogados del Grupo son responsables por entregar la Aprobación Preliminar de la Corte al Administrador.

7.3 Deber de Cooperar. Si las Partes están en desacuerdo sobre cualquier aspecto de la Moción propuesta de Aprobación Preliminar y/o las declaraciones y documentos de soporte, los Abogados del Grupo y los Abogados de la Defensa trabajarán expeditamente en conjunto en nombre de las Partes al reunirse en persona o por teléfono y en buena fe, para poder resolver el desacuerdo. Si la Corte no otorga Aprobación Preliminar o condiciona la Aprobación Preliminar sobre cualquier cambio material en este Acuerdo, los Abogados del Grupo y los Abogados de la Defensa trabajarán expeditamente en conjunto en nombre las Partes al reunirse en persona o por teléfono y en buena fe, para modificar el Acuerdo y de forma similar satisfacer las preocupaciones de la Corte. Sin embargo, ninguna parte deberá estar obligada a consentir a un cambio material (incluyendo pero sin limitación a los cambios al Monto Bruto del Acuerdo o las exoneraciones que se establecen dentro de la presente) en el Acuerdo, ya sea o no el cambio material sea causado o solicitado por la Corte.

8. ADMINISTRACIÓN DEL ACUERDO.

8.1 Selección del Administrador. Las Partes han seleccionado conjuntamente a ILYM Group, Inc., Settlement Administrators para servir como el Administrador y verificado

que, como condición de su designación, ILYM Group, Inc. Settlement Administrators esté de acuerdo a ser vinculado por este Acuerdo y de realizar, como fiduciario, todos los deberes especificados en este Acuerdo a cambio por el pago de los Gastos de Administración. Las Partes y sus Abogados representan que ellos no tienen ningún interés o relación, ya sea financiera o similar, con el Administrador además de la relación profesional que surge de previas experiencias administrando acuerdos.

8.2 Número de Identificación del Empleador. El Administrador deberá tener y usar su propio Número de Identificación de Empleador para el propósito de calcular las retenciones de impuestos de nómina de pago y de brindar reportes a las autoridades fiscales estatales y federales.

8.3 Fondo del Acuerdo Calificado. El Administrador deberá establecer los fondos del acuerdo que cumplen con los requisitos del Fondo del Acuerdo Calificado ("QSR", por sus siglas en inglés de Qualified Settlement Fund) bajo la Regulación de la Tesorería de Estados Unidos sección 468B-1.

8.4 Aviso a los Miembros del Grupo.

8.4.1 A no más tardar tres (3) días hábiles después de la recepción de los Datos del Grupo, el Administrador deberá notificar a los Abogados del Grupo que la lista ha sido recibida y establecer el número de los Miembros del Grupo, los Empleados Agraviados, los Periodos de Pago del Grupo y los Periodos de Pago bajo la PAGA en los Datos del Grupo.

8.4.2 Usando los mejores esfuerzos para trabajar lo antes posible, y en ningún caso mayor a 14 días después de recibir los Datos del Grupo, el Administrador enviará a todos los Miembros del Grupo identificados en los Datos del Grupo a través de correo de primera clase del Servicio Postal de los Estados Unidos ("USPS", del inglés, United States Postal Service), el Paquete de Avisos con una traducción al español en los formularios adjuntos a este Acuerdo como **Anexos A, B, C y D**. La primer página del Aviso Colectivo deberá establecer prominentemente el monto en dólares del Pago Individual del Grupo y/o el Pago Individual bajo la PAGA pagadero al Miembro del Grupo, el número de Periodos de pago del Grupo y Periodos de Pago bajo la PAGA (si aplica) usados para calcular estos montos. Antes de enviar los Paquetes de Avisos, el Administrador deberá actualizar las direcciones de los Miembros del Grupo usando la Base de Datos Nacional de Cambio de Domicilio.

8.4.3 A no más tardar 3 días hábiles después de la recepción del Administrador

de cualquier Paquete de Avisos retornado por USPS como no entregado, el Administrador deberá reenviar por creo el Paquete de Avisos usando la dirección de reenvío suministrada por USPS. Si USPS no brinda una dirección de reenvío, el Administrador deberá conducir una Búsqueda de Dirección del Miembro del Grupo y reenviar por correo el Paquete de Avisos a la dirección más actual obtenida. El Administrador no tienen la obligación de hacer intentos adicionales para ubicar o enviar el Paquete de Avisos a los Miembros del Grupo cuyo Paquete de Avisos sea devuelto por USPS por una segunda vez.

8.4.4 Las fechas límite para las objeciones escritas de los Miembros del Grupo, las Impugnaciones a los Periodos de Pago del Grupo y/o Periodos de Pago bajo la PAGA (las disputas), las Solicitudes para Exclusión serán extendidas por 14 días adicionales más allá de los 60 días provistos en el Aviso Colectivo para todos los Miembros del Grupo cuyo aviso ha sido reenviado por creo. El Administrador informará al Miembro del Grupo de la extensión sobre la fecha límite con el Paquete de Avisos reenviado por creo.

8.4.5 Si el Administrador, el Demandado o los Abogados del Grupo son contactados por o de forma similar descubre cualquier persona quien cree que debe ser incluido en los Datos del Grupo y debe haber recibido un Paquete de Avisos, las Partes se reunirán expeditamente y discutirán en persona o por teléfono y en buena fe, en un esfuerzo de acordar si se debe incluir o no como Miembro del Grupo. Si las Partes están de acuerdo, dichas personas deben ser Miembros del Grupo con derecho a los mismos derechos a los demás Miembros del Grupo, y el Administrador enviará, a través de correo electrónico o entrega expeditada, un Aviso Colectivo que les requiere ejercer las opciones bajo este Acuerdo a no más tardar 14 días después de la recepción del Aviso Colectivo, o las fechas límites en el Aviso Colectivo, lo que ocurra después.

8.5 Solicitudes para Exclusión (Optar por Retirarse).

8.5.1 Los Miembros del Grupo quienes desean excluirse a sí mismos (optar por retirarse de) el Acuerdo Colectivo deben enviar al Administrador, por fax, correo electrónico o correo, una Solicitud para Exclusión escrita firmada a no más tardar 60 días después de que el Administrador envíe por correo el Paquete de Avisos (más 14 días adicionales para los Miembros del Grupo cuyo Paquete de Avisos es reenviado por correo). Una Solicitud para Exclusión es una carta de un Miembro del Grupo o su representante que razonablemente comunica la elección del Miembro del Grupo de ser excluido del Acuerdo e incluye el nombre,

dirección y dirección de correo electrónico o número de teléfono del Miembro del Grupo. Para que sea válida, una Solicitud para Exclusión debe ser oportunamente enviada por fax, correo electrónico o post sellada a no más tardar para la Fecha Límite de Respuesta. Se adjunta un formulario de Solicitud para Exclusión como Anexo B, que puede ser usado para este propósito, pero no es requerido.

8.5.2 El Administrador no puede rechazar una Solicitud para Exclusión como inválida debido a que falla en contener toda la información especificada en el Aviso Colectivo. El Administrador deberá aceptar cualquier Solicitud para Exclusión como válida si el Administrador puede razonablemente afirmar la identidad de la persona como un Miembro del Grupo y el deseo del Miembro del Grupo de ser Excluido. La determinación del Administrador deberá ser definitiva y no apelable o de forma similar susceptible a una impugnación. Si el Administrador tiene una razón de cuestionar la autenticidad de una Solicitud para Exclusión, el Administrador puede demandar pruebas adicionales de la identidad del Miembro del Grupo. La determinación del Administrador sobre la autenticidad deberá ser definitiva y no apelable o de forma similar susceptible a una impugnación.

8.5.3 Cada Miembro del Grupo quien no presente oportuna y válidamente una Solicitud para Exclusión será considerado como un Miembro Participante del Grupo bajo este Acuerdo, con derecho a todos los beneficios y vinculado por todos los términos y condiciones del Acuerdo, incluyendo las Exoneraciones de los Miembros Participantes del Grupo bajo el Párrafo 6.3 de este Acuerdo, sin importar si el Miembro Participante del Grupo reciba o no el Aviso Colectivo o si objeta al Acuerdo.

8.5.4 Cada Miembro del Grupo quien presente oportuna y válidamente una Solicitud para Exclusión es un Miembro No Participante del Grupo y no deberá recibir un Pago Individual del Grupo ni tendrá derecho a objetar a los componentes de la acción de demanda colectiva del Acuerdo. Los Empleados Agraviados son elegibles para un Pago Individual bajo la PAGA.

8.6 Las Impugnaciones al Cálculo de los Periodos de Pago. Cada Miembro del Grupo deberá tener 60 días a partir de que el Administrador envíe por correo el Paquete de Avisos (más 14 días adicionales para los Miembros del Grupo cuyo Paquete de Avisos ha sido reenviado por correo) para impugnar el número de Periodos de Pago del Grupo y Periodos de Pago bajo la PAGA (si hay alguno) distribuidos al Miembro del Grupo en el Aviso Colectivo.

Esto es también conocido como una disputa. Se adjunta un formulario para la Disputa por Periodos de Pago como Anexo C que puede ser usado para este propósito, pero no es requerido. El Miembro del Grupo puede impugnar la distribución al comunicarse con el Administrador a través de fax, correo electrónico o correo. El Administrador debe animar al Miembro del Grupo que hace la impugnación a presentar documentación de apoyo. En la ausencia de documentación contrario, el Administrador tiene el derecho de asumir que los Periodos de pago contenidos en el Aviso Colectivo son correctos siempre y cuando sean consistentes con los Datos del Grupo. La determinación del Administrador de la distribución de cada Miembro del Grupo sobre los Periodos de Pago del Grupo y/o Periodos de Pago bajo la PAGA deberán ser definitivos y no apelables o de forma similar susceptibles a una impugnación. El Administrador deberá oportunamente brindar copias de todas las impugnaciones en cuanto al cálculo de los Periodos de Pago del Grupo y/o Periodos de Pago bajo la PAGA a los Abogados de la Defensa y a los Abogados del Grupo al igual que la determinación del Administrador sobre las impugnaciones.

8.7 Objeciones al Acuerdo.

8.7.1 Solo los Miembros Participantes del Grupo pueden objetar a los componentes de la acción de demanda colectiva de la Liquidación y/o este Acuerdo de Arreglo, incluyendo contestando sobre la justicia del Acuerdo, y/o los montos solicitados para el Pago de los Honorarios Legales de los Abogados del Grupo, el Pago de los Gastos de Litigación de los Abogados del Grupo y/o el Pago por Servicio al Representante del Grupo.

8.7.2 Los Miembros Participantes del Grupo pueden enviar las objeciones escritas al Administrador, por fax, correo electrónico o correo. Alternativamente, los Miembros Participantes del Grupo pueden comparecer en la Corte (o contratar a un abogado a que comparezca en la Corte) para presentar objeciones escritas en la Audiencia de Aprobación Final. Un Miembro Participante del Grupo quien elija enviar una objeción escrita al Administrador debe hacerlo a no más tardar 60 días después de que el Administrador envíe por correo el Paquete de Avisos (más 14 días adicionales a los Miembros del Grupo cuyo Paquete de Avisos fue reenviado por correo). Una formulario de Objeción se adjunta como Anexo D, que puede ser usado para este propósito pero no es requerido.

8.7.3 Los Miembros No Participantes del Grupo no tienen el derecho de objetar a cualquier componente de acción de demanda colectiva del Acuerdo.

8.8 Deberes del Administrador. El Administrador tiene el deber de realizar y observar todas las tareas a ser realizadas u observadas por el Administrador contenidas en este Acuerdo o de forma similar.

8.8.1 Dirección de Correo Electrónico y Número Gratuito. El Administrador establecerá y mantendrá y usará una dirección de correo electrónico y un número de teléfono gratuito para poder recibir llamadas faxes y correos electrónicos de los Miembros del Grupo.

8.8.2 Las Solicitudes para Exclusión (Opciones por Retirarse) y Lista de Exclusión. El Administrador oportunamente revisará de forma rotativa las Solicitudes para Exclusión para poder afirmar su validez. A no más tardar 5 días después del vencimiento de la fecha límite para presentar Solicitudes para Exclusión, el Administrador deberá enviar un correo electrónico con una lista a los Abogados de la Defensa que contiene (a) los nombres y otra información de identificación de los Miembros del Grupo quienes han presentado oportunamente una Solicitud para Exclusión válida (la "Lista de Exclusión"); (b) los nombres y otra información de identificación de los Miembros de los Miembros del Grupo quienes han presentado Solicitudes para Exclusión inválidas; (c) copias de toda la documentación presentada con las Solicitudes para Exclusión (ya sea válida o inválida). Tras su solicitud, el Administrador puede brindar información en relación a la información descrita en este párrafo a los Abogados del Grupo, pero no deberá brindar ninguna información de identificación personal (por ejemplo, nombres e información de contacto) a los Abogados del Grupo.

8.8.3 Reportes Semanales. El Administrador debe, de forma semana, brindar reportes escritos a los Abogados del Grupo y a los Abogados de la Defensa, entre otras cosas, totalizar el número de: Paquetes de Aviso enviados o reenviados por correo, los Paquetes de Aviso retornados sin entregar, las Solicitudes para Exclusión (ya sea válidas o inválidas) recibidas, las objeciones recibidas, las impugnaciones a los Periodos de Pago del Grupo y/o los Periodos de Pago bajo la PAGA recibidos y/o resueltos, y los cheques enviados por correo para el Pago Individual del Grupo y los Pagos Individuales bajo la PAGA (el "Reporte Semanal"). Los Reportes Semanales deben incluir la evaluación del Administrador sobre la validez de las Solicitudes para Exclusión y adjuntar copias de todas las Solicitudes para Exclusión y objeciones recibidas.

8.8.4 Las Impugnaciones a los Periodos de Pago del Grupo y/o Los Periodos de Pago bajo la PAGA. El Administrador tiene la autoridad de abordar y hacer decisiones

definitivas consistentes con los términos de este Acuerdo en todas las impugnaciones de los Miembros del Grupo sobre el cálculo de los Periodos de Pago y/o Periodos de Pago bajo la PAGA. La decisión del Administrador deberá ser definitiva y no apelable o de forma similar susceptible a una impugnación.

8.8.5 Declaración del Administrador. A no más tardar 14 días antes de la fecha en que se le requiere al Demandante a presentar una Moción de Aprobación Final del Acuerdo, el Administrador brindará a los Abogados del Grupo y a los Abogados de la Defensa, una declaración firmada adecuada para presentarse a la Corte que da fe de su diligencia y cumplimiento con todas las obligaciones bajo este Acuerdo, incluyendo pero sin limitación a, el envío por correo de los Paquetes de Avisos, los Paquetes de Avisos retornados como no entregados, el reenvío por correo de los Paquetes de Avisos, los intentos de ubicar a los Miembros del Grupo, el número total de Solicitudes para Exclusión del Acuerdo si son recibidos (tanto válidos o inválidos), el número de objeciones escritas y adjuntar la Lista de Exclusión, excepto que cualquier información de identificación personal (por ejemplo, nombres e información de contacto) deberán ser redactados y eliminados de cualquier copia de formularios de Solicitudes para Exclusión u otra documentación. El Administrador deberá suplementar su declaración según sea necesario por las Partes y/o la Corte. Los Abogados del Grupo son responsables por presentar las declaraciones del Administrador ante la Corte.

8.8.6 Reporte Final por parte del Administrador. Dentro de 10 días después de que el Administrador desembolse todos los fondos en el Monto Bruto del Acuerdo, el Administrador brindará a los Abogados del Grupo y los Abogados de la Defensa un reporte final que detalla los desembolsos por número de identificación de empleado únicamente de todos los pagos hechos bajo este Acuerdo. Al menos 15 días antes de cualquier fecha límite establecida por la Corte, el Administrador preparará y presentará a los Abogados del Grupo y a los Abogados de la Defensa, una declaración adecuada para presentarse a la Corte dando fe dl desembolso de todos los pagos requeridos bajo este Acuerdo. Los Abogados del Grupo son responsables por presentar la declaración del Administrador ante la Corte.

9. ESTIMADOS DEL TAMAÑO DEL GRUPO y CLÁUSULA ESCALONADA. Basado en sus registros, el Demandado estima que, a partir de la fecha de mediación de las partes, (1) había un total de 126 Miembros del Grupo y 14,193 Periodos de Pago durante el

Periodo del Grupo. Si el número de Miembros del Grupo excede 126 por 10% o el número de Periodos de Pago trabajados por los Miembros del Grupo excede 14,193 por 10% o más, cualquiera de las figuras que sea más favorable para el Demandado, ara la fechad e aprobación preliminar (el "Umbral de Aumento de Prorrateo"), el Monto Bruto del Acuerdo (GSA, del inglés, Gross Settlement Amount) se aumentará de formar prorrateada por cada miembro del grupo adicional por encima de 137 (por ejemplo, 126 + [.1 * 126]) o semanas de trabajo adicionales por encima de 15,612 (por ejemplo, 14,193 + [.1 * 14,193]), cualquiera de las figuras que el Demandado elija usar, pero solo según la medida que el Demandado no elija una fecha más temprana a la fecha de aprobación preliminar para evitar cualquier aumento al prorrateo. Si se desencadena el Umbral de Aumento de Prorrateo, el Demandado tendrá el derecho exclusivo de elegir una fecha más temprana a la fecha de aprobación preliminar como el final del Periodo del Grupo y el Periodo bajo la PAGA para poder evitar desencadenar cualquier aumento al prorrateo.

10. EL DERECHO DE LOS DEMANDADOS DE RETIRARSE. Si el número de Solicitudes para Exclusión válidas identificadas en la Lista de Exclusión excede el 10.00% del número total de Miembros del Grupo, el Demandado puede, pero no está obligado, a elegir retirarse del Acuerdo. Las Partes están de acuerdo que, si el Demandado se retira, el Acuerdo se anulará ab initio, y no tendrá valor o efecto, y que ninguna de las Partes tendrá ninguna obligación adicional de celebrar este Acuerdo; provisto sin embargo, que el Demandado permanecerá responsable de pagar todos los Gastos de Administración del Acuerdo incurridos hasta ese momento. El Demandado debe notificar a los Abogados del Grupo y a la Corte de su elección de retirarse a no más tardar 21 días después de que el Administrador envíe la Lista de Exclusión final a los Abogados de la Defensa; las elecciones tardías no tendrán efecto. La Terminación del Acuerdo puede ser alcanzado mediante los Abogados de la Defensa brindando una viso escrito a los Abogados del Grupo de la intención del Demandado de dar por terminado el acuerdo.

11. MOCIÓN PARA APROBACIÓN FINAL. A no más tardar de los 16 días hábiles de la corte antes de la Audiencia programada de Aprobación Final, el Demandante presentará a la

Corte una moción de aprobación final del Acuerdo que incluye una solicitud de aprobación del acuerdo bajo la PAGA bajo el Código de Trabajo sección 2699, subd. (l), una Orden de Aprobación Final Propuesta y un Juicio propuesto (colectivamente la "Moción para Aprobación Final"). El Demandante deberá brindar borradores de estos documentos a los Abogados de la Defensa a no más tardar 7 días antes de la presentación de la Moción de Aprobación Final. Los Abogados del Grupo y los Abogados de la Defensa se reunirán expeditamente y discutirán en persona o por teléfono, y en buena fe, para resolver cualquier desacuerdo en relación a la Moción para Aprobación Final.

11.1 Respuesta a las Objeciones. Cada Parte retiene el derecho de responder a cualquier objeción escalada por un Miembro Participante del Grupo, incluyendo el derecho de presentar documentos de contestación en la Corte a no más tardar 5 días antes de la Audiencia de Aprobación Final, u ordenado o aceptado de forma similar por la Corte.

11.2 Deber de Cooperar. Si la Corte no otorga Aprobación Final o condiciona la Aprobación Final sobre cualquier cambio material al Acuerdo (incluyendo, pero sin limitación, el alcance de la exoneración a ser otorgado por los Miembros del Grupo), las Partes trabajarán expeditamente en conjunto y en buena fe para poder abordar las preocupaciones de la Corte al revisar el Acuerdo según sea necesario para poder obtener la Aprobación Final. La decisión de la Corte de otorgar menos de los montos solicitados para el Pago de Servicio al Representante del Grupo, el Pago de los Honorarios Legales de los Abogados del Grupo, el Pago de los Gastos de Litigación de los Abogados del Grupo y/o el Pago de los Gastos del Administrador, no deberán constituir una modificación material al Acuerdo dentro del significado de este párrafo. Sin embargo, ninguna parte estará obligada a consentir a cualquier cambio material en el Acuerdo, ya sea o no ese cambio material es causado o solicitado por la Corte.

11.3 Jurisdicción Continua de la Corte. Las Partes están de acuerdo que, después del ingreso del Juicio, la Corte retendrá la jurisdicción sobre las Partes, la Acción y el Acuerdo únicamente para propósitos de (i) hacer cumplir este Acuerdo y/o el Juicio (ii) abordar los asuntos de administración del acuerdo y (iii) abordar dichos asuntos post Juicio según sea permitido por la ley.

11.4 Renuncia al Derecho de Apelar. Provisto que el Juicio es consistente con los términos y condiciones de este Acuerdo, específicamente incluyendo el Pago de los Honorarios Legales de los Abogados del Grupo y el Pago de Gastos de Litigación de los Abogados del

Grupo reflejados según se establece en este Acuerdo, las Partes, sus abogados respectivos y todos los Miembros Participantes del Grupo quienes no objetaron al Acuerdo según se provee en este Acuerdo, renuncian a todos los derechos de apelar el Juicio, incluyendo todos los derechos posteriores a los procedimientos de juicio y apelaciones, el derecho de presentar mociones para poder evacuar el juicio, mociones para un nuevo juicio, autos extraordinarios y apelaciones. Si un objetor apela el Juicio, las obligaciones de las Partes de realizar este Acuerdo se suspenderá hasta dicho tiempo que tal apelación haya sido resuelta definitivamente y el Juicio se vuelve definitivo, excepto en cuanto a los asuntos que no afectan el monto del Monto Neto del Acuerdo.

11.5 Ordenes de Corte de Apelación de Evacuar, Revertir o Modificar Materialmente el Juicio. Si la Corte que revisa evacua, revierte o modifica el Juicio de tal manera que requiere una modificación material de este Acuerdo (incluyendo pero sin limitación a, el alcance de las exoneraciones otorgadas por los Miembros del Grupo), este Acuerdo deberá ser nulo ye inválido. Las partes deberán, sin embargo, trabajar expeditamente juntas y en buena fe para poder abordar las preocupaciones de la corte de apelaciones y de obtener Aprobación Final e ingreso del Juicio, compartiendo una base del 50% cada uno sobre cualquier Gasto de Administración adicional incurrido razonablemente después del remittitur. Una decisión de la corte de apelaciones de evacuar, revertir o modificar la compensación de la Corte de otorgar el Pago por Servicio al Representante del Grupo o cualquier pago a los Abogados del Grupo no deberá constituir una modificación material al Juicio dentro del significado de este párrafo, siempre y cuando el Monto Bruto del Acuerdo permanezca sin cambios. Sin embargo, ninguna parte estará obligada a consentir a cualquier cambio material en el Acuerdo, ya sea o no ese cambio material es causado o solicitado por la Corte que revisa.

12. JUICIO MODIFICADO. Si cualquier juicio modificado es requerido bajo el Código de Procedimientos Civiles sección 384, las Partes trabajarán en conjunto y en buena fe para poder presentar conjuntamente un juicio propuesto modificado.

13. DISPOSICIONES ADICIONALES.

13.1 No Admisión de Responsabilidad, Certificación Colectiva o Administración Representativa para Otros Propósitos. Este Acuerdo representa un compromiso y un acuerdo de

reclamos altamente disputados. Nada en este Acuerdo tiene la intención ni debe ser interpretado como una admisión por parte del Demandado de que cualquiera de las alegaciones en el Reclamo Operativo tiene mérito o que el Demandado tienen algún tipo de responsabilidad por cualquiera de los reclamos afirmados; ni tiene la intención ni debe ser interpretado como una admisión por parte del Demandante de que las defensas del Demandado en la Acción de demanda tienen mérito. Las Partes están de acuerdo que la certificación colectiva y el tratamiento representativo es para el propósito de este Acuerdo únicamente. Si por cualquier razón la Corte otorga Aprobación Preliminar, Aprobación Final o ingresa el Juicio, el Demandado se reserva el derecho de contestar la certificación de cualquier grupo por cualquier razón, el Demandado se reserva todas las defensas disponibles a los reclamos en la Acción, el Demandante se reserva el derecho de moverse para una certificación colectiva sobre cualquier base disponible y de contestar las defensas del Demandado. Este Acuerdo de Arreglo, el Acuerdo y la disposición de las Partes de liquidar la Acción no tendrán peso y no será admisible en conexión con cualquier litigación (excepto por los procedimientos para hacer cumplir o efectuar la Liquidación y este Acuerdo).

13.2 Confidencialidad Previo a la Aprobación Preliminar. El Demandante, los Abogados del Grupo, el Demandado y los Abogados de la Defensa acuerdan por separado que, hasta que se presente la Moción para Aprobación Preliminar del Acuerdo, ellos y cada uno de ellos no divulgará, transmitirá ni publicará, ni causará o permitirá que otra persona divulgue, transmita o publique cualquiera de los términos de este Acuerdo directa o indirectamente, específica o generalmente a cualquier persona, corporación, asociación, agencia gubernamental u otra entidad excepto: (1) los abogados, contadores o cónyuges de las Partes, todos quienes serán instruidos de mantener este Acuerdo de forma confidencial; (2) los abogados relacionados en el asunto; (3) según la medida necesaria para reportar los ingresos a las autoridades fiscales apropiadas; (4) en respuesta a una orden o citación de la corte, o (5) en respuesta a cualquier consulta o citación emitida por una agencia gubernamental estatal o federal. Además, los Abogados del Grupo están de acuerdo en mantener el Acuerdo de Arreglo confidencial. Los Abogados del Grupo no deberán divulgar el Acuerdo de Arreglo a los empleados o exempleados de las Partes Exoneradas, a los medios, o en cualquier página web, blog, redes sociales y/o plataformas en línea. Excepciones a la obligación de los Abogados del Grupo de confidencialidad son las (i) divulgaciones necesarias para poder cumplir con la ley, procesos

judiciales o para el planeamiento financiero o para propósitos de preparación de impuestos; (ii) según la medida necesaria para poder hacer cumplir este Acuerdo. Nada en este documento deberá prevenir a los Abogados del Grupo de divulgar este acuerdo para propósitos de describir sus cualificaciones como abogados en otros casos o según sea requerido por la ley, ni ninguno de los términos dentro de la presente deberá prevenir a los Abogados del Grupo de comunicarse con y de realizar sus obligaciones para con los Miembros del Grupo.

13.3 Cada Parte está de acuerdo de notificar inmediatamente a la otra Parte de cualquier orden judicial o agencia, consulta o citación que busque información. El Demandante, los Abogados del Grupo y los Abogados de la Defensa están de acuerdo individualmente de no iniciar cualquier conversación u otra comunicación directa o indirectamente antes de presentar la Moción de Aprobación Preliminar con ningún tercero en relación a este Acuerdo o cualquier asunto que surja según este Acuerdo excepto para responder únicamente que "el asunto ha sido resuelto" o palabras con un tenor para ese efecto.

13.4 Nada en este párrafo deberá interpretarse como que restringe la habilidad del Demandado o de los Abogados de la Defensa de comunicarse con los Miembros del Grupo en cumplimiento con las obligaciones éticas aplicables, incluyendo para propósitos de notificar a los Miembros del Grupo en relación a estas liquidaciones y procedimientos.

13.5 No Solicitación. Las Partes individualmente están de acuerdo que ellos y sus respectivos abogados y empleados no solicitarán a ningún Miembro del Grupo a que opte por retirarse de o a objetar al Acuerdo, o de apelar el Juicio. Nada en este párrafo deberá ser interpretado a restringir la habilidad de los Abogados del Grupo de comunicarse con los Miembros del Grupo en cumplimiento con las obligaciones éticas de los Abogados del Grupo debidas a los Miembros del Grupo. Nada en este párrafo deberá interpretarse como que restringe la habilidad del Demandado o de los Abogados de la Defensa de comunicarse con los Miembros del Grupo en cumplimiento con las obligaciones éticas aplicables, incluyendo para propósitos de notificar a los Miembros del Grupo en relación a estas liquidaciones y procedimientos.

13.6 Acuerdo Integrado. Tras la ejecución por todas las Partes y sus abogados, este Acuerdo en conjunto con todos sus anexos adjuntos deberán constituir un acuerdo completo entre las Partes en relación al Acuerdo de Arreglo, reemplazando cualquier y toda representación, garantía, convenio o incentivos verbales hechos para o por cualquier Parte.

13.7 Cooperación. Las Partes y sus abogados cooperarán con el otro y usarán sus

mejores esfuerzos en buena fe para poder implementar el Acuerdo de Arreglo para, entre otras cosas, modificar el Acuerdo de Arreglo, presentar evidencia suplementaria y puntos y autoridades suplementarias según se solicite por la Corte. En el caso de que las Partes sean incapaces de estar de acuerdo sobre la forma y fondo de cualquier documento necesario para poder implementar el Acuerdo de Arreglo o sobre cualquier modificación que el Acuerdo pueda necesitar para poder implementar el Acuerdo de Arreglo, las Partes buscarán asistencia del Sr. Scott Radovich y/o de la Corte para su resolución. Sin embargo, ninguna parte deberá estar obligada a consentir a cualquier cambio material del Acuerdo, ya sea el cambio material es causado o solicitado o no por la Corte o por la Corte que revisa.

13.8 No Cesiones Previas. Las Partes individualmente representan y garantizan que ellos no han cesado, transferido, gravado ni tienen la intención de ceder, transferir o gravar a cualquier persona o entidad cualquier porción o responsabilidad, reclamo, demanda, acción, causa de acción o derecho exonerado y dado de alta por la Parte en este Acuerdo.

13.9 No Consejos Fiscales. Ni el Demandante, los Abogados del Grupo, la Defensa ni los Abogados de la Defensa están brindando un consejo fiscal sobre los impuestos o la fiscalización, ni nada en este Acuerdo de Arreglo debe ser utilizado como soporte según el significado de la Circular del Departamento de Tesorería de los Estados Unidos (31 CFR Parte 10, según sus enmiendas) o de forma similar.

13.10 Modificación del Acuerdo. Este Acuerdo y todas sus partes pueden ser enmendadas, modificadas, cambiadas o renunciadas únicamente a través de un instrumento escrito y expreso firmado por todas las Partes o sus representantes y aprobado por la Corte.

13.11 El Acuerdo es Vinculante con los Sucesores. Este Acuerdo es vinculante con, y redunda en el beneficio de, los sucesores de cada una de las Partes.

13.12 Ley Aplicable. Todos los términos y condiciones de este Acuerdo y sus anexos deberán ser gobernados e interpretados según las leyes internas del estado de California, sin importar los principios de conflicto de leyes.

13.13 Cooperación en la Elaboración de Borradores. Las Partes han cooperado en la elaboración de borradores y preparación de este Acuerdo. Este Acuerdo no deberá ser interpretado en contra de ninguna de las Partes sobre la base de que la Parte fue el elaborador del borrador o que participó durante la elaboración del borrador.

13.14 Confidencialidad. Según la medida permitida por la ley, todos los acuerdos

hechos y ordenes ingresadas durante la Acción y en este Acuerdo en relación a la confidencialidad de la información deberán sobrevivir a la ejecución de este Acuerdo.

13.15 Uso y Devolución de los Datos del Grupo. La información suministrada por los Abogados del Grupo en cumplimiento con el Código de Evid. De Cal. §1152, y todas las copias y resúmenes de los Datos del Grupo suministrados a los Abogados del Grupo por los Demandados en conexión con la mediación, otras negociaciones del acuerdo o en conexión con el Acuerdo de Arreglo solo pueden ser usados con respecto a este Acuerdo y no para otro propósito y no pueden ser usados en una manera que viole un acuerdo contractual existente, estatuto o regla de la corte. A no más tardar 90 días después de la fecha en que la Corte descargue la obligación del Administrador de brindar una Declaración confirmando un pago final de todos los fondos del Acuerdo de Arreglo, el Demandante deberá destruir todas las versiones físicas y electrónicas de los Datos del Grupo recibidos del Demandado, a menos que previo a la descarga de la Corte de la obligación del Administrador, el Demandado hace una solicitud por escrito a los Abogados del Grupo de retornar, en lugar de destruir, los Datos del Grupo.

13.16 Encabezados. El encabezado descriptivo de cualquier sección o párrafo en este Acuerdo se inserta por conveniencia de una referencia únicamente y no constituye una parte de este Acuerdo.

13.17 Días Calendario. A menos que se note lo contrario, todas las referencias a los "días" en este Acuerdo deberán ser a días calendario. En el caso de que cualquier fecha o límite de tiempo que se establezca en este Acuerdo caiga en un fin de semana o en un feriado legal federal, dicha fecha o límite de tiempo deberá ocurrir en el primer día hábil siguiente.

13.18 Avisos. Todos los avisos, demandas u otras comunicaciones entre las Partes en conexión con este Acuerdo deberán ser por escrito y consideradas que se han entregado debidamente a partir del tercer día hábil de recibirlo por correo de los Estados Unidos, o el día que se envíe por correo electrónico o mensaje, dirigido de la siguiente forma:

Al Demandante:
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The Spivak Law Firm
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PMB 42554
West Hollywood, CA 90069

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Al Demandado:
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Michael Joseph Conway, II Esq.
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mikec@sw2law.com; ian@sw2law.com

13.19 Ejecución en Copias. Este Acuerdo puede ser ejecutado en una o más copias por fax, electrónicamente (es decir, DocuSign) o por correo electrónico para cuyos propósitos de este Acuerdo deberá ser aceptado como un original. Todas las copias ejecutadas y cada una de ellas serán considerados como un solo y el mismo instrumento si los abogados para las Partes intercambian entre ellos las copias firmadas. Cualquier copia ejecutada será admisible como evidencia para poder probar la existencia y los contenidos de este Acuerdo.

13.20 Aplazamiento de la Litigación. Las Partes están de acuerdo que tras la ejecución de este Acuerdo, la litigación se aplazará, excepto para efectuar los términos de este Acuerdo. Las Partes además están de acuerdo que tras firmar este Acuerdo en cumplimiento a la CCP sección 583.330 para extender la fecha para traer el caso a juicio bajo el CCP sección 583.310 por el periodo completo de este proceso de liquidación.

Con Fecha: 20 De Febrero del 2024 Por: Genaro R.V
GENARO REYES VILLAGRA

Con Fecha: _____ De Febrero del 2024 Por: _____
GEORGE ADAM, Presidente
Innovative Produce, Inc.

THE SPIVAK LAW FIRM

Con Fecha: _____ De Febrero del 2024 Por: _____

DAVID G. SPIVAK, Abogados para el Demandante, GENARO REYES VILLAGRA, y otros en una situación similar

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BENOWITZ LAW CORPORATION

Con Fecha: _____ De Febrero del 2024 Por: _____

LOUIS M. BENOWITZ, Abogados para el Demandante, GENARO REYES VILLAGRA, y otros en una situación similar

SAGASER WATKINS & WIELAND PC

Con Fecha: _____ De Febrero del 2024 Por: _____

IAN B. WIELAND / MICHAEL JOSEPH CONWAY, Abogados para el Demandado, INNOVATIVE PRODUCE, INC.

ANEXO A

AVISO APROBADO POR LA CORTE DE ACUERDO DE ARREGLO DE ACCIÓN DE DEMANDA COLECTIVA Y FECHA DE AUDIENCIA PARA APROBACIÓN FINAL DE LA CORTE

(nombre del caso: *Genaro Reyes Villagra v. Innovative Produce, Inc.* bajo el número 22CV02744)

La Corte Superior del Estado de California autorizó este Aviso. ¡Léalo cuidadosamente! No es correo no deseado, spam, publicidad o una solicitación de un abogado. Usted no está siendo demandado.

Usted puede ser elegible en recibir dinero de una acción de demanda colectiva de empleados (la "Acción") en contra de Innovative Produce, Inc. (el "Demandado") por supuestas violaciones a las leyes de trabajo de California. La Acción fue presentada por uno de los empleados del Demandado, Genaro Reyes Villagra (el "Demandante"), y busca el pago de (1) salarios y otra compensación por un grupo de empleados no exentos pagados por hora del Demandado contratados en California (los "Miembros del Grupo") durante el Periodo del Grupo (entre el 18 de Julio del 2018 hasta la fecha de la orden que aprueba preliminarmente este Acuerdo); y (2) penalidades bajo la Ley General de Abogados Privados (la "PAGA", por sus siglas en inglés de Private Attorneys Genral Act) de California para los empleados no exentos contratados por el Demandado en California durante el Periodo bajo la PAGA (entre el 18 de Julio del 2021 hasta la fecha de la orden que aprueba preliminarmente este Acuerdo) (los "Empleados Agraviados").

El Acuerdo propuesto tiene dos partes principales: (1) un Acuerdo Colectivo que requiere que el Demandado financie los Pagos Individuales del Grupo, y (2) un Acuerdo bajo la PAGA que requiere que el Demandado financie Pagos Individuales bajo la PAGA y a pagar penalidades a la Agencia de Desarrollo de Trabajo y Fuerza Laboral (la "LWDA", por sus siglas en inglés de Labor and Workforce Development Agency) de California.

Basado en los registros del Demandado, y las suposiciones actuales de las Partes, **su Pago Individual del Grupo se estima que es de $<<IndividualClassPaymentAmount>> (menos retenciones) y su Pago Individual bajo la PAGA está estimado a ser de $<<IndividualPAGAPaymentAmount>>**. El valor en dólares estimado de un Periodo de Pago del Grupo es de <<$increment type value>> y un Periodo de Pago bajo la PAGA es de <<@PayPeriodValue>>.El monto real que usted pueda recibir muy probablemente será diferente y dependerá de un número de factores. (Si ningún monto se ha establecido para su Pago Individual bajo la PAGA entonces según los registros del Demandado usted no es elegible para un Pago Individual bajo la PAGA bajo el Acuerdo porque usted no trabajó durante el Periodo bajo la PAGA.) El monto de pagos individuales variará. Sin embargo, el Pago Individual del Grupo promedio a un Miembro del Grupo se estima que es de <<$Average Individual Class Payment Amount>>. El Pago Individual bajo la PAGA promedio a un Miembro del Grupo se estima que es de <<$Average Individual PAGA Payment Amount>>. El Pago Individual del Grupo más alto se estima que es de <<$Highest Individual Class Payment Amount>> y el más bajo se estima que es de <<$Lowest Individual Class Payment Amount>>.

El Pago Individual bajo la PAGA más alto a un miembro del Grupo se estima que es de <<$Highest Individual PAGA Payment Amount>> y el más bajo se estima que es de <<$Lowest Individual PAGA Payment Amount>>.

Los montos anteriores están basados en los registros del Demandado que muestran que **usted trabajó <<___>> Periodos de Pago** durante el Periodo del Grupo y que **usted trabajó <<___>> Periodos de Pago** durante el Periodo bajo la PAGA. Si usted cree que usted trabajó más Periodos de pago durante cualquiera de los periodos, usted puede presentar una impugnación para la fecha límite de respuesta. Vea la Sección 4 de este Aviso.

La Corte ha aprobado preliminarmente el Acuerdo propuesto y aprobó este Aviso. La Corte no ha decidido aún si otorgar o no aprobación final. La Corte ha determinado únicamente que hay suficiente evidencia para poder sugerir que el acuerdo propuesto puede ser justo, adecuado y razonable y que cualquier determinación final de esos asuntos se hará en la Audiencia de Aprobación Final. Sus derechos legales son afectados ya sea usted actúe o no. Lea este Aviso cuidadosamente. Usted será considerado como que lo ha leído cuidadosamente y lo ha entendido. En la Audiencia de Aprobación Final, la Corte decidirá si aprueba finalmente o no el Acuerdo y cuanto del Acuerdo será pagado al Demandante y a los abogados del Demandante (los "Abogados del Grupo"). La Corte también decidirá si ingresa o no un juicio que requiere que el Demandado haga pagos bajo el Acuerdo y que requiera que los Miembros del Grupo y los Empleados Agraviados renuncien a sus derechos de afirmar ciertos reclamos en contra del Demandado.

Si usted trabajó para el Demandado durante el Periodo del Grupo y/o el Periodo bajo la PAGA, usted tiene dos opciones básicas bajo el Acuerdo:

(1) **Hacer Nada**. Usted no tiene que hacer algo para participar en el Acuerdo propuesto y ser elegible para un Pago Individual del Grupo y/o un Pago Individual bajo la PAGA. Como Miembro Participante del Grupo, sin embargo, usted renuncia a su derecho de afirmar los Reclamos Exonerados del Grupo y los Reclamos Exonerados bajo la PAGA en contra del Demandado.

(2) **Optar por Retirarse del Acuerdo Colectivo**. Usted puede excluirse a usted mismo del Acuerdo Colectivo (optar por retirarse) al presentar una Solicitud para Exclusión escrita o de forma similar al notificar al Administrador por escrito. Si usted opta por retirarse del Acuerdo, usted no recibirá un Pago Individual del Grupo. Usted, sin embargo, si preserva su derecho de personalmente perseguir los reclamos por el Periodo del Grupo por violaciones de la ley de trabajo de California en contra del Demandado y, si usted es un Empleado Agraviado, usted permanece elegible para un Pago Individual bajo la PAGA. Usted no puede optar por retirarse de la porción bajo la PAGA del Acuerdo propuesto.

El Demandado no tomará represalias en contra de usted por cualquier acción que usted tome con respecto al Acuerdo propuesto.

RESUMEN DE SUS DERECHOS Y OPCIONES LEGALES EN ESTE ACUERDO

Usted No Tiene Que Hacer Algo para Participar en el Acuerdo	Si usted hace nada, usted será un Miembro Participante del Grupo, elegible para un Pago Individual del Grupo y un Pago Individual bajo la PAGA (si hay alguno). A cambio, usted renuncia a sus derechos de asegurar reclamos en contra del Demandado que están cubiertos por este Acuerdo (los Reclamos Exonerados).
Usted puede Optar por Retirarse del Acuerdo Colectivo pero no del Acuerdo bajo la PAGA **La Fecha Límite para Optar por Retirarse es el <<RESPONSE DEADLINE>>**	Si usted no quiere participar completamente en el Acuerdo propuesto, usted puede optar por retirarse del Acuerdo colectivo al enviarle al Administrador una Solicitud para Exclusión por escrito. Usted puede usar el formulario de Solicitud para Exclusión adjunto para este propósito. Una vez esté excluido, usted será un Miembro No Participante del Grupo y no será más elegible para un Pago Individual del Grupo. Los Miembros No Participantes del Grupo no pueden objetar a ninguna porción del Acuerdo propuesto. Vea la Sección 6 de este Aviso. Usted no puede optar por retirarse de la porción bajo la PAGA del Acuerdo propuesto. El Demandado debe pagar por los Pagos Individuales bajo la PAGA a todos los Empleados Agraviados y al Demandante que exoneran al Demandado de penalidades civiles que puede deber a los Empleados Agraviados.
Los Miembros Participantes del Grupo Pueden Objetar al Acuerdo Colectivo pero no al Acuerdo bajo la PAGA **Las Objeciones Escritas Deben Ser Presentadas para el <<RESPONSE DEADLINE>>**	Todos los Miembros del Grupo quienes no opten por retirarse (los "Miembros Participantes del Grupo") pueden objetar a cualquier aspecto del Acuerdo propuesto. Usted puede usar el formulario de Objeción adjunto para este propósito. La decisión de la Corte si finalmente aprueba o no el Acuerdo incluirá la determinación de cuánto será pagado a los Abogados del Grupo y al Demandante quien persiguió la Acción en nombre del Grupo. Usted no es personalmente responsable por todos los pagos a los Abogados del Grupo o al Demandante, pero todo dólar pagado a los Abogados del Grupo y al Demandante reduce el monto a ser pagado a los Miembros Participantes del Grupo. Usted puede objetar a los montos solicitados por los Abogados del Grupo o al Demandante si usted cree que son irrazonables. Vea la Sección 7 de este Aviso.
Usted Puede Participar en la Audiencia de Aprobación Final del <<FinalApprobvalHearingDate>>	La Audiencia de Aprobación Final de la Corte está programada a tomar lugar el **<<FinalApprovalHearingDate>>**. Usted no tiene que asistir pero usted tiene el derecho de comparecer (o de contratar a un abogado a que comparezca en su nombre bajo su propio costo), en persona, por teléfono o usando la plataforma de asistencia virtual de la Corte. Los Miembros Participantes del Grupo pueden verbalmente objetar al Acuerdo en la Audiencia de Aprobación Final ya sea hayan presentado o no una objeción por escrito. Vea la Sección **8** de este Aviso.

Usted Puede Impugnar el Cálculo de sus Periodos de Pago **Las Impugnaciones Escritas deben ser Presentadas para el <<RESPONSE DEADLINE>>**	Si el monto de su Pago Individual del Grupo y Pago bajo la PAGA (si hay alguno) dependiendo en el número de Periodos de pago que usted trabajó al menos un día durante el Periodo del Grupo y cuantos Periodos de Pago usted trabajó por al menos un día durante el Periodo bajo la PAGA, respectivamente. El número de Periodos de Pago del Grupo y el número de Periodos de Pago bajo la PAGA que usted trabajó según los registros del Demandado se establece en la primer página de este Aviso. Si usted está en desacuerdo con cualquiera de los dos números, usted debe impugnarlo para el **<<RESPONSE DEADLINE>>**. Vea la Sección **4** de este Aviso. Usted puede usar el formulario de Disputas de Periodos de Pago adjunto para este propósito.

1. ¿DE QUÉ SE TRATA ESTA ACCIÓN?

El Demandante es un exempleado del Demandado. La Acción acusa al Demandado de violar las leyes de trabajo de California al falla en pagar salarios, realizar deducciones no autorizadas e ilegales de los salarios, fallar en brindar periodos de comida, fallar en autorizar y permitir periodos de descanso, fallar en indemnizar los gastos de negocios, fallar en emitir los estados de cuentas apropiados, fallar en pagar oportunamente los salarios, fallar en mantener los registros de nómina de pago requeridos y violaciones relacionadas del Código de Trabajo. Basado en los mismos reclamos, el Demandante también ha asegurado un reclamo por penalidades civiles bajo la PAGA (el Código de Trabajo sección 2698 y secciones que siguen) (la "PAGA"). El Demandante es representado por los abogados en la Acción: David G. Spivak de The Spivak Law Firm y Louis M. Benowitz of Benowitz Law Corporation (los "Abogados del Grupo").

El Demandado niega encarecidamente cualquier violación o incumplimiento del pago de salarios y contiende que ha cumplido con todas las leyes aplicables.

2. ¿QUÉ SIGNIFICA QUE LA ACCIÓN HA SIDO ACORDADA O LIQUIDADA?

Hasta el momento, la Corte no ha hecho una determinación si el Demandado o el Demandante están en lo correcto en cuanto a los méritos. Entre tanto, el Demandante y el Demandado han contratado a un mediador experimentado y neutral en un esfuerzo de resolver la Acción al negociar un fin al caso por medio de acuerdo (acordar el caso) en lugar de continuar el proceso de litigación costoso y consume tiempo. Las negociaciones fueron exitosas. Al firmar un acuerdo de arreglo escrito y extenso (el "Acuerdo") y al acordar en conjuntamente pedirle a la Corte a ingresar un juicio que termine la Acción y haga cumplir el Acuerdo, el Demandante y el Demandado han negociado un Acuerdo propuesto que esté sujeto a la Aprobación Final de la Corte. Ambas partes han estado de acuerdo en que el Acuerdo propuesto es un compromiso de los reclamos disputados. Al acordar la liquidación, el Demandado no admite ninguna violación ni concede el mérito de cualquier reclamo.

El Demandante y los Abogados del Grupo creen encarecidamente que el Acuerdo es un buen trato para usted porque ellos creen que: (1) el Demandado ha acordado en pagar un monto justo, razonable y adecuado considerado la fuerza de los reclamos y los riesgos y las incertidumbres

de la continuación de la litigación y (2) el Acuerdo está dentro de los mejores intereses de los Miembros del Grupo. La Corte aprobó preliminarmente el Acuerdo propuesto como justo, razonable, y adecuado, autorizó este Aviso y programó una audiencia para determinar la Aprobación Final.

3. ¿CUÁLES SON LOS TÉRMINOS MÁS IMPORTANTES DEL ACUERDO PROPUESTO?

A. El Monto Bruto del Acuerdo. El Demandado Pagará $150,000.00 como el Monto Bruto del Acuerdo (el Acuerdo Bruto). El Demandado ha acordado en depositar el Acuerdo Bruto en una cuenta controlada por el Administrador del Acuerdo. El Administrador usará el Acuerdo Bruto para pagar los Pagos Individuales del Grupo, los Pagos Individuales bajo la PAGA, el Pago por Servicio al Representante del Grupo, los honorarios legales y gastos de los Abogados del Grupo, los gastos del Administrador y las penalidades a ser pagadas a la Agencia de Desarrollo de Trabajo y Fuerza Laboral (la "LWDA", por sus siglas del inglés Labor and Workforce Development Agency) de California. Asumiendo que la Corte otorgue Aprobación Final, el Demandado financiará el Acuerdo Bruto a no más tardar 60 días después de que el Juicio ingresado por la Corte se vuelva definitivo. El Juicio se vuelve definitivo en la fecha en que la Corte ingrese el Juicio, o una fecha posterior si un Miembro Participante del Grupo objeta al Acuerdo propuesto o el Juicio es apelado.

B. Deducciones del Acuerdo Bruto Aprobadas por la Corte. En la Audiencia de Aprobación Final, el Demandante y/o los Abogados del Grupo le pedirán a la Corte a aprobar las siguientes deducciones del Monto Bruto del Acuerdo, los montos que serán decididos por la Corte en la Audiencia de Aprobación Final:

1. Los Honorarios y Costos Legales. Hasta $50,000.00 del Acuerdo bruto a los Abogados del Grupo como honorarios legales y hasta $12,000.00 por sus gastos de litigación. Hasta la fecha, los Abogados del Grupo han trabajado e incurrido gastos en la Acción sin un pago.

2. Compensación por Servicio al Representante del Grupo. Hasta $10,000.00 como Compensación por Servicio al Representante del Grupo por presentar la Acción, trabajar con los Abogados del Grupo y por representar al Grupo. Una Compensación por Servicio al Representante del Grupo será el único dinero que el Demandante recibirá distinto al Pago Individual del Grupo del Demandante y cualquier Pago Individual bajo la PAGA.

3. Gastos de Administración. Hasta $10,000.00 al Administrador por los servicios por administrar el Acuerdo.

4. Penalidades bajo la PAGA. Hasta $4,000.00 por Penalidades bajo la PAGA distribuidos 75% al Pago bajo la PAGA de la LWDA y 25% a los Pagos Individuales bajo la PAGA a los empleados Agraviados basado en sus Periodos de Pago bajo la PAGA.

Los Miembros Participantes del Grupo tienen el derecho a objeta a cualquiera de estas deducciones. La Corte considerará todas las objeciones.

Basado en sus registros, el Demandado estima que, a partir de la fecha de mediación en el caso, (1) había un total de 126 Miembros del Grupo y 14,193 Periodos de Pago durante el Periodo del Grupo. Si el número de Miembros del Grupo excede 126 por 10% o el número de Periodos de Pago trabajados por los Miembros del Grupo excede 14,193 por 10% o más, cualquiera de las figuras que sea más favorable para el Demandado, ara la fechad e aprobación preliminar (el "Umbral de Aumento de Prorrateo"), el Monto Bruto del Acuerdo (GSA, del inglés, Gross Settlement Amount) se aumentará de formar prorrateada por cada miembro del grupo adicional por encima de 137 (por ejemplo, 126 + [.1 * 126]) o semanas de trabajo adicionales por encima de 15,612 (por ejemplo, 14,193 + [.1 * 14,193]), cualquiera de las figuras que el Demandado elija usar, pero solo según la medida que el Demandado no elija una fecha más temprana a la fecha de aprobación preliminar para evitar cualquier aumento al prorrateo. Si se desencadena el Umbral de Aumento de Prorrateo, el Demandado tendrá el derecho exclusivo de elegir una fecha más temprana a la fecha de aprobación preliminar como el final del Periodo del Grupo y el Periodo bajo la PAGA para poder evitar desencadenar cualquier aumento al prorrateo.

C. El Acuerdo Neto Distribuido a los Miembros del Grupo. Después de hacer las deducciones anteriores por los montos aprobados por la Corte, el Administrador distribuirá el resto del Acuerdo Bruto (el "Acuerdo Neto") al hacer los Pagos Individuales del Grupo a los Miembros Participantes del Grupo basado en sus Periodos de Pago del Periodo del Grupo.

D. Impuestos Debidos sobre los Pagos a los Miembros del Grupo. El Demandante y el Demandado están pidiéndole a la Corte a aprobar una distribución de 10.00% de cada Pago Individual del Acuerdo a salarios imponibles (la "Porción de Salarios") y 90.00% como intereses y penalidades (la "Porción No Salarial"). La Porción Salarial está sujeta a las retenciones y será reportado en el Formulario W-2 del IRS. El Demandado pagará por separado los impuestos de nómina de pago del empleador que debe sobre la Porción Salarial. Los Pagos Individuales bajo la PAGA se cuentan como penalidades en lugar de salarios para propósitos fiscales. El Administrador reportará los Pagos Individuales bajo la PAGA y las Porciones No Salariales de los Pagos Individuales del Grupo en el Formulario 1099 del IRS.

Aunque el Demandante y el Demandado han acordado estas distribuciones, ninguna de las partes le está dando un consejo sobre el hecho sus Pagos son gravables o cuánto puede deber usted en impuestos. Usted es responsable en pagar todos los impuestos (incluyendo penalidades e intereses atrasados) sobre cualquier Pago recibido del Acuerdo propuesto. Usted debe consultar con un asesor fiscal si usted tiene alguna pregunta sobre las consecuencias fiscales del Acuerdo propuesto.

E. Necesidad de Cobrar Oportunamente los Cheques de Pago. La cara de cada cheuque emitido para Pagos Individuales del Grupo y Pagos Individuales bajo la PAGA mostrarán la fecha en la que el cheque expira (la fecha de anulación). Si usted no lo cobra para la fecha de anulación, su cheque se cancelará automáticamente, y los fondos serán depositados

con el Fondo de Propiedad Sin Reclamar del Contralor de California (https://www.sco.ca.gov/search_upd.html) bajo su nombre.

Si el dinero representado por su cheque se envía al Fondo de Propiedad Sin Reclamar del Contralor, usted debe consultar las reglas del Fondo para instrucciones de cómo obtener su dinero. Usted puede contactar al Fondo de Propiedad Sin Reclamar al número (800) 992-4647.

F. Las Solicitudes para Exclusión del Acuerdo Colectivo (Optar por Retirarse). Usted será tratado como un Miembro Participante del Grupo, participando plenamente en el Acuerdo Colectivo, a menos que usted lo notifique al Administrador por escrito, a no más tardar el <<RESPONSE DEADLINE>>, que usted desea optar por retirarse. La forma más fácil de notificar al Administrador es de enviar por correo electrónico, fax o correo una Solicitud para Exclusión escrita y firmada para la fecha límite de respuesta del <<RESPONSE DEADLINE>>. La Solicitud para Exclusión debe ser una carta del Miembro del Grupo o su representante que establece el nombre, dirección actual y número de teléfono del Miembro del Grupo en conjunto con una declaración sencilla estableciendo que elije ser excluido del Acuerdo. Usted puede usar el formulario de Solicitud para Exclusión adjunto para este propósito. Los Miembros Excluidos del Grupo (es decir, los Miembros No Participantes del Grupo) no recibirán los Pagos Individuales del Grupo, pero preservarán sus derechos de perseguir personalmente los reclamos en contra del Demandado por violaciones de las leyes de trabajo de California.

Usted no puede optar por retirarse de la Porción bajo la PAGA del Acuerdo. Los Miembros del Grupo quienes se excluyen a sí mismos del Acuerdo Colectivo (los Miembros No Participantes del Grupo) permanecen elegibles para los Pagos Individuales bajo la PAGA y el Demandante exonera al Demandado de penalidades civiles que puede deber a los Empleados Agraviados.

G. El Acuerdo Propuesto Será Anulado si la Corte Rechaza la Aprobación Final. Es posible que la Corte decline en otorgar Aprobación Final del Acuerdo o decline ingresar un Juicio. Es también posible que ingrese un Juicio que sea revertido en una apelación. El Demandante y el Demandado también han acordado que, en cualquiera de los casos, el Acuerdo será anulado: el Demandado no pagará ningún dinero y los Miembros del Grupo no exonerarán cualquier reclamo en contra del Demandado.

H. El Administrador. La Corte ha designado a una compañía neutral, ILYM Group, Inc., Settlement Administrators (el "Administrador") para poder enviar este Aviso, calcular y hacer los pagos y procesar las Solicitudes para Exclusión de los Miembros del Grupo. El Administrador también decidirá las Impugnaciones de los Miembros del Grupo sobre los Periodos de Pago, y enviará y reenviará por correo los cheques del acuerdo y los formularios fiscales, y realizará otras tareas necesarias para poder administrar el Acuerdo. la información de contacto del Administrador se contiene en la Sección 9 de este Aviso.

I. Exoneración de los Miembros Participantes del Grupo. Después del Juicio sea definitivo y el Demandado haya financiado completamente el Acuerdo Bruto (y por separado haya pagado todos los impuestos de nómina de pago por el lado del empleador), los Miembros Participantes del Grupo estarán restringidos legalmente de afirmar cualquiera de los reclamos

exonerados bajo el Acuerdo. Esto significa que a menos que usted haya optado por retirarse de forma válida para poder excluirse a usted mismo del Acuerdo Colectivo, usted no puede demandar, continuar demandando ni ser parte de cualquier otra demanda en contra del Demandado o sus oficiales, directores, empleados y agentes por salarios basados en los hechos del Periodo del Grupo y las Penalidades bajo la PAGA basados en los hechos del Periodo bajo la PAGA, según se afirman en la Acción y se resuelven por este Acuerdo.

Los Miembros Participantes del Grupo estarán vinculados por la siguiente exoneración:

Todos los Miembros del Grupo, excluyendo aquellos que optaron por retirarse del acuerdo, y todos los Empleados Agraviados (quienes no deberán tener derecho a optar por retirarse) estarán vinculados por la exoneración de todos los reclamos alegados en el Reclamo Operativo o que pudo haber sido alegado basado en los hechos alegados en el Reclamo Operativo y que surgió durante el Periodo del Grupo o Periodo bajo la PAGA. Los Reclamos Exonerados del Grupo deberán incluir todos los reclamos alegados por el Demandante en el Reclamo Operativo basado en los hechos establecidos en el Reclamo Operativo, incluyendo cualquier y todo reclamo o causa de acción en relación a los salarios sin pagar, incluyendo pero sin limitación al fallar en pagar salario mínimos, salarios por tiempo directo, compensación por horas extra e intereses; fallar en pagar oportunamente los salarios regulares y finales; fallar en brindar periodos de comida, descanso y/o periodos de recuperación; fallar en pagar primas en lo absoluto o a la tasa correcta por cualquier violación de las obligaciones de los periodos de comida y de descanso; reclamos que surgen de las renuncias inválidas de los periodos de comida; pago por todas las horas trabajadas; estados de cuenta y talonarios de pago de salarios, incluyendo estados de cuenta y talonarios de pago producidos o disponibles en medios físicos, electrónicos o de otro tipo; fallar en mantener registros exactos; prácticas de negocios injustas relacionados a lo mismo; y cualquier y toda penalidad, incluyendo penalidades por mantenimiento registro, penalidades por estados de cuenta de salarios, penalidades por salarios mínimos, penalidades por tiempos de espera y otras penalidades estatutarias o civiles con cualquiera de lo anterior. Dichos Reclamos Exonerados del Grupo deberán incluir, pero sin limitación a esos reclamos que surgen bajo el Código de Trabajo de California secciones 201, 202, 203, 204, 204b, 207, 208, 210, 218.5, 218.6, 221, 225.5, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 y siguientes, y 2699 siguientes, y/o esas que surjan bajo las Órdenes de Salarios de La Comisión de Bienestar Industrial (incluyendo pero sin limitación a las subsecciones 3, 4, 5, 7, 8, 9, 11, 12, 13, 18, y 20 de las Órdenes de Salarios Aplicables tal como la Orden de Salarios 14-2001 de la IWC [incluyendo las disposiciones del Código de Regulaciones de California que codifica las Órdenes de Salarios aplicables]), 8 C.C.R. §3395, Código de Negocios y Profesiones de California 17200 y siguientes (incluyendo, sin limitación la §§17200 hasta la 17208); el Código Civil de California secciones 3287 y 3289; el Código de Procedimiento Civil de California sección 1021.5 y cualquier reclamo

relacionado bajo los reclamos bajo las disposiciones de la Ley de Estándares Justos de Trabajo (del inglés, Fair Labor Standards Act, 29 USC §§201, y siguientes) (los "Reclamos Exonerados"). Las Partes tienen la intención de que esta exoneración se interprete de la forma más amplia posible. La exoneración excluye la exoneración de reclamos que no se permiten bajo la ley.

Las "Partes Exoneradas" son el Demandado en conjunto con matrices, subsidiarias, entidades afiliadas, entidades de propiedad común o controladas actuales y anteriores, sus propietarios, miembros de la junta directiva, oficiales, directores, fideicomisarios, accionistas, miembros, socios, empleados, agentes, aseguradores, abogados, representantes, herederos, albaceas, administradores, sucesores y cesionarios actuales y anteriores, y cualquier individuo o entidad a quien la responsabilidad por los Reclamos Exonerados, según se define dentro de la presente, se le puede asignar en cumplimiento con el Código de Trabajo §558.1, o un empleador conjunto, alter ego u otra teoría de responsabilidad vicaria.

J. La Exoneración bajo la PAGA. Después de que la sentencia de la Corte sea definitiva, y el Demandado haya pagado el Acuerdo Bruto (y separadamente haya pagado los impuestos de nómina de pago por el lado del empleador), todos los Empelados Agraviados serán considerados que exoneran los Reclamos Exonerados bajo la PAGA, el cual incluye todos los reclamos identificados en la subsección 3(I), anterior, que surgen y/o son pronunciables bajo la PAGA.

4. ¿CÓMO CALCULARÁ EL ADMINISTRADOR MI PAGO?

A. Los Pagos Individuales del Grupo. El Administrador calculará los Pagos Individuales del Grupo al (a) dividir el Monto Neto del Acuerdo por el número total de Periodos de Pago del Grupo trabajados por todos los Miembros Participantes del Grupo y (b) multiplicando el resultado por el número de Periodos de pago del Grupo trabajados por cada Miembro Participante del Grupo.

B. Los Pagos Individuales bajo la PAGA. El Administrador calculará los Pagos Individuales bajo la PAGA al (a) dividir $1,000.00 por el número total de Periodos de Pago bajo la PAGA trabajados por todos los Empleados Agraviados y (b) multiplicando el resultado por el número de Periodos de Pago bajo la PAGA trabajados por cada Empleado Agraviado individual.

C. Impugnaciones a la Semana de Trabajo/Periodos de Pago. El número de Periodos de Pago del Grupo que usted trabajó durante el Periodo del Grupo y el número de Periodos de Pago bajo la PAGA que usted trabajó durante el Periodo bajo la PAGA, según se registran en los registros del Demandado, se establecen en la primer página de este Aviso. Usted tiene hasta el <<RESPONSE DEADLINE>> para impugnar el número de Periodos de Pago del Grupo y/o los Periodos de Pago bajo la PAGA acreditados a usted. Usted puede presentar una impugnación al firmar y enviar una carta al Administrador por correo electrónico, fax o correo regular de los Estados Unidos. Usted puede usar el formulario de Disputas adjunto para este

propósito. La Sección 9 de este Aviso tiene la información de contacto del Administrador.

Usted necesita apoyar su impugnación al presentar copias de los talonarios de pago u otros registros. El Administrador aceptará el cálculo del Demandado de los Periodos de Pago del Grupo y/o los Periodos de Pago bajo la PAGA basado en los registros del Demandado considerados como exactos a menos que usted envíe copias de los registros que contengan información contraria. Usted debe enviar copias en lugar de los originales porque los documentos no serán devueltos a usted. El Administrador resolverá las impugnaciones de los Periodos de Pago del Grupo y/o los Periodos de Pago bajo la PAGA basado en su presentación y en el resultado de los Abogados del Grupo (quienes abogarán en nombre de los Miembros Participantes del Grupo y los Abogados de la Defensa. La decisión del Administrador es definitiva. Usted no puede apelar o de forma similar impugnar su decisión definitiva.

5. ¿CÓMO SE ME PAGARÁ?

A. Los Miembros Participantes del Grupo. El Administrador enviará por correo de los Estados Unidos un solo cheque para cada Miembro Participante del Grupo (es decir, cada Miembro del Grupo quien no optó por retirarse) incluyendo aquellos quienes también califican como Empleados Agraviados. Este único cheque combinará el Pago Individual del Grupo y el Pago Individual bajo la PAGA.

B. Los Miembros No Participantes del Grupo. El Administrador enviará por correo de los Estados Unidos un solo cheque de Pago Individual bajo la PAGA a cada Empleado Agraviado quien opte por retirarse del Acuerdo Colectivo (es decir cada Miembro No Participante del Grupo).

Su cheque se enviará a la misma dirección que este Aviso. Si usted ambia su dirección, asegúrese de notificar al Administrador tan pronto como sea posible. La Sección 9 de este Aviso tiene la información de contacto del Administrador.

6. ¿CÓMO PUEDO OPTAR POR RETIRARME DEL ACUERDO COLECTIVO?

Envíe un correo electrónico, fax o correo escrito y una carta firmada con su nombre, dirección actual, número de teléfono y una declaración simple que usted no quiere participar en el Acuerdo. Usted puede usar el formulario de Solicitud para Exclusión adjunto para este propósito. El Administrador lo excluirá a usted basado en cualquier comunicado escrito que solicite su exclusión. Asegúrese de firmar personalmente su solicitud, identificar la Acción como *Genaro Reyes Villagra vs. Innovative Produce, Inc.*, Caso No. 22CV02744, e incluir su información de identificación (nombre completo, dirección, número de teléfono, fechas aproximadas de empleo y el número de seguro social para propósitos de verificación). Usted debe hacer la solicitud usted mismo. Si alguien más hace la solicitud por usted, no será válida. Usted debe enviar su Solicitud para Exclusión al Administrador por correo electrónico, fax, o enviarlo por correo regular de los Estados Unidos. **El Administrador debe enviar su solicitud para ser excluido para el <<RESPONSE DEADLINE>>, o será inválida.** La Sección 9 de este Aviso tiene la información de contacto del Administrador. Si usted es un Empleado Agraviado, usted siempre tendrá el derecho a recibir un Pago Individual bajo la PAGA.

7. ¿CÓMO PUEDO OBJETAR AL ACUERDO?

Solo los Miembros Participantes del Grupo tienen el derecho de objetar al Acuerdo. Antes de decidir si objetar o no, usted puede desear ver lo que el Demandante y el Demandado están pidiéndole a la Corte en aprobar. Al menos 16 días antes de la Audiencia de Aprobación Final, los Abogados del Grupo y/o el Demandante presentarán en la Corte (1) una Moción para Aprobación Final que incluye entre otras cosas, las razones por las cuales el Acuerdo propuesto es justo, y (2) la moción por Honorarios, Gastos de Litigación y Compensación por Servicio que establece (i) el monto de los Abogados del Grupo y la Compensación por Servicio al Representante del Grupo. Tras una solicitud razonable, los Abogados del Grupo (cuya información de contacto se encuentra en la Sección 9 de este Aviso) enviarán copias de estos documentos a ningún costo a usted. Usted también puede revisarlos y el Acuerdo de Arreglo en la página web de la Corte en la dirección <<COURT WEBSITE>>.

Un Miembro Participante del Grupo que esté en desacuerdo con cualquier aspecto del Acuerdo, la Moción para Aprobación Final /o la Moción por Honorarios, Gastos de Litigación y Compensación por Servicio puede objetar, por ejemplo, que el Acuerdo propuesto es injusto, o que los montos solicitados por los Abogados del Grupo o los Demandantes son muy altos o muy bajos. **La fecha límite para enviar las objeciones escritas al Administrador es** el **<<RESPONSE DEADLINE>>**. Asegúrese de decirle al Administrador a lo que usted objeta, por qué objeta y cualquier hecho que apoye su objeción. Asegúrese de identificar la Acción *Genaro Reyes Villagra vs. Innovative Produce, Inc.*, caso no. 22CV02744, e incluir su nombre, dirección actual, número de teléfono y fechas aproximadas de empleo con el Demandado y la firme la objeción. La Sección 9 de este Aviso tiene la información de contacto del Administrador. Usted puede usar el formulario de Objeción adjunto para este propósito. Usted debe enviar su objeción al Administrador por correo electrónico, fax o enviarlo por correo regular de los Estados Unidos.

Alternativamente, un Miembro Participante del Grupo puede objetar (o personalmente retener a una bogado para que objete a su propio costo) al asistir a la Audiencia de Aprobación Final. Usted (o su abogado) debe estar listo para decirle a la Corte a lo que usted objeta, por qué objeta, y cualquier hecho que apoye su objeción. Vea la Sección 8 de este Aviso (inmediatamente a continuación) por los detalles específicos de la Audiencia de Aprobación Final.

8. ¿PUEDO ASISTIR A LA AUDIENCIA DE APROBACIÓN FINAL?

Usted puede pero no tiene que asistir al a Audiencia de Aprobación Final el <<FINAL APPROVAL HEARING DATE>> a las <<FINAL APPROVAL HEARING TIME>> en el Departamento 2 de la Corte Superior de Santa Barbara, ubicado en la División de Cook, 312 East Cook Street, Buidling C, Santa Maria, CA 93454. En la Audiencia, el juez decidirá si otorga Aprobación Final al Acuerdo y cuánto del Acuerdo Bruto será pagado a los Abogados del Grupo, al Demandante y al Administrador. La Corte invitará los comentarios de los objetantes, de los Abogados del Grupo y los Abogados de la Defensa antes de tomar una decisión. Usted puede asistir (o contratar a un abogado a que asista) ya sea personalmente o

virtualmente a través de <<CourtConnect/CourtCall/MicrosoftTeams>> (https://www.<<CourtVirtualAppearanceLink>>. Revise la página web de la Corte para la información más actualizada.

Es posible que la Corte reprograme la Audiencia de Aprobación Final. Usted debe revisar la página web del Administrador en la dirección <<ADMINISTRATOR WEBSITE>> de antemano o contactar a los Abogados del Grupo para poder verificar la fecha y hora de la Audiencia de Aprobación Final.

9. ¿CÓMO PUEDO OBTENER MÁS INFORMACIÓN?

El Acuerdo establece todo los que el Demandado y el Demandante han prometido hacer bajo el Acuerdo propuesto. Para obtener una copia del Acuerdo, el Juicio o cualquier otro documento del Acuerdo, usted puede llamar por teléfono o enviar por correo electrónico a los Abogados del Grupo o al Administrador usando la información de contacto anotada a continuación o consulte en la página web de la Corte Superior al ir a la dirección (http://www.<< COURT'S WEBSITE>>.aspx) e ingresando el Número de Caso para la Acción, Caso No. 22CV02744. Usted también puede hacer una cita para poder revisar personalmente los documentos de la corte en la Oficina del Oficial en la División de Cook al llamar al número <<CLERK OF COURT'S PHONE NUMBER>>.

NO LLAME POR TELÉFONO A LA CORTE SUPERIOR PARA PODER OBTENER INFORMACIÓN SOBRE EL ACUERDO.

Los Abogados del Grupo:

Nombre del Abogado:	David G. Spivak
Correo Electrónico:	david@spivaklaw.com
Nombre del Bufete:	The Spivak Law Firm
Dirección de Correo:	8605 Santa Monica Bl PMB 42554 West Hollywood, CA 90069
Teléfono:	(213) 725-9094

Administrador:

Nombre de la Compañía:	
Correo Electrónico:	___
Dirección de Correo:	___
Teléfono:	___
Número de Fax:	___

10. ¿QUÉ SUCEDE SI PIERDO MI CHEQUE DEL ACUERDO?

Si usted pierde o extravía su cheque del acuerdo antes de cobrarlo, el Administrador lo reemplazará siempre y cuando usted solicite el reemplazo antes de la fecha de anulación en la

cara del cheque original. Si su cheque ya fue anulado, usted debe consultar con el Fondo de Propiedad Sin Reclamar (https://www.sco.ca.gov/search_upd.html) para instrucciones en como recuperar los fondos. Usted puede contactar al Fondo de Propiedad Sin Reclamar al número (800) 992-4647.

11. ¿QUÉ SUCEDE SI CAMBIO MI DIRECCIÓN?

Para recibir un cheque, usted debe notificar inmediatamente al Administrador si usted se muda o de forma similar cambia su dirección de correo.

ANEXO B

Reyes Villagra v. Innovative Produce, Inc.
Corte Superior del Estado de California, Condado de Santa Barbara
Caso No. 22CV02744

FORMULARIO DE SOLICITUD PARA EXCLUSIÓN

SI USTED QUIERE SER INCLUIDO EN ESTE ACUERDO DE ARREGLO DE ACCIÓN DE DEMANDA COLECTIVA Y SER ELEGIBLE PARA UNA PORCIÓN DE LOS PRODUCTOS DEL ACUERDO, NO LLENE ESTE FORMULARIO.

SI USTED NO QUIERE ESTAR INCLUIDO EN EL ACUERDO, USTED DEBE COMPLETAR Y FIRMAR ESTE DOCUMENTO Y ENVIARLO POR CORREO A LA DIRECCIÓN A CONTINUACIÓN, POR CORREO ELECTRÓNICO, POR FAX O POST SELLADO A NO MÁS TARDAR DE <<RESPONSE DEADLINE>>:

Administrador de la Acción Colectiva de *Reyes Villagra v. Innovative Produce, Inc.*
c/o ___
___
___

Yo declare lo siguiente: Yo he recibido un aviso del acuerdo propuesto en esta acción y deseo ser excluido del grupo y de ***no*** participar en el acuerdo propuesto. Yo entiendo que esto significa que yo no estaré vinculado por el Acuerdo y tampoco voy a tener una participación en los productos de la liquidación. Yo entiendo que la exclusión del Acuerdo Colectivo no resultará en la exclusión de la porción bajo la PAGA del Acuerdo. Si soy un Empleado Agraviado bajo el Acuerdo, yo siempre voy a recibir un Pago Individual bajo la PAGA.

___
(Nombre Impreso o Escrito)

___
(Dirección)

___
(Ciudad, Estado, Código Zip)

___
(Número de Teléfono, Incluyendo Código de Área)

___
(Número de Identificación)

Yo declare bajo penalidad de perjurio bajo las leyes del Estado de California que lo anterior es verdadero y correcto y que fue ejecutado el ___.

Con Fecha: ___.

___
(Firma)

ANEXO C

FORMULARIO DE DISPUTA DE PERIODOS DE PAGO

Corte Superior del Estado de California
Para el Condado de Santa Barbara
Genaro Reyes Villagra v. Innovative Produce, Inc., Caso No. 22CV02744

Indique el Cambio de Nombre/Dirección, si hay alguno:

<<Name>>
<<Address>>
<<City>>, <<State>> <<Zip Code>>
XX – XX - ___

PARA TODOS LOS EMPLEADOS NO EXENTOS PAGADOS POR HORA DE INNOVATIVE PRODUCE, INC., DESDE EL 18 DE JULIO DEL 2018 HASTA LA ORDEN QUE PRELIMINARMENTE APRUEBA ESTE ACUERDO.

El monto de su Compensación del Acuerdo estimado está basado en el número de Periodos de Pago Elegibles que usted trabajó entre el 18 de Julio del 2018 y la orden que preliminarmente aprueba este Acuerdo y los Periodos de Pago Elegibles que usted trabajó entre el 18 de Julio del 2021 y la orden que preliminarmente aprueba este Acuerdo. Los "Periodos de Pago del Grupo Individuales" están definidos como cualquier Periodo de Pago en el cual usted trabajó al menos un (1) día como en empleado no exento contratado por el Demandado en California durante la semana calendario durante el Periodo del Grupo. Los "Periodos de Pago bajo la PAGA Individuales" están definidos como cualquier Periodo de Pago en el cual usted trabajó al menos un (1) día como un empleado no exento contratado por el Demandado en California durante la semana calendario durante el periodo del 18 de Julio del 2021 hasta al orden que preliminarmente aprueba este Acuerdo. El número de Periodos de Pago del Grupo y bajo la PAGA aplicables a su reclamos e establecen a continuación.

SUS PERIODOS DE PAGO ELEGIBLES

Los registros del Demandado indican que usted trabajó <<number of Pay Periods>> Periodos de Pago entre el 18 de Julio del 2018 y la orden que aprueba preliminarmente este Acuerdo y <<number of Pay Periods>> Periodos de Pago entre el 18d e Julio del 2021 hasta la orden que aprueba preliminarmente este Acuerdo.

SU COMPENSACIÓN DEL ACUERDO ESTIMADO Y PROCEDIMIENTO DE DISPUTAS

Bajo los términos del Acuerdo de Arreglo de Acción de Demanda Colectiva, usted tiene el derecho de recibir un pago del acuerdo por un monto estimado de <<$Settlement Share Amount>>, menos todas las deducciones aplicables de nómina de pago y fiscales, después de que la Corte apruebe el Acuerdo y entre en vigor. Este proceso puede tomar seis meses o más. Usted recibirá un Formulario W-2 del IRS para poder reflejar el pago a usted. Su Porción del

Acuerdo reflejado en este Aviso es solo un estimado. El monto exacto del pago puede variar, hacia arriba o abajo.

Si usted desea disputar el número de Periodos de Pago acreditados a usted, o cualquier otra cosa sobre su estado de empleo usted debe completar y devolver este formulario indiciando lo que usted cree que está incorrecto en las líneas en blanco a continuación y devolverlo en o antes del <<RESPONSE DEADLINE>> al Administrador por correo electrónico, fax o correo normal de los Estados Unidos con prueba de la fecha de presentación (tal como el post sello o fecha de sello de la entrega del servicio). Usted puede usar este formulario de Disputa de Periodos de Pago para este propósito. Usted también debe enviar cualquier documento u otra información que usted contiende apoya su creencia de que la información establecida previamente es incorrecta. El Administrador resolverá cualquier disputa basado en los registros del Demandado y cualquier información que usted brinde. Por favor tome en cuenta que la información en este Formulario de Disputas de Periodos de Pago se presume como correcta a menos que los documentos que usted presente son registros de la compañía del Demandado.

_____

_____

_____

_____

A MENOS QUE USTED ESTÉ PRESENTANDO UNA DISPUTA EN RELACIÓN AL NÚMERO DE PERIODOS DE PAGO, LA RECEPCIÓN DE UN PAGO DEL ACUERDO O SU ESTATUS DE EMPLEO, USTED <u>NO</u> NECESITA TOMAR NINGUNA ACCIÓN ADICIONAL

ANEXO D

FORMULARIO DE OBJECIÓN

Genaro Reyes Villagra v. Innovative Produce, Inc.
Corte Superior del Estado de California, Condado de Santa Barbara
Caso No. 22CV02744

Por favor verifique y/o complete cualquier información de identificación faltante:

CPT ID: <<CPT ID>>
<<Name>>
<<Address1>>
<<Address2>>
<<City>>, <<State>> <<Zip>>

CORRECT NAME AND ADDRESS HERE:
_____
_____
_____
_____
Telephone Number: (__ __ __) __ __ __ - __ __ __ __

ESTE FORMULARIO DEBE USARSE <u>ÚNICAMENTE</u> SI USTED QUIERE PARTICIPAR EN EL ACUERDO, PERO USTED OBJETA A LOS TÉRMINOS DELA CUERDO. SI USTED OBJETA AL ACUERDO, USTED DEBE FIRMAR Y COMPLETAR ESTE FORMULARIO DE FORMA EXACTA Y EN SU TOTALIDAD (O UNO SIMILAR), Y USTED DEBE ENVIARLO POR CORREO ELECTRÓNICO ALA DIRECCIÓN <<_____@_____.COM>>, POR FAX AL NÚMERO <<XXX-XXX-XXXX>>, O POR CORREO DE PRIMERA CLASE LOS ESTADOS UNIDOS AL ADMINISTRADOR PARA QUE SEA POST SELLADO EN O ANTES DEL <<RESPONSE DEADLINE>>. LA DIRECCIÓN PARA EL ADMINISTRADOR SE ANOTA EN LA PÁGINA DOS DE ESTE FORMULARIO.

SI USTED NO OBJETA AL ACUERDO, <u>NO</u> PRESENTE ESTE FORMULARIO. EL ADMINISTRADOR ENVIARÁ ESTA OBJECIÓN Y CUALQUIER DOCUMENTACIÓN DE SOPORTE A LOS ABOGADOS PARA LAS PARTES. LOS ABOGADOS PARA LAS PARTES PRESENTARÁN UNA OBJECIÓN CON LA CORTE.

La Corte considerará su objeción en la Audiencia de Aprobación Final si usted la presentó de forma oportuna. Incluya cualquier y toda evidencia y documentación de apoyo (incluyendo, sin limitación, todos los resúmenes, evidencia escrita y declaraciones) que a usted le gustaría que la Corte considere. Sin embargo, usted puede hablar ante la Corte en la audiencia de aprobación final ya sea haya presentado o no una objeción de manera oportuna.

[ ] YO OBJETO al Acuerdo de Arreglo de *Genaro Reyes Villagra v. Innovative Produce, Inc.* sobre los siguientes fundamentos (si necesita espacio adicional, por favor incluya las hojas adicionales de papel):

_____
_____
_____

_____
_____
_____
_____
_____

[ ] Yo soy o voy a ser representado por un abogado (brinde el nombre y dirección del abogado en las líneas a continuación si aplica):

_____
_____
_____
_____
_____
_____
_____
_____
_____

Ejecutado el _____ del 2024

_____
(Firma)

<<Name>>_____
(Nombre Impreso)

ENVÍE UN CORREO ELECTRÓNICO AL ADMINISTRADOR A LA DIRECCIÓN: **<<_____@_____.COM>>**

ENVÍE UN FAX PARA EL ADMINISTRADOR: <<(XXX) XXX-XXXX>>

ENVÍE UN CORREO AL ADMINISTRADOR DEL ACUERDO A TRAVÉS DE CORREO DE LOS ESTADOS UNIDOS POST SELLADO A NO MÁS TARDAR EL <<RESPONSE DEADLINE>>:

Administrador de Genaro Reyes Villagra v. Innovative Produce, Inc.
[ADDRESS]
<<_____>>
<<_____>>
<<_____>>

ANEXO E

DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com
THE SPIVAK LAW FIRM
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
Teléfono: (213) 725-9094
Fax: (213) 634-2485

Abogados para el Demandante,
GENARO REYES VILLAGRA, y todos los demás en una situación similar
(Abogados adicionales para las partes en la siguiente página)

CORTE SUPERIOR DEL ESTADO DE CALIFORNIA

PARA EL CONDADO DE SANTA BARBARA

(*JURISDICCIÓN ILIMITADA*)

GENARO REYES VILLAGRA, en nombre de él mismo y otros en una situación similar, y como un "empleado agraviado" en nombre de otros "empleados agraviados" bajo la Ley General de Abogados Privados del 2004 del Código de Trabajo,

El Demandante,

vs.

INNOVATIVE PRODUCE, INC., una corporación de California; y DOES 1–50, inclusive,

Los Demandados.

Caso No. 22CV02744

ORDEN [PROPUESTA] APROBANDO PRELIMINARMENTE EL ACUERDO DE ARREGLO DE ACCIÓN DE DEMANDA COLECTIVA

La acción se presentó el:	18 de Julio del 2022
Dep:	2, El Honorable James F. Rigali

LOS ABOGADOS ADICIONALES PARA EL DEMANDANTE

LOUIS M. BENOWITZ (SBN 262300)
louis@benowitzlaw.com
BENOWITZ LAW CORPORATION
8605 Santa Monica Boulevard
PMB 97638
West Hollywood, CA 90069
Teléfono: (747) 233-2600 Trabajo
Fax: (818) 839-9610

Abogados para el Demandante,
GENARO REYES VILLAGRA, y otros en una situación similar

ABOGADOS PARA EL DEMANDADO

MICHAEL JOSEPH CONWAY (SBN 332030)
mikec@sw2law.com
SAGASER WATKINS & WIELAND PC
5260 N Palm Ave
Ste 400
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Abogados para el Demandado,
INNOVATIVE PRODUCE, INC.

La Moción del Demandante, Genaro Reyes Villagra (de aquí en adelante referido como el "Demandante") para Aprobación Preliminar de un Acuerdo de Acción de Demanda Colectiva (la "Moción") fue considerada por la Corte, presidido por El Honorable _____ _____. La Corte, habiendo considerando la Moción, el Acuerdo de Arreglo de Acción de Demanda Colectiva y bajo la PAGA y Aviso Colectivo (el "Acuerdo", "Acuerdo de Arreglo" o "Liquidación") y documentos de apoyo, POR ESTE MEDIO ORDENA LO SIGUIENTE:

1. La Corte otorga aprobación preliminar del Acuerdo y del Grupo del Acuerdo basado en los términos establecidos en el Acuerdo presentado como un Anexo a la Moción de Aprobación Preliminar. Todos los términos dentro de la presente tienen el mismo significado tal como se define en el Acuerdo. La Corte ha determinado únicamente que hay suficiente evidencia para sugerir que el acuerdo propuesto es justo, adecuado y razonable y que cualquier determinación final sobre esos asuntos se haga en la audiencia final. La Corte hará una determinación en la audiencia de moción de aprobación final del acuerdo de acción de demanda colectiva (la "Audiencia de Aprobación Final") en cuanto a si el Acuerdo es o no justo, adecuado y razonable para el Grupo del Acuerdo.

2. Esta acción está provisionalmente certificada en cumplimiento con la sección 382 del Código de Procedimiento Civil de California y la Regla 3.760, y siguientes de las Reglas de la Corte de California como una acción colectiva para propósitos de este acuerdo únicamente con respecto al Grupo del Acuerdo propuesto.

3. A no más tardar 15 días después de que la Corte otorgue Aprobación Preliminar del Acuerdo, el Demandado simultáneamente entregará los Datos del Grupo al Administrador en la forma de una hoja de trabajo de Microsoft Excel. Para poder proteger los derechos de privacidad de los Miembros del Grupo, el Administrador debe mantener los Datos del Grupo en

confidencialidad, usando los Datos del Grupo únicamente para los propósitos del Acuerdo y para ningún otro propósito, y de restringir el acceso a los Datos del Grupo a los empleados del Administrador quienes necesitan acceso a los Datos del Grupo con el efecto de realizar trabajo bajo el Acuerdo de Arreglo. El Demandado tiene el deber continuo de notificar inmediatamente a los Abogados del Grupo si descubre que los Datos del Grupo omitieron la información de identificación de un miembro del grupo y a brindar los Datos del Grupo corregidos y actualizados tan pronto como sea factible. Sin ninguna extensión de la fecha límite para la cual el Demandado debe enviar los Datos del Grupo al Administrador, las Partes y sus abogados trabajarán expeditamente usando sus mejores esfuerzos en buena fe para reconstruir o de forma similar resolver cualquier asunto relacionado con los Datos del Grupo faltantes u omitidos.

4. A no más tardar tres (3) días hábiles después de la recepción de los Datos del Grupo, el Administrador deberá notificar a los Abogados del Grupo que la lista ha sido recibido y establecer el número de Miembros del Grupo, Miembros bajo la PAGA y Periodos de Pago en los Datos del Grupo.

5. Usando los mejores esfuerzos para realizarlo lo antes posible, y en ningún evento mayor a 14 días después de recibir los Datos del Grupo, el Administrador enviará a todos los Miembros del Grupo identificados en los Datos del Grupo, a través de correo de Primera Clase del Servicio Postal de los Estados Unidos ("USPS"), el Paquete de Avisos con una traducción al Español, si aplica, los formularios adjuntos a esta orden como los **Anexos A, B, C y D**. La primer página del Aviso Colectivo deberá mostrar prominentemente los montos en dólares de cualquier Pago Individual del Grupo y/o Pago Individual bajo la PAGA pagadero al Miembro del Grupo y el número de Periodos de pago bajo el Grupo y Periodos de Pago bajo la PAGA (si aplica) usados para calcular estos montos. Antes de enviar por correo los Paquetes de Avisos, el

Administrador deberá actualizar la dirección del Miembro del Grupo utilizando la base de datos nacional de Cambio de Domicilio.

6. A no más tardar de 3 días hábiles después de la recepción del Administrador de cualquier Paquete de Avisos retornado por USPS como no entregados, el Administrador deberá reenviar por correo el Paquete de Avisos utilizando la dirección de reenvío suministrada por USPS. Si USPS no brinda una dirección de reenvío, el Administrador deberá conducir una Búsqueda de Dirección del Miembro del Grupo y reenviar por correo el Paquete de Avisos a la dirección más actual obtenida. El Administrador no tiene ninguna obligación de hacer intentos adicionales de ubicar o enviar el Paquete de Avisos a los Miembros del Grupo cuyo Paquete de Avisos se ha devuelto por USPS por una segunda vez.

7. Las fechas límites de las objeciones escritas de los Miembros del Grupo, las Impugnaciones de los Periodos de Pago del Grupo y/o Periodos de Pago bajo la PAGA (las disputas) y Solicitudes para Exclusión serán extendidas por 14 días adicionales más allá de los 60 días provistos de otro modo en el Aviso Colectivo para todos los Miembros del Grupo cuyo aviso ha sido reenviado por correo. El Administrador informará al Miembro del Grupo de la fecha límite extendida con el Paquete de Avisos reenviado por correo.

8. Si el Administrador, el Demandado o los Abogados del Grupo son contactados por o de forma similar descubren cualquier persona quien cree que debe ser incluido en los Datos del Grupo y que tuvo que haber recibido un Paquete de Avisos, las Partes se reunirán y discutirán expeditamente en persona o a través de teléfono y en buena fe en un esfuerzo de acordar si incluirlos o no como Miembros del Grupo. Si las Partes están de acuerdo, dichas personas serán Miembros del Grupo con derecho a los mismos derechos que los otros Miembros del Grupo y el Administrador enviará mediante correo electrónico o entrega expeditada, un

Paquete de Avisos que les requiere a ellos a ejercer las opciones bajo el Acuerdo de Arreglo a no más tardar 14 días después de la recepción del Paquete de Avisos o la fechas límite en el Paquete de Avisos, el que ocurra después.

9. Solicitudes para Exclusión. Los Miembros del Grupo que desean excluirse a sí mismos (optar por retirarse) del Acuerdo Colectivo deben enviar al Administrador, por fax, correo electrónico o correo, una Solicitud para Exclusión escrita y firmada a no más tardar 60 día después de que el Administrador envíe por correo el Paquete de Avisos (más 14 días adicionales para los Miembros del Grupo cuyo Paquete de Avisos ha sido reenviado por correo). Una Solicitud para Exclusión es una carta de un Miembro del Grupo o su representante que comunica razonablemente la elección del Miembro del Grupo a ser excluido del Acuerdo e incluye el nombre, dirección y correo electrónico o número de teléfono del Miembro del Grupo. Para que sea válida, una Solicitud para Exclusión debe estar enviada por fax, correo electrónico o post sellada oportunamente para la Fecha Límite de Respuesta. Un formulario de Solicitud para Exclusión, adjunto como Anexo B, puede ser usado para este propósito pero no es requerido.

10. El Administrador no puede rechazar una Solicitud para Exclusión como inválida porque falle en contener toda la información especificada en el Aviso Colectivo. El Administrador deberá aceptar cualquier Solicitud para Exclusión como válida si el Administrador puede razonablemente asegurar la identidad de la persona como un Miembro del Grupo y el deseo del Miembro del Grupo de ser excluido. La determinación del Administrador deberá ser definitiva y no apelable o de forma similar susceptible a una impugnación. Si el Administrador tiene razón de cuestionar la autenticidad de una Solicitud para Exclusión, el Administrador puede demandar prueba adicional de identidad del Miembro del Grupo. La

determinación del Administrador de la autenticidad deberá ser definitiva y no apelable o de forma similar susceptible a una impugnación.

11. Cada Miembro del Grupo quien no presente una Solicitud para Exclusión oportuna y válida es considerado como un Miembro Participante del Grupo bajo el Acuerdo de Arreglo, con derecho a todos los beneficios y vinculado por todos los términos y condiciones del Acuerdo, incluyendo las Exoneraciones de los Miembros Participantes del Grupo bajo el Párrafo 6.3 del Acuerdo, sin importar si el Miembro Participante del Grupo reciba o no el Aviso Colectivo u objete al Acuerdo.

12. Cada Miembro del Grupo quien presente una Solicitud para Exclusión válida y oportunamente es un Miembro No Participante del Grupo y no deberá recibir un Pago Individual del Grupo o tener derecho de objetar a los componentes de la acción colectiva del Acuerdo.

13. Todos los Empleados Agraviados serán considerados que exoneran los Reclamos Exonerados bajo la PAGA, lo que incluye todos los reclamos identificados en el párrafo 6.3 del Acuerdo que surgen y/o que son asegurables bajo la PAGA, sin importar si el Miembro Participante realmente reciba o no el Aviso Colectivo.

14. Impugnaciones al Cálculo de Periodos de Pago. Cada Miembro del Grupo deberá tener 60 días después de que el Administrador envíe por correo el Paquete de Avisos (más 14 días adicionales para los Miembros del Grupo cuyo Paquete de Avisos se reenvió por correo) para impugnar el número de Periodos de Pago del Grupo y Periodos de Pago bajo la PAGA (si hay alguno) distribuido al Miembro del Grupo en el Aviso Colectivo. Esto es también conocido como una disputa. Un formulario de Disputa de Periodos de Pago, adjunto como Anexo C, puede ser usado para este propósito pero no es requerido. El Miembro del Grupo que impugne

la distribución al comunicarse con el Administrador vía fax, correo electrónico o correo. El Administrador debe animar al Miembro del Grupo que hace la impugnación a presentar documentación de soporte. En la ausencia de cualquier documentación contrario, el Administrador tiene el derecho de asumir que los Periodos de Pago Contenidos en el Aviso Colectivo son correctos siempre y cuando sean consistentes con los Datos del Grupo. La determinación del Administrador para cada distribución de los Miembros del Grupo de los Periodos de Pago del Grupo y/o Periodos de Pago bajo la PAGA deberá ser definitiva y no apelable o de forma similar susceptible a una impugnación. El Administrador deberá brindar copias prontamente de todas las impugnaciones al cálculo de Periodos de Pago del Grupo y/o Periodos de Pago bajo la PAGA a los Abogados de la Defensa y a los Abogados del Grupo y la determinación del Administrador de las impugnaciones.

15. Objeciones al Acuerdo. Solo los Miembros Participantes del Grupo pueden objetar a los componentes de la acción colectiva del Acuerdo de Arreglo y/o de este Acuerdo, incluyendo contestando sobre la justicia del Acuerdo, y/o los montos requeridos para el Pago de los Honorarios Legales de los Abogados del Grupo, el Pago los Gastos de Litigación de los Abogados del Grupo y/o el Pago por Servicio al Representante del Grupo.

16. Los Miembros Participantes del Grupo pueden enviar objeciones escritas al Administrador por fax, correo electrónico o correo. De forma alternativa, los Miembros Participantes del Grupo pueden comparecer en la Corte (o contratar a un abogado a comparecer en la Corte) para presentar objeciones verbales en la Audiencia de Aprobación Final. Un Miembro Participante del Grupo quien elija enviar una objeción escrita al Administrador debe hacerlo a no más tardar 60 días después del envío por correo del Paquete de Avisos por parte del Administrador (más 14 días adicionales para los Miembros del Grupo cuyo Paquete de Avisos

fue reenviado por correo). Un formulario de Objeción adjunto como Anexo D puede ser usado para este propósito pero no es requerido.

17. Los Miembros No Participantes del Grupo no tienen derecho a objetar a cualquier componente de la acción colectiva del Acuerdo de Arreglo.

18. A no más tardar 14 días antes de la fecha para la cual se le requiere al Demandante a presentar la Moción para Aprobación Final del Acuerdo, el Administrador brindará a los Abogados del Grupo y a los Abogados de la Defensa, una declaración firmada adecuada para presentarse a la Corte dando fe de su debida diligencia y cumplimiento con todas sus obligaciones bajo el Acuerdo de Arreglo, incluyendo pero sin limitación a enviar por correo los Paquetes de Avisos, intentos de ubicar a los Miembros del Grupo, el número total de Solicitudes para Exclusión del Acuerdo que ha recibido (tanto válidos e inválidos) y el número de objeciones escritas y adjuntar la Lista de Exclusión, excepto que cualquier información de identificación personal (por ejemplo, nombres e información de contacto) deberá ser redactado de cualquier copia de los formularios de Solicitudes para Exclusión u otra documentación. El Administrador suplementará su declaración según sea necesario o solicitado por las Partes y/o la Corte. Los Abogados del Grupo son responsables por presentar las declaraciones del Administrador en la Corte.

19. La Corte aprueba, en cuanto a la forma y contenido, el Aviso Colectivo en sustancia en el formulario adjunto como Anexo A en esta Orden, el formulario de Solicitud para Exclusión en sustancia en el formulario adjunto como Documento B a esta Orden, el formulario de Disputas de Periodos de Pago en sustancia en el formulario adjunto como Anexo C a esta Orden y el formulario de Objeción en sustancia en el formulario adjunto como Anexo D a esta Orden.

20. La Corte aprueba, para propósitos del acuerdo únicamente, que David G. Spivak de The Spivak Law Firm y Louis M. Benowitz de Benowitz Law Corporation sean los Abogados del Grupo.

21. La Corte aprueba, para propósitos del acuerdo únicamente, a Genaro Reyes Villagra como el representante del Grupo.

22. La Corte aprueba a ILYM Group, Inc. Settlement Administrators como el Administrador.

23. La Corte aprueba preliminarmente la solicitud de los Abogados del Grupo por honorarios legales y costos de los abogados sujeto a revisión final de la Corte.

24. La Corte aprueba preliminarmente los costos estimados del Administrador pagaderos al Administrador sujeto a revisión final de la Corte.

25. La Corte aprueba preliminarmente el Pago por Servicio al Representante del Grupo del Demandante sujeto a revisión final de la Corte.

26. Una Audiencia de Aprobación Final se sostendrá el _____ a las _____ **.M** en el Departamento 2 de la Corte Superior del Estado de California, Condado de Santa Barbara, ubicado en la División de Cook, 312 East Cook Street, Buidling C, Santa Maria, CA 93454 para considerar la solicitud de los Abogados del Grupo por honorarios y costos legales y el Pago por Servicio al Representante del Grupo para el Representante del Grupo. El aviso de moción y todos los resúmenes y materiales en apoyo a la moción para aprobación final del acuerdo de acción de demanda colectiva y moción de los honorarios legales y costos de litigación deberán ser servidos y presentados con la Corte en o antes del _____. Los abogados del Demandante deben dar aviso a cualquier parte objetante de cualquier aplazamiento de la audiencia de la moción para aprobación final.

27. Si por cualquier otra razón la Corte no ejecuta y presenta una Orden de Aprobación Final y el juicio, o si la Fecha Efectiva, como se define en el Acuerdo, no ocurre por cualquier razón, el Acuerdo propuesto que es sujeto de esta orden, y toda la evidencia y procedimientos en conexión con el mismo, deberán estar sin prejuicio al estatus quo ante los derechos de las Partes a la litigación, como se establece más específicamente en el Acuerdo.

28. La Corte expresamente se reserva el derecho de levantar o aplazar la Audiencia de Aprobación Final de vez en cuando sin previo aviso a los miembros del Grupo. El Demandante deberá dar aviso oportuno de cualquier aplazamiento a los Miembros del Grupo del Acuerdo quienes objetaron al Acuerdo.

ASÍ SE HA ORDENADO.

FECHA	**EL HONORABLE TIMOTHY J. STAFFEL** **JUEZ DE LA CORTE SUPERIOR**

DECLARATION OF TRANSLATOR

I, Ferdinan Fernandez, being fluent in both Spanish and English languages, declare and state as follows:

I declare that I have translated the attached document ("Class Action and PAGA Settlement Agreement and Class Notice") from the English language to Spanish language.

I declare, to the best of my abilities and belief, that this is a true and correct translation of the English language text of the attached document to the Spanish language.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct to the best of my knowledge and that this Declaration was executed this 6th day of March 2024, at San Pedro Sula, Honduras.

Ferdinan Fernandez (Mar 6, 2024 13:24 CST)

Ferdinan Fernandez
Translator, Spanish<>English

Rush Translate
ATA Member #263979

EXHIBIT 2

THE SPIVAK LAW FIRM
EMPLOYEE RIGHTS

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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

April 20, 2022

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

Re: Genaro Reyes Villagra / Innovative Produce

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Genaro Reyes Villagra (hereafter "Reyes Villagra" or "Complainant") provides notice that Innovative Produce, Inc., a California corporation, and related entities (collectively "the Innovative Produce Employers" or "the Employers") violated his rights and those of all other individuals the Innovative Produce Employers have employed or otherwise contracted with in California as hourly and piece rate non-exempt employees, including but not limited to farm workers, produce pickers, harvesters, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the "Aggrieved Employees") under Labor Code sections 201, 202, 203, 204, 221, 226, 510, 1174, 1194, 1197, 1198, and related Labor Code statutes. On behalf of himself and all other Aggrieved Employees, Reyes Villagra hereby provides this notice to the Labor & Workforce Development Agency and the Innovative Produce Employers and their agents and representatives.

At all relevant times, the Innovative Produce Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Reyes Villagra and all of the other Aggrieved Employees are "employees" within the meaning of Industrial Welfare Commission Order No. 14-2001 (hereafter "the Wage Order") section 2, subdivision (E) and "Aggrieved Employees" within the meaning of Labor Code section 2699(c).

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Statement of Facts

In approximately 2016, the Innovative Produce Employers began to employ Reyes Villagra in Santa Maria in the position of hourly, non-exempt farm worker. The Innovative Produce Employers continuously employed him in that capacity until on or about August 9, 2021 when his employment ended.

At all relevant times, the Innovative Produce Employers issued wages to Reyes Villagra and all of the other Aggrieved Employees on a biweekly basis and paid them by the hour. At all relevant times, the Innovative Produce Employers classified Reyes Villagra and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Innovative Produce Employers failed to compensate Reyes Villagra and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. Reyes Villagra and the other Aggrieved Employees often worked more than 10 hours per day. However, the Innovative Produce Employers usually only credited Reyes Villagra and the other Aggrieved Employees with nine or less hours of work per day to avoid paying all regular, overtime, and minimum wages earned. Additionally, Reyes Villagra and the other Aggrieved Employees non-discretionary bonuses during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Innovative Produce Employers failed to pay Villagra and all of the other Aggrieved Employees overtime premium wages on such bonus compensation.

The Innovative Produce Employers unlawfully deducted wages belonging to Reyes Villagra and all of the other Aggrieved Employees. The Innovative Produce Employers deducted hours worked from the total daily hours worked by Reyes Villagra and the other Aggrieved Employees.

At all relevant times, the Innovative Produce Employers failed to issue to Reyes Villagra and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Innovative Produce Employers knowingly and intentionally failed to state on the wage statements they issued to Reyes Villagra and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all overtime wages earned, all doubletime wages earned, all minimum wages earned, all regular wages earned, all

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unlawfully deducted wages, all earned wages subject to discount, address of employer, and the employer's name and address. Instead of listing the legal address of the Innovative Produce Employers, the Innovative Produce Employers only listed a post office box on the wage statements they issued to Reyes Villagra and the other Aggrieved Employees.

The Innovative Produce Employers also failed to timely pay Reyes Villagra and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Innovative Produce Employers failed to maintain accurate employee records of Reyes Villagra and all of the other Aggrieved Employees. Defendant did not maintain records of the start and stop times of the work Reyes Villagra and the other Aggrieved Employees worked, instead maintaining only incomplete reports of the total hours worked per day.

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

(a) The Innovative Produce Employers failed to pay Reyes Villagra and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;

(b) The Innovative Produce Employers unlawfully deducted wages belonging to Reyes Villagra and all of the other Aggrieved Employees;

(c) The Innovative Produce Employers knowingly and intentionally failed to provide Reyes Villagra and all of the other Aggrieved Employees with accurate wage statements;

(d) The Innovative Produce Employers willfully failed to timely pay Reyes Villagra and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Innovative Produce Employers and when their employment ended; and

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(e) The Innovative Produce Employers failed to maintain accurate employment records pertaining to Reyes Villagra and all of the other Aggrieved Employees.

Accordingly, Reyes Villagra now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Innovative Produce Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in an agricultural occupation whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "employed in an agricultural occupation" to mean,

(1) The preparation, care, and treatment of farm land, pipeline, or ditches, including leveling for agricultural purposes, plowing, discing, and fertilizing the soil;

(2) The sowing and planting of any agricultural or horticultural commodity;

(3) The care of any agricultural or horticultural commodity,; as used in this subdivision, "care" includes, but is not limited to, cultivation, irrigation, weed control, thinning, heating, pruning, or tying, fumigating, spraying, and dusting;

(4) The harvesting of any agricultural or horticultural commodity, including but not limited to, picking, cutting, threshing, mowing, knocking off, field chopping, bunching, baling, balling, field packing, and placing in field containers or in the vehicle in which the commodity will be hauled, and transportation on the farm or to a place of first processing or distribution;

(5) The assembly and storage of any agricultural or horticultural commodity, including but not limited to, loading, road siding, banking, stacking, binding, and piling;

(6) The raising, feeding and management of livestock, fur bearing animals, poultry, fish, mollusks, and insects, including but not limited to herding, housing, hatching, milking, shearing, handling eggs, and extracting honey;

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(7) The harvesting of fish, as defined by Section 45 of the Fish and Game Code, for commercial sale;

(8) The conservation, improvement or maintenance of such farm and its tools and equipment.

Wage Order, § 2(D).

At all relevant times during the applicable limitations period, the Innovative Produce "Employers, Reyes Villagra, and all of the Aggrieved Employees were covered by the Wage Order because Reyes Villagra and all of the Aggrieved Employees worked for the Innovative Produce Employers as farm workers, and similar occupations. Accordingly, Reyes Villagra and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

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

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

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

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

In relevant part, Labor Code section 1194 states:

(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of

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> this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

In relevant part, Labor Code section 510 states:

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

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

> (A) The following overtime provisions are applicable to employees eighteen (18) years of age or over and to employees sixteen (16) or seventeen (17) years of age who are not required by law to attend school:
>
> (1) Such employees shall not be employed more than ten (10) hours in any one workday or more than six (6) days in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over ten (10) hours in any workday and for the first eight (8) hours on the seventh (7th) day of work and double the employee's regular rate of pay for all hours worked over eight (8) on the seventh (7th) day of work in the workweek.
>
> (2) For employers of more than 25 employees:
>
> (a) Starting January 1, 2019, an employee shall not be employed more than nine and one-half (9 1/2) hours per workday or fifty-five (55) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over nine and one-half (9 1/2) hours in any one workday or more than fifty-five (55) hours in any one workweek.

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(b) Starting January 1, 2020, an employee shall not be employed more than nine (9) hours per workday or fifty (50) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over nine (9) hours in any one workday or more than fifty (50) hours in any one workweek.

(c) Starting January 1, 2021, an employee shall not be employed more than eight and one-half (8 1/2) hours per workday or forty-five (45) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight and one-half (8 1/2) hours in any one workday or more than forty-five (45) hours in any one workweek.

(d) Starting January 1, 2022, an employee shall not be employed more than eight (8) hours per workday or work in excess of forty (40) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight (8) hours in any workday or more than forty (40) hours in any workweek and double the employee's regular rate of pay for all hours worked over twelve (12) hours in any one workday.

(3) For employers of 25 or fewer employees:

(a) Starting January 1, 2022, the overtime standards and compensation in subsection (2)(a) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.

(b) Starting January 1, 2023, the overtime standards and compensation in subsection (2)(b) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.

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(c) Starting January 1, 2024, the overtime standards and compensation in subsection (2)(c) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.

(d) Starting January 1, 2025, the overtime standards and compensation in subsection (2)(d) above, shall apply to any employee who works over the specified numbers of hours in any one workday or workweek.

…

(B) An employee may be employed on seven (7) workdays in one workweek with no overtime pay required when the total hours of employment during such workweek do not exceed 30 and the total hours of employment in any one workday thereof do not exceed six (6), subject to Labor Code Sections 510 and 550-556.

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

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

Reyes Villagra and the other Aggrieved Employees often worked more than 10 hours per day. However, the Innovative Produce Employers usually only credited Reyes Villagra and the other Aggrieved Employees with nine or less hours of work per day to avoid paying all regular, minimum, and overtime wages earned. Additionally, Reyes Villagra and the other Aggrieved Employees non-discretionary bonuses during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Innovative Produce Employers failed to pay Villagra and all of the other Aggrieved Employees overtime premium wages on such bonus compensation. Additionally, on occasions when they did pay for overtime hours worked, the Innovative Produce Employers failed to pay Villagra and all of the other

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Aggrieved Employees such overtime pay at the correct rates, instead paying for overtime hours at lower rates or the regular rates of pay.

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

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

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

2. $100 for each aggrieved employee for each initial violation of Labor Code § 1194, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));

3. $100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and $250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount

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sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and

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

Unlawful Deductions
(Lab. Code § 221)

Under Labor Code § 221, "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." The Innovative Produce Employers deducted wages from the wages earned by Reyes Villagra and all of the other Aggrieved Employees for hours worked and similar deductions in violation of Labor Code § 221. Accordingly, Reyes Villagra seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows: $100 for each aggrieved employee for each initial violation of Labor Code § 221, and $200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of Labor Code § 221, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 225.5).

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

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

1. Gross wages earned;

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

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

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

5. Net wages earned;

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

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

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

9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Similarly, section 7(C) of the Wage Order states

> Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing:
>
> (1) all deductions;
>
> (2) the inclusive dates of the period for which the employee is paid;
>
> (3) the name of the employee or the employee's social security number; and
>
> (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

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

At all relevant times during the applicable limitations period, the Innovative Produce Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Innovative Produce Employers failed to state in the wage statements they issued to Reyes Villagra and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Innovative Produce Employers knowingly and intentionally failed to state on the wage statements they issued to Reyes Villagra and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all overtime wages earned, all doubletime wages earned, all minimum wages earned, all regular wages earned, all unlawfully deducted wages, all earned wages subject to discount, address of employer, and the employer's name and address and similar information. Instead of listing the legal address of the Innovative Produce Employers, the Innovative Produce Employers only listed a post office box on the wage statements they issued to Reyes Villagra and the other Aggrieved Employees. Accordingly, Reyes Villagra seeks civil penalties for the Labor Code violations that the Innovative Produce Employers have committed against him and all of the other Aggrieved Employees as follows: $250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and $1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

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

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the

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following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Innovative Produce Employers failed to compensate Reyes Villagra and all of the other Aggrieved Employees for wages earned, including overtime wages, at the intervals stated above. As a result, the Innovative Produce Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Reyes Villagra now seeks civil penalties for the Labor Code violations that the Innovative Produce Employers have committed against him and all of the other Aggrieved Employees as follows: $100 for each aggrieved employee for each initial violation of Labor Code section 204, and $200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

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

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

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

The Innovative Produce Employers failed to pay Reyes Villagra and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Reyes Villagra, including

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overtime wages and similar forms of compensation. By failing to pay Reyes Villagra and all of the other Aggrieved Employees as set forth above at the end of employment, the Innovative Produce Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Reyes Villagra seeks civil penalties from the Innovative Produce Employers as follows:

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

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

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

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

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

> Every person employing labor in this state shall:
>
> ...
>
> (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
>
> (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate

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> paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

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

Section 7 of Wage Order states,

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

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

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

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

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

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

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

…

(E) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three (3) years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

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

The Innovative Produce Employers failed to compensate Reyes Villagra and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all overtime wages earned, all doubletime wages earned, all minimum wages earned, all regular wages earned, all unlawfully deducted wages, all earned wages subject to discount, address of employer, and the employer's name and address. As a result, the Innovative Produce Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Reyes Villagra and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Reyes Villagra seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. $500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and

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

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Genaro Reyes Villagra will seek

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both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,

David Spivak

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cc: Mr. Genaro Reyes Villagra

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EXHIBIT 3

THE SPIVAK LAW FIRM
EMPLOYEE RIGHTS

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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

October 6, 2023

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

Attn: PAGA Administrator
California Division of Occupational Safety and Health (Cal/OSHA)
http://dir.tflaforms.net
Via Electronic Submission

Re: Genaro Reyes Villagra / Innovative Produce
LWDA Case No. LWDA-CM-882417-22

To Whom It May Concern:

This is a supplement to Genaro Reyes Villagra's letter of April 20, 2022 (enclosed).

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Genaro Reyes Villagra (hereafter "Reyes Villagra" or "Complainant") provides notice that Innovative Produce, Inc., a California corporation, and related entities (collectively "the Innovative Produce Employers" or "the Employers") violated his rights and those of all other individuals the Innovative Produce Employers have employed or otherwise contracted with in California as hourly and piece rate non-exempt employees, including but not limited to farm workers, produce pickers, harvesters, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the "Aggrieved Employees") under Labor Code sections 201, 202, 203, 204, 204b, 206, 207, 208, 210, 218.5, 218.6, 221, 225.5, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and related Labor Code statutes, in addition to related provisions of the applicable Wage Order governing Aggrieved Employees' employment with the Employers, including but not limited to 8 CCR 11140, Secs. 3, 4,

5, 7, 8, 9, 11, 12, 13, and 18. On behalf of himself and all other Aggrieved Employees, Reyes Villagra hereby provides this notice to the Labor & Workforce Development Agency and the Innovative Produce Employers and their agents and representatives.

At all relevant times, the Innovative Produce Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Reyes Villagra and all of the other Aggrieved Employees are "employees" within the meaning of Industrial Welfare Commission Order No. 14-2001 (hereafter "the Wage Order", codified at 8 CCR 11140) section 2, subdivision (E) and "Aggrieved Employees" within the meaning of Labor Code section 2699(c).

Statement of Facts

At all relevant times, the Innovative Produce Employers failed to provide Reyes Villagra and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods in violation of applicable law, including but not limited to Labor Code §512 and 8 C.C.R. §11140, Sec. 11, giving rise to penalties under Labor Code §558 and 8 CCR 11140, Sec. 18. In addition to other violations, the Innovative Produce Employers unlawfully deducted Aggrieved Employees pay as though they took legally compliant meal periods, though they did not, resulting in meal period violations and unlawful deductions of wages in violation of Labor Code §221, giving rise to penalties under Labor Code §225.5. The Innovative Produce Employers also failed to pay premium wages for days on which it failed to provide Reyes Villagra and all of the other Aggrieved Employees with meal periods as required by law, including but not limited to Labor Code §226.7, giving rise to penalties under Labor Code §§558 and 2699, in addition to 8 CCR §11140, Sec. 18.

In addition to unlawfully deducting Aggrieved Employees' pay as though they took meal periods in pay periods where they did not, the Innovative Produce Employers made other unlawful deductions from Aggrieved Employees' wages, that were not required by law nor authorized in writing by employees. As a result, the Innovative Produce Employers violated Labor Code §221, giving rise to penalties under Labor Code §225.5.

At all relevant times, the Innovative Produce Employers failed to authorize and permit Reyes Villagra and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof, or recovery periods required by law, thereby violating applicable law, including but not limited to 8 CCR

§11140, Sec. 12 and 8 CCR §3395. The Innovative Produce Employers also failed to pay premium wages for days on which it failed to authorize and permit Reyes Villagra and all of the other Aggrieved Employees to take rest breaks as required by law, including but not limited to Labor Code §226.7, giving rise to penalties under Labor Code §§558 and 2699, in addition to 8 CCR §11140, Sec. 18.

At all relevant times, the Innovative Produce Employers failed to pay Aggrieved Employees all pay due to them, whether at regularly applicable intervals required by law (including, but not limited to, Labor Code §§204, 204, and/or 204b) or at the time of discharge and/or quitting in violation of Labor Code §§201-203. This failure to pay resulted from, among other things, the Innovative Produce Employers' unlawful deduction of pay associated with meal periods that Aggrieved Employees did not take. On some occasions, the wages that Innovative Produce Employers failed to pay were not in dispute yet they failed to pay in violation of Labor Code §206, giving rise to penalties under Labor Code §2699. The Innovative Produce Employers failure to pay encompassed minimum wage and overtime violations, which violated Labor Code 510 and 8 CCR §11140, Secs. 3-4, giving rise to penalties under Labor Code §§558 and 1197.1.

In some situations, Innovative Produce Employers failed to abide by maximum hours of work and standard conditions of labor fixed by the applicable IWC Wage Order, in violation of Labor Code §1198, giving rise to penalties under Labor Code §2699. On some occasions, Aggrieved Employees worked split shifts, or reported to work and were sent home without being furnished half their scheduled shift, yet the Innovative Produce Employers did not pay split-shift premiums or reporting time pay, in violation of 8 CCR §11140, Secs. 4-5, giving rise to penalties under 8 CCR §11140, Sec. 18.

At all relevant times, the Innovative Produce Employers failed to issue legally compliant wage statements, as the wage statements failed to include information that includes, but is not limited to: gross wages earned, total hours worked, the number of piece-rate units earned and any applicable piece rate when employees were paid on a piece-rate basis, all deductions, net wages earned, the inclusive dates for the period for which the employee is paid, the name of the employee and either the last four of the employee's social security number or another employee identification number, the name and address of the employer, and all applicable hourly rates in effect during the pay period. This conduct violated Labor Code §226, giving rise to penalties under Labor Code §226.3. In addition, the Innovative Produce Employers failed to keep accurate records of similar information that the law, including but not limited to Labor Code §1174 and

8 CCR §11140, Sec. 7, required them to keep. This conduct violated said provisions, giving rise to penalties under Labor Code §1174.5 and 8 CCR §11140, Sec. 18. In some circumstances, the Innovative Produce Employers paid a piece-rate, yet failed to pay non-productive time and/or rest and recovery time as required by law, and failed to itemize either appropriately on Aggrieved Employees' wage statements. This conduct violated Labor Code §226.2, giving rise to penalties under Labor Code §§226.2 and/or 2699.

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

(a) The Innovative Produce Employers failed to provide Reyes Villagra and all of the other Aggrieved Employees all meal periods in compliance with California law;

(b) The Innovative Produce Employers failed to authorize and permit Reyes Villagra and all of the other Aggrieved Employees to take rest breaks and recovery periods in compliance with California law;

(c) The Innovative Produce Employers failed to compensate Reyes Villagra and all of the other Aggrieved Employees at one hour's pay for each day in which the Innovative Produce Employers failed to provide them with one or more meal periods as required by law; and

(d) The Innovative Produce Employers failed to compensate Reyes Villagra and all of the other Aggrieved Employees at one hour's pay for each day in which the Innovative Produce Employers failed to authorize and permit them to take one or more rest and/or recovery breaks as required by law;

(e) The Innovative Produce Employers unlawfully deducted wages from Reyes Villagra and all of the other Aggrieved Employees in violation of California law;

(f) The Innovative Produce Employers failed to pay Reyes Villagra and all of the other Aggrieved Employees all pay due to them, whether at regularly applicable intervals required by law (including, but not limited to, Labor Code §§204 and 204b) or at the time of discharge and/or quitting in

violation of Labor Code §§201-202, which failure included pay not in dispute, in violation of Labor Code §206. Such failure to pay encompassed mnimum wage and overtime violations, in violation of Labor Code §510 and 8 CCCR §11140, Secs. 3-4.

(g) The Innovative Produce Employers failed, with respect to Reyes Villagra and all of the other Aggrieved Employees, to abide by maximum hours of work and standard conditions of labor fixed by the applicable IWC Wage Order, in violation of Labor Code §1198.

(h) The Innovative Produce Employers failed to pay Reyes Villagra and all of the other Aggrieved Employees split shift differentials and/or reporting time pay when due to them, in violation of 8 CCR §11140, Secs. 4-5.

(i) The Innovative Produce Employers failed to issue to Reyes Villagra and to all other Aggrieved Employees legally compliant wage statements, in violation of Labor Code §226. Correspondingly, they failed to keep accurate records relating to Reyes Villagra's and all other Aggrieved Employees' employment, in violation of Labor Code §1174 and 8 CCR §11140, Sec. 7.

(j) The Innovative Produce Employers paid Reyes Villagra and other Aggrieved Employees a piece-rate, yet failed to accurately pay non-productive time and/or rest and recovery time as required by law, in violation of §226.2, and further failed to list such information accurately in employees' wage statements.

Accordingly, Reyes Villagra now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Innovative Produce Employers' alleged violations of the Labor Code and the Wage Order.

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

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

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

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

In relevant part, Labor Code section 512 states:

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

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

> (A) An employer may not employ an employee for a work period of more than five (5) hours without providing the employee with 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 employer and employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to.

> (A) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the —7 employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
>
> (See California Labor Code, Section 512)

In addition, Labor Code section 226.7 states:

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

At all relevant times, the Innovative Produce Employers failed to provide Reyes Villagra and all of the other Aggrieved Employees with all timely meal periods. The Innovative Produce Employers denied Reyes Villagra and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. Furthermore, the Innovative Produce Employers failed to pay premium wages for days on which they failed to provide Reyes Villagra and all of the other Aggrieved Employees with timely meal periods. Accordingly, Reyes Villagra now seeks civil penalties for these Labor Code violations that the Innovative Produce Employers have committed against him and all of the other Aggrieved Employees as follows:

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

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

3. $100 for each aggrieved employee for each initial violation of Labor Code section 1198, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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

Section 2(G) of the Wage Order states,

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

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

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

> Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3½) hours. Authorized rest period time shall be counted, as hours worked for which there shall be no deduction from wages.

In addition, Labor Code section 226.7 states:

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

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

(d) A rest or recovery period mandated pursuant to a state law, including, but not limited to, an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, shall be counted as hours worked, for which there shall be no deduction from wages. This subdivision is declaratory of existing law.

The Innovative Produce Employers failed to authorize and permit Reyes Villagra and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Innovative Produce Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Moreover, the Innovative Produce Employers failed to pay Reyes Villagra and all of the other Aggrieved Employees premium wages on workdays the Innovative Produce Employers failed to provide Reyes Villagra and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Reyes Villagra now seeks civil penalties for these Labor Code violations that the Innovative Produce Employers have committed against him and all of the other Aggrieved Employees as follows:

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

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

Conclusion

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

Sincerely,

David Spivak, Esq.
David@spivaklaw.com
Enclosure as stated
cc: Mr. Genaro Reyes Villagra
Mr. Louis M. Benowitz Esq.

Innovative Produce, Inc.
c/o Mr. Michael Joseph Conway II Esq.
Sagaser Watkins & Wieland PC
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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

April 20, 2022

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

Re: Genaro Reyes Villagra / Innovative Produce

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Genaro Reyes Villagra (hereafter "Reyes Villagra" or "Complainant") provides notice that Innovative Produce, Inc., a California corporation, and related entities (collectively "the Innovative Produce Employers" or "the Employers") violated his rights and those of all other individuals the Innovative Produce Employers have employed or otherwise contracted with in California as hourly and piece rate non-exempt employees, including but not limited to farm workers, produce pickers, harvesters, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the "Aggrieved Employees") under Labor Code sections 201, 202, 203, 204, 221, 226, 510, 1174, 1194, 1197, 1198, and related Labor Code statutes. On behalf of himself and all other Aggrieved Employees, Reyes Villagra hereby provides this notice to the Labor & Workforce Development Agency and the Innovative Produce Employers and their agents and representatives.

At all relevant times, the Innovative Produce Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Reyes Villagra and all of the other Aggrieved Employees are "employees" within the meaning of Industrial Welfare Commission Order No. 14-2001 (hereafter "the Wage Order") section 2, subdivision (E) and "Aggrieved Employees" within the meaning of Labor Code section 2699(c).

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Statement of Facts

In approximately 2016, the Innovative Produce Employers began to employ Reyes Villagra in Santa Maria in the position of hourly, non-exempt farm worker. The Innovative Produce Employers continuously employed him in that capacity until on or about August 9, 2021 when his employment ended.

At all relevant times, the Innovative Produce Employers issued wages to Reyes Villagra and all of the other Aggrieved Employees on a biweekly basis and paid them by the hour. At all relevant times, the Innovative Produce Employers classified Reyes Villagra and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Innovative Produce Employers failed to compensate Reyes Villagra and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. Reyes Villagra and the other Aggrieved Employees often worked more than 10 hours per day. However, the Innovative Produce Employers usually only credited Reyes Villagra and the other Aggrieved Employees with nine or less hours of work per day to avoid paying all regular, overtime, and minimum wages earned. Additionally, Reyes Villagra and the other Aggrieved Employees non-discretionary bonuses during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Innovative Produce Employers failed to pay Villagra and all of the other Aggrieved Employees overtime premium wages on such bonus compensation.

The Innovative Produce Employers unlawfully deducted wages belonging to Reyes Villagra and all of the other Aggrieved Employees. The Innovative Produce Employers deducted hours worked from the total daily hours worked by Reyes Villagra and the other Aggrieved Employees.

At all relevant times, the Innovative Produce Employers failed to issue to Reyes Villagra and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Innovative Produce Employers knowingly and intentionally failed to state on the wage statements they issued to Reyes Villagra and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all overtime wages earned, all doubletime wages earned, all minimum wages earned, all regular wages earned, all

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unlawfully deducted wages, all earned wages subject to discount, address of employer, and the employer's name and address. Instead of listing the legal address of the Innovative Produce Employers, the Innovative Produce Employers only listed a post office box on the wage statements they issued to Reyes Villagra and the other Aggrieved Employees.

The Innovative Produce Employers also failed to timely pay Reyes Villagra and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Innovative Produce Employers failed to maintain accurate employee records of Reyes Villagra and all of the other Aggrieved Employees. Defendant did not maintain records of the start and stop times of the work Reyes Villagra and the other Aggrieved Employees worked, instead maintaining only incomplete reports of the total hours worked per day.

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

(a) The Innovative Produce Employers failed to pay Reyes Villagra and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;

(b) The Innovative Produce Employers unlawfully deducted wages belonging to Reyes Villagra and all of the other Aggrieved Employees;

(c) The Innovative Produce Employers knowingly and intentionally failed to provide Reyes Villagra and all of the other Aggrieved Employees with accurate wage statements;

(d) The Innovative Produce Employers willfully failed to timely pay Reyes Villagra and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Innovative Produce Employers and when their employment ended; and

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(e) The Innovative Produce Employers failed to maintain accurate employment records pertaining to Reyes Villagra and all of the other Aggrieved Employees.

Accordingly, Reyes Villagra now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Innovative Produce Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in an agricultural occupation whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "employed in an agricultural occupation" to mean,

(1) The preparation, care, and treatment of farm land, pipeline, or ditches, including leveling for agricultural purposes, plowing, discing, and fertilizing the soil;

(2) The sowing and planting of any agricultural or horticultural commodity;

(3) The care of any agricultural or horticultural commodity,; as used in this subdivision, "care" includes, but is not limited to, cultivation, irrigation, weed control, thinning, heating, pruning, or tying, fumigating, spraying, and dusting;

(4) The harvesting of any agricultural or horticultural commodity, including but not limited to, picking, cutting, threshing, mowing, knocking off, field chopping, bunching, baling, balling, field packing, and placing in field containers or in the vehicle in which the commodity will be hauled, and transportation on the farm or to a place of first processing or distribution;

(5) The assembly and storage of any agricultural or horticultural commodity, including but not limited to, loading, road siding, banking, stacking, binding, and piling;

(6) The raising, feeding and management of livestock, fur bearing animals, poultry, fish, mollusks, and insects, including but not limited to herding, housing, hatching, milking, shearing, handling eggs, and extracting honey;

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(7) The harvesting of fish, as defined by Section 45 of the Fish and Game Code, for commercial sale;

(8) The conservation, improvement or maintenance of such farm and its tools and equipment.

Wage Order, § 2(D).

At all relevant times during the applicable limitations period, the Innovative Produce "Employers, Reyes Villagra, and all of the Aggrieved Employees were covered by the Wage Order because Reyes Villagra and all of the Aggrieved Employees worked for the Innovative Produce Employers as farm workers, and similar occupations. Accordingly, Reyes Villagra and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

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

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

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

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

In relevant part, Labor Code section 1194 states:

(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of

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> this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

In relevant part, Labor Code section 510 states:

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

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

> (A) The following overtime provisions are applicable to employees eighteen (18) years of age or over and to employees sixteen (16) or seventeen (17) years of age who are not required by law to attend school:
>
> (1) Such employees shall not be employed more than ten (10) hours in any one workday or more than six (6) days in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over ten (10) hours in any workday and for the first eight (8) hours on the seventh (7th) day of work and double the employee's regular rate of pay for all hours worked over eight (8) on the seventh (7th) day of work in the workweek.
>
> (2) For employers of more than 25 employees:
>
> (a) Starting January 1, 2019, an employee shall not be employed more than nine and one-half (9 1/2) hours per workday or fifty-five (55) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over nine and one-half (9 1/2) hours in any one workday or more than fifty-five (55) hours in any one workweek.

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(b) Starting January 1, 2020, an employee shall not be employed more than nine (9) hours per workday or fifty (50) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over nine (9) hours in any one workday or more than fifty (50) hours in any one workweek.

(c) Starting January 1, 2021, an employee shall not be employed more than eight and one-half (8 1/2) hours per workday or forty-five (45) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight and one-half (8 1/2) hours in any one workday or more than forty-five (45) hours in any one workweek.

(d) Starting January 1, 2022, an employee shall not be employed more than eight (8) hours per workday or work in excess of forty (40) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight (8) hours in any workday or more than forty (40) hours in any workweek and double the employee's regular rate of pay for all hours worked over twelve (12) hours in any one workday.

(3) For employers of 25 or fewer employees:

(a) Starting January 1, 2022, the overtime standards and compensation in subsection (2)(a) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.

(b) Starting January 1, 2023, the overtime standards and compensation in subsection (2)(b) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.

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(c) Starting January 1, 2024, the overtime standards and compensation in subsection (2)(c) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.

(d) Starting January 1, 2025, the overtime standards and compensation in subsection (2)(d) above, shall apply to any employee who works over the specified numbers of hours in any one workday or workweek.

…

(B) An employee may be employed on seven (7) workdays in one workweek with no overtime pay required when the total hours of employment during such workweek do not exceed 30 and the total hours of employment in any one workday thereof do not exceed six (6), subject to Labor Code Sections 510 and 550-556.

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

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

Reyes Villagra and the other Aggrieved Employees often worked more than 10 hours per day. However, the Innovative Produce Employers usually only credited Reyes Villagra and the other Aggrieved Employees with nine or less hours of work per day to avoid paying all regular, minimum, and overtime wages earned. Additionally, Reyes Villagra and the other Aggrieved Employees non-discretionary bonuses during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Innovative Produce Employers failed to pay Villagra and all of the other Aggrieved Employees overtime premium wages on such bonus compensation. Additionally, on occasions when they did pay for overtime hours worked, the Innovative Produce Employers failed to pay Villagra and all of the other

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Aggrieved Employees such overtime pay at the correct rates, instead paying for overtime hours at lower rates or the regular rates of pay.

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

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

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

2. $100 for each aggrieved employee for each initial violation of Labor Code § 1194, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));

3. $100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and $250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount

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sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and

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

Unlawful Deductions
(Lab. Code § 221)

Under Labor Code § 221, "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." The Innovative Produce Employers deducted wages from the wages earned by Reyes Villagra and all of the other Aggrieved Employees for hours worked and similar deductions in violation of Labor Code § 221. Accordingly, Reyes Villagra seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows: $100 for each aggrieved employee for each initial violation of Labor Code § 221, and $200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of Labor Code § 221, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 225.5).

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

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

1. Gross wages earned;

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

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

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

5. Net wages earned;

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

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

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

9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Similarly, section 7(C) of the Wage Order states

> Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing:
>
> (1) all deductions;
>
> (2) the inclusive dates of the period for which the employee is paid;
>
> (3) the name of the employee or the employee's social security number; and
>
> (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

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

At all relevant times during the applicable limitations period, the Innovative Produce Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Innovative Produce Employers failed to state in the wage statements they issued to Reyes Villagra and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Innovative Produce Employers knowingly and intentionally failed to state on the wage statements they issued to Reyes Villagra and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all overtime wages earned, all doubletime wages earned, all minimum wages earned, all regular wages earned, all unlawfully deducted wages, all earned wages subject to discount, address of employer, and the employer's name and address and similar information. Instead of listing the legal address of the Innovative Produce Employers, the Innovative Produce Employers only listed a post office box on the wage statements they issued to Reyes Villagra and the other Aggrieved Employees. Accordingly, Reyes Villagra seeks civil penalties for the Labor Code violations that the Innovative Produce Employers have committed against him and all of the other Aggrieved Employees as follows: $250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and $1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

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

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the

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following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Innovative Produce Employers failed to compensate Reyes Villagra and all of the other Aggrieved Employees for wages earned, including overtime wages, at the intervals stated above. As a result, the Innovative Produce Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Reyes Villagra now seeks civil penalties for the Labor Code violations that the Innovative Produce Employers have committed against him and all of the other Aggrieved Employees as follows: $100 for each aggrieved employee for each initial violation of Labor Code section 204, and $200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

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

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

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

The Innovative Produce Employers failed to pay Reyes Villagra and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Reyes Villagra, including

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overtime wages and similar forms of compensation. By failing to pay Reyes Villagra and all of the other Aggrieved Employees as set forth above at the end of employment, the Innovative Produce Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Reyes Villagra seeks civil penalties from the Innovative Produce Employers as follows:

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

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

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

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

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

> Every person employing labor in this state shall:
>
> ...
>
> (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
>
> (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate

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> paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

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

Section 7 of Wage Order states,

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

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

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

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

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

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

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

…

(E) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three (3) years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

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

The Innovative Produce Employers failed to compensate Reyes Villagra and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all overtime wages earned, all doubletime wages earned, all minimum wages earned, all regular wages earned, all unlawfully deducted wages, all earned wages subject to discount, address of employer, and the employer's name and address. As a result, the Innovative Produce Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Reyes Villagra and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Reyes Villagra seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. $500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and

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

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Genaro Reyes Villagra will seek

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both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,

David Spivak

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cc: Mr. Genaro Reyes Villagra

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EXHIBIT 4

ELECTRONICALLY FILED
Superior Court of California
County of Santa Barbara
Darrel E. Parker, Executive Officer
7/18/2022 10:45 AM
By: Leili Hejazi, Deputy

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Attorneys for Plaintiff,
GENARO REYES VILLAGRA, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA
(*UNLIMITED JURISDICTION*)

GENARO REYES VILLAGRA, on behalf of himself and all others similarly situated, and the general public,

Plaintiff,

vs.

INNOVATIVE PRODUCE, INC., a California corporation; and DOES 1–50, inclusive,

Defendants.

Case No. 22CV02744

CLASS ACTION

COMPLAINT FOR:

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

JURY TRIAL DEMANDED

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Plaintiff, Genaro Reyes Villagra (hereafter "Plaintiff" or "Reyes Villagra"), on behalf of himself and all others similarly situated, complains and alleges as follows:

I. INTRODUCTION

1. Plaintiff brings this class action for alleged violations of the California Labor Code, Industrial Welfare Commission Order No. 14-2001 (hereafter "the Wage Order"), and the California Business and Professions Code against Defendants Innovative Produce, Inc., a California corporation, and Does 1 through 50, inclusive (collectively "Defendants").

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

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

(B) Issue only accurate and complete itemized wage statements;

(C) Timely pay wages upon termination of employment;

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

II. THE PARTIES

3. Plaintiff Genaro Reyes Villagra is a resident of California.

4. Defendant Innovative Produce, Inc. is a corporation organized and existing under the laws of California and also a citizen of California based on Plaintiff's information and belief.

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

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

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approval and ratification of each of the other Defendants.

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

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

III. CLASS ALLEGATIONS

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

10. **Class Definition:** The Class is defined as follows: All persons Defendants employed in California as hourly, non-exempt employees, including but not limited to farm workers, produce pickers, harvesters,, individuals performing work comparable to the aforementioned, compensated comparably to the aforementioned, individuals in similar positions, at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is entered in this action ("Class" or "Class Members").

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

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

13. **Commonality and Predominance:** Common questions of law and fact exist as to all Class Members and predominate over any questions which affect only individual Class

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Members. These questions include, but are not limited to:

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

B. Whether Defendants unlawfully deducted wages from Class Members;

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

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

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

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

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

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

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

17. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of Class Members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the

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monetary amounts due to many individual Class Members are likely to be relatively small and would thus make it difficult, if not impossible, for individual Class Members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting Class Members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

IV. STATEMENT OF FACTS

18. The Wage Order applies to "all persons employed in an agricultural occupation whether paid on a time, piece rate, commission, or other basis" Wage Order, § 1. The Wage Order defines "employed in an agricultural occupation" to mean

(1) The preparation, care, and treatment of farm land, pipeline, or ditches, including leveling for agricultural purposes, plowing, discing, and fertilizing the soil;

(2) The sowing and planting of any agricultural or horticultural commodity;

(3) The care of any agricultural or horticultural commodity,; as used in this subdivision, "care" includes, but is not limited to, cultivation, irrigation, weed control, thinning, heating, pruning, or tying, fumigating, spraying, and dusting;

(4) The harvesting of any agricultural or horticultural commodity, including but not limited to, picking, cutting, threshing, mowing, knocking off, field chopping, bunching, baling, balling, field packing, and placing in field containers or in the vehicle in which the commodity will be hauled, and transportation on the farm or to a place of first processing or distribution;

(5) The assembly and storage of any agricultural or horticultural commodity, including but not limited to, loading, road siding, banking, stacking, binding, and piling;

(6) The raising, feeding and management of livestock, fur bearing animals, poultry, fish, mollusks, and insects, including but not limited to herding, housing, hatching, milking, shearing, handling eggs, and extracting honey;

(7) The harvesting of fish, as defined by Section 45 of the Fish and Game Code, for commercial sale;

(8) The conservation, improvement or maintenance of such farm and its tools and equipment.

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Wage Order, § 2(D). At all relevant times during the applicable limitations period, the Innovative Produce "Employers, Reyes Villagra, and all of the Class Members were covered by the Wage Order because the Defendants operated, and Reyes Villagra, and all of the Class Members worked for, one or more establishments operated as agriculture businesses. Accordingly, Reyes Villagra and all of the other Class Members are entitled to the protections the Wage Order provides.

19. In approximately 2016, the Defendants began to employ Reyes Villagra in Santa Maria in the position of hourly, non-exempt farm worker. The Defendants continuously employed him in that capacity until on or about August 9, 2021 when his employment ended.

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

21. At all relevant times, the Defendants willfully misclassified Reyes Villagra and all of the other Class Members as independent contractors. At all relevant times with regard to Reyes Villagra and all of the other Class Members, the Defendants . At all relevant times, Reyes Villagra and all of the other Class Members were employees of the Defendants. The Defendants engaged, suffered, and permitted them to work. The Defendants knew or should have known their actions of misclassifying Reyes Villagra and all of the other Class Members as independent contractors violated California law.

22. knowingly advised the Defendants to misclassify Reyes Villagra and all of the other Class Members as independent contractors.

23. At all relevant times, the Defendants failed to compensate Reyes Villagra and all of the other Class Members for all hours worked at the applicable minimum or regular rates of pay. Reyes Villagra and the other Class Members usually worked from 6:00 a.m. to 5:30 p.m. Monday through Friday. However, the Defendants usually only credited Reyes Villagra and the other Class Members with nine hours of work per day to avoid paying all regular and minimum wages earned.

24. At all relevant times, the Defendants failed to compensate Reyes Villagra and all of the other Class Members at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. Reyes Villagra and the other Class Members usually worked from 6:00 a.m. to 5:30 p.m. Monday through Friday.

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However, the Defendants usually only credited Reyes Villagra and the other Class Members with nine hours of work per day to avoid paying all overtime wages earned. Additionally, Reyes Villagra and the other Class Members non-discretionary bonuses during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Defendants failed to pay Villagra and all of the other Class Members overtime premium wages on such bonus compensation.

25. At all relevant times, the Defendants failed to compensate Reyes Villagra and all of the other Class Members at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek.

26. At all relevant times, the Defendants failed to provide Reyes Villagra and all of the other Class Members with all timely 30-minute, off-duty meal periods. The Defendants also failed to pay premium wages for days on which it failed to provide Reyes Villagra and all of the other Class Members with meal periods as required by law.

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

28. At all relevant times, the Defendants unlawfully deducted wages belonging to Reyes Villagra and all of the other Class Members. The Defendants deducted hours worked from the total daily hours worked by Reyes Villagra and the other Class Members.

29. At all relevant times, the Defendants failed to issue to Reyes Villagra and all of the other Class Members complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on the wage statements they issued to Reyes Villagra and all of the other Class Members the unpaid wages discussed above. The wage statements fail to state all overtime wages earned, all doubletime wages earned, all minimum wages earned, all regular wages earned, all unlawfully deducted wages, all earned wages subject to discount, address of employer, the employer's name and address, and related information. Instead of listing the legal address of the Defendants, the Defendants only listed a post office box on the wage statements they issued to Reyes Villagra and the other Class Members.

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30. At all relevant times, the Defendants also failed to timely pay Reyes Villagra and all of the other Class Members all earned wages as described above during and at the conclusion of employment.

31. At all relevant times, the Defendants failed to maintain accurate employee records of Reyes Villagra and all of the other Class Members. Defendants did not maintain records of the start and stop times of the work Reyes Villagra and the other Class Members worked, instead maintaining only incomplete reports of the total hours worked per day.

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

A. Not paid all wages earned, including, but not limited to, minimum, regular, overtime, and doubletime wages for work performed;

B. Not provided with accurate and complete wage statements; and

C. Not timely paid all earned and unpaid wages at the time their employment ended.

FIRST CAUSE OF ACTION

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

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

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

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

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

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

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

36. Section 3 of the Wage Order states:

> (A) The following overtime provisions are applicable to employees eighteen (18) years of age or over and to employees sixteen (16) or seventeen (17) years of age who are not required by law to attend school:

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(1) Such employees shall not be employed more than ten (10) hours in any one workday or more than six (6) days in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over ten (10) hours in any workday and for the first eight (8) hours on the seventh (7th) day of work and double the employee's regular rate of pay for all hours worked over eight (8) on the seventh (7th) day of work in the workweek.

(2) For employers of more than 25 employees:

(a) Starting January 1, 2019, an employee shall not be employed more than nine and one-half (9 1/2) hours per workday or fifty-five (55) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over nine and one-half (9 1/2) hours in any one workday or more than fifty-five (55) hours in any one workweek.

(b) Starting January 1, 2020, an employee shall not be employed more than nine (9) hours per workday or fifty (50) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over nine (9) hours in any one workday or more than fifty (50) hours in any one workweek.

(c) Starting January 1, 2021, an employee shall not be employed more than eight and one-half (8 1/2) hours per workday or forty-five (45) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight and one-half (8 1/2) hours in any one workday or more than forty-five (45) hours in any one workweek.

(d) Starting January 1, 2022, an employee shall not be employed more than eight (8) hours per workday or work in excess of forty (40) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight (8) hours in any workday or more than forty (40) hours in any workweek and double the employee's regular rate of pay for all hours worked over twelve (12) hours in any one workday.

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(3) For employers of 25 or fewer employees:

(a) Starting January 1, 2022, the overtime standards and compensation in subsection (2)(a) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.

(b) Starting January 1, 2023, the overtime standards and compensation in subsection (2)(b) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.

(c) Starting January 1, 2024, the overtime standards and compensation in subsection (2)(c) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.

(d) Starting January 1, 2025, the overtime standards and compensation in subsection (2)(d) above, shall apply to any employee who works over the specified numbers of hours in any one workday or workweek.

…

(B) An employee may be employed on seven (7) workdays in one workweek with no overtime pay required when the total hours of employment during such workweek do not exceed 30 and the total hours of employment in any one workday thereof do not exceed six (6), subject to Labor Code Sections 510 and 550-556.

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

38. Labor Code section 510 states:

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

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to an employee for any hour of overtime work.

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

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

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

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

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

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

B. UNLAWFUL WAGE DEDUCTIONS

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

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

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SECOND CAUSE OF ACTION

FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS

Lab. Code § 226

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

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

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

1. Gross wages earned;

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

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

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

5. Net wages earned;

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

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

8. The name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer; and

9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Lab.Code § 266(a).

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

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

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

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

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

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

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

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

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earned, all regular wages earned, all unlawfully deducted wages, all earned wages subject to discount, address of employer, and the employer's name and address. Instead of listing the legal address of the Defendants, the Defendants only listed a post office box on the wage statements they issued to Reyes Villagra and the other Class Members.

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

53. Similarly, section 7(C) of the Wage Order states:

> Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing:
>
> (1) all deductions;
>
> (2) the inclusive dates of the period for which the employee is paid;
>
> (3) the name of the employee or the employee's social security number; and
>
> (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.
>
> This information shall be furnished either separately or as a detachable part of the check, draft, or voucher paying the employee's wages.

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

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THIRD CAUSE OF ACTION

WILLFUL FAILURE TO TIMELY PAY FINAL WAGES

(Lab. Code §§ 201, 202, and 203)

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

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

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

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

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

59. The Defendants failed to pay Reyes Villagra and all of the other Class Members whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Reyes Villagra, including overtime wages.

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

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

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

A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE LABOR CODE

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

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

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

64. At all relevant times, was an employer of Reyes Villagra and all of the other Class Members, and/or "owner," "managing agent," and/or "officer" of the Defendants and the other employers identified above. directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Class Members, and caused the violations to the Labor Code and the Wage Order described above. On behalf of himself and all of the other Class Members, Reyes Villagra seeks an award of unpaid wages, interest, restitution, statutory penalties, liquidated damages, attorneys' fees, costs, and related relief against that is the same as the award of against the other Defendants on the same grounds for which Plaintiff seeks against the Defendants.

FOURTH CAUSE OF ACTION

UNFAIR COMPETITION

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

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

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

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

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

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68. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class Members were deprived of regular wages, minimum wages, overtime wages, doubletime wages, and comparable money and property.

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

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

V. PRAYER FOR RELIEF

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

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

B. An order that Plaintiff be appointed class representative;

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

D. Unpaid wages, including minimum, regular, overtime, double-time, split shift, vacation, missed meal period, missed rest period, nonproductive time, rest and recovery time, and reporting time wages;

E. Liquidated damages;

F. Statutory penalties, including waiting time penalties;

G. Restitution;

H. Declaratory relief;

I. Actual damages;

J. Pre-judgment interest;

K. Costs of suit;

L. Reasonable attorneys' fees; and

M. Such other relief as the Court deems just and proper.

/ / /

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VI. DEMAND FOR JURY TRIAL

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: July 17, 2022

By: _____

DAVID G. SPIVAK
CHRISTINA J. PREJEAN, Attorneys for Plaintiff, GENARO REYES VILLAGRA, and all others similarly situated

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EXHIBIT 5

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Attorneys for Plaintiff,
GENARO REYES VILLAGRA, and all others similarly situated

ELECTRONICALLY FILED
Superior Court of California
County of Santa Barbara
Darrel E. Parker, Executive Officer
7/18/2022 10:36 AM
By: Terri Chavez, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA
(*UNLIMITED JURISDICTION*)

GENARO REYES VILLAGRA, as an "aggrieved employee" on behalf of himself and other similarly situated "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004,

Plaintiff,

vs.

INNOVATIVE PRODUCE, INC., a California corporation; and DOES 1–50, inclusive,

Defendants.

Case No. 22CV02747

COMPLAINT FOR VIOLATIONS OF THE LABOR CODE AND CIVIL PENALTIES UNDER THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004, LABOR CODE §§ 2698, ET SEQ.

JURY TRIAL DEMANDED

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Plaintiff, Genaro Reyes Villagra (hereafter "Plaintiff" or "Reyes Villagra"), on behalf of himself, the State of California, and the other Aggrieved Employees, complains and alleges as follows:

I. INTRODUCTION

1. Plaintiff brings this representative action based on alleged violations of the California Labor Code and Industrial Welfare Commission Order No. 14-2001 (hereafter "the Wage Order"), against Defendants Innovative Produce, Inc., a California corporation, and DOES 1-50, inclusive (collectively "Defendants").

2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to him, the State of California, and the Aggrieved Employees (defined below), for civil penalties and other related relief. These claims are based on Defendants' failures to:

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

(B) Only deduct wages lawfully;

(C) Issue only accurate and complete itemized wage statements;

(D) Timely pay wages during employment;

(E) Timely pay wages upon termination of employment; and

(F) Maintain accurate employment records.

Accordingly, Plaintiff now seeks to recover civil penalties and related relief through this representative action.

II. THE PARTIES

3. Plaintiff Genaro Reyes Villagra is resident of California.

4. Defendant Innovative Produce, Inc. is a corporation organized and existing under the laws of California and also a citizen of California based on Plaintiff's information and belief.

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

6. The "Aggrieved Employees" are all individuals the Defendants have employed or otherwise contracted with in California as hourly, non-exempt employees, including but not limited to farm workers, produce pickers, harvesters, individuals performing work comparable to the aforementioned, and individuals in similar positions during the period beginning one year before the Plaintiff's notice of April 20, 2022 to the California Labor and Workforce Development Agency and ending on the date judgment is entered.

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

8. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack of a practice which resulted in Defendants not paying Plaintiff and the other Aggrieved Employees in accordance with applicable California labor laws as alleged herein.

9. Plaintiff is informed and believes and thereon alleges that each and every one of the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants, each acting as agents and/or employees, and/or under

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the direction and control of each of the other defendants, and that said acts and failures to act were within the course and scope of said agency, employment, and/or direction and control.

III. FACTUAL ALLEGATIONS

10. IWC Wage Order 14-2001 ("the Wage Order") applies to "all persons employed in an agricultural occupation whether paid on a time, piece rate, commission, or other basis" Wage Order, § 1. The Wage Order defines "employed in an agricultural occupation" to mean

(1) The preparation, care, and treatment of farm land, pipeline, or ditches, including leveling for agricultural purposes, plowing, discing, and fertilizing the soil;

(2) The sowing and planting of any agricultural or horticultural commodity;

(3) The care of any agricultural or horticultural commodity,; as used in this subdivision, "care" includes, but is not limited to, cultivation, irrigation, weed control, thinning, heating, pruning, or tying, fumigating, spraying, and dusting;

(4) The harvesting of any agricultural or horticultural commodity, including but not limited to, picking, cutting, threshing, mowing, knocking off, field chopping, bunching, baling, balling, field packing, and placing in field containers or in the vehicle in which the commodity will be hauled, and transportation on the farm or to a place of first processing or distribution;

(5) The assembly and storage of any agricultural or horticultural commodity, including but not limited to, loading, road siding, banking, stacking, binding, and piling;

(6) The raising, feeding and management of livestock, fur bearing animals, poultry, fish, mollusks, and insects, including but not limited to herding, housing, hatching, milking, shearing,

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handling eggs, and extracting honey;

(7) The harvesting of fish, as defined by Section 45 of the Fish and Game Code, for commercial sale;

(8) The conservation, improvement or maintenance of such farm and its tools and equipment.

Wage Order, § 2(D). At all relevant times during the applicable limitations period, the Innovative Produce "Employers, Reyes Villagra, and all of the Aggrieved Employees were covered by the Wage Order because the Innovative Produce Employers operated, and Reyes Villagra, and all of the Aggrieved Employees worked for, one or more establishments operated as agricultural businesses. Accordingly, Reyes Villagra and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

11. On approximately 2016, the Defendants began to employ Reyes Villagra in Santa Maria in the position of hourly, non-exempt farm worker. The Defendants continuously employed him in that capacity until on or about August 9, 2021 when his employment ended.

12. At all relevant times, the Defendants issued wages to Reyes Villagra and all of the other Aggrieved Employees on a basis and paid them by the hour. At all relevant times, the Defendants classified Reyes Villagra and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

13. At all relevant times, the Defendants failed to compensate Reyes Villagra and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. Reyes Villagra and the other Aggrieved Employees usually worked from 6:00 a.m. to 5:30 p.m. Monday through Friday. However, the Innovative Produce Employers usually only credited Reyes Villagra

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and the other Aggrieved Employees with nine hours of work per day to avoid paying all regular and minimum wages earned.

14. At all relevant times, the Defendants failed to compensate Reyes Villagra and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. Reyes Villagra and the other Aggrieved Employees usually worked from 6:00 a.m. to 5:30 p.m. Monday through Friday. However, the Innovative Produce Employers usually only credited Reyes Villagra and the other Aggrieved Employees with nine hours of work per day to avoid paying all overtime wages earned. Additionally, Reyes Villagra and the other Aggrieved Employees non-discretionary bonuses during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Innovative Produce Employers failed to pay Villagra and all of the other Aggrieved Employees overtime premium wages on such bonus compensation.

15. At all relevant times, the Defendants failed to compensate Reyes Villagra and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek.

16. At all relevant times, the Defendants failed to provide Reyes Villagra and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Defendants also failed to pay premium wages for days on which it failed to provide Reyes Villagra and all of the other Aggrieved Employees with meal periods as required by law.

17. At all relevant times, the Defendants failed to authorize and permit Reyes Villagra and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Defendants also failed to pay premium wages for days on which it failed to

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authorize and permit Reyes Villagra and all of the other Aggrieved Employees to take rest breaks as required by law.

18. At all relevant times, the Defendants unlawfully deducted wages belonging to Reyes Villagra and all of the other Aggrieved Employees. The Innovative Produce Employers deducted hours worked from the total daily hours worked by Reyes Villagra and the other Aggrieved Employees.

19. At all relevant times, the Defendants failed to issue to Reyes Villagra and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on the wage statements they issued to Reyes Villagra and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all overtime wages earned, all doubletime wages earned, all minimum wages earned, all regular wages earned, all unlawfully deducted wages, all earned wages subject to discount, address of employer, the employer's name and address, and related information. Instead of listing the legal address of the Innovative Produce Employers, the Innovative Produce Employers only listed a post office box on the wage statements they issued to Reyes Villagra and the other Aggrieved Employees.

20. At all relevant times, the Defendants also failed to timely pay Reyes Villagra and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

21. At all relevant times, the Defendants failed to maintain accurate employee records of Reyes Villagra and all of the other Aggrieved Employees. Defendant did not maintain records of the start and stop times of the work Reyes Villagra and the other Aggrieved Employees worked, instead maintaining only incomplete reports of the total hours worked per day.

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22. For the reasons stated herein, Plaintiff alleges that as a result of Defendants' unlawful practice and policies, Plaintiff and the Aggrieved Employees were:

A. Not paid all wages earned, including, but not limited to, minimum, regular, overtime, and doubletime wages for work performed while clocked out;

B. Not provided with all off duty meal periods;

C. Not authorized and permitted to take all rest break periods;

D. Not paid one hour's pay for each workday in which Defendants failed to authorize and permit them to take one or more timely rest periods;

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

F. Not indemnified for all necessary business expenditures incurred during the discharge of their duties;

G. Not provided with accurate and complete wage statements; and

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

IV. FIRST (AND ONLY) CAUSE OF ACTION

CIVIL PENALTIES

(Lab. Code §§ 2698, *et seq.*)

(By Plaintiff, on behalf of himself and the other Aggrieved Employees, against all Defendants)

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

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

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

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

26. Section 3 of the Wage Order states:

> (A) The following overtime provisions are applicable to employees eighteen (18) years of age or over and to employees sixteen (16) or seventeen (17) years of age who are not required by law to attend school:
>
> (1) Such employees shall not be employed more than ten (10) hours in any one workday or more than six (6) days in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over ten (10) hours in any workday and for the first eight (8) hours on the seventh (7th) day of work and double the employee's regular rate of pay for all hours worked over eight (8) on the seventh (7th) day of work in the workweek.
>
> (2) For employers of more than 25 employees:
>
> (a) Starting January 1, 2019, an employee shall not be employed more than nine and one-half (9 1/2) hours per workday or fifty-five (55) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over nine and one-half (9 1/2) hours in any one workday or more than fifty-five (55) hours in any one workweek.
>
> (b) Starting January 1, 2020, an employee shall not be employed more than nine (9) hours per workday or

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fifty (50) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over nine (9) hours in any one workday or more than fifty (50) hours in any one workweek.

(c) Starting January 1, 2021, an employee shall not be employed more than eight and one-half (8 1/2) hours per workday or forty-five (45) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight and one-half (8 1/2) hours in any one workday or more than forty-five (45) hours in any one workweek.

(d) Starting January 1, 2022, an employee shall not be employed more than eight (8) hours per workday or work in excess of forty (40) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight (8) hours in any workday or more than forty (40) hours in any workweek and double the employee's regular rate of pay for all hours worked over twelve (12) hours in any one workday.

(3) For employers of 25 or fewer employees:

(a) Starting January 1, 2022, the overtime standards and compensation in subsection (2)(a) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.

(b) Starting January 1, 2023, the overtime standards and compensation in subsection (2)(b) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.

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(c) Starting January 1, 2024, the overtime standards and compensation in subsection (2)(c) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.

(d) Starting January 1, 2025, the overtime standards and compensation in subsection (2)(d) above, shall apply to any employee who works over the specified numbers of hours in any one workday or workweek.

…

(B) An employee may be employed on seven (7) workdays in one workweek with no overtime pay required when the total hours of employment during such workweek do not exceed 30 and the total hours of employment in any one workday thereof do not exceed six (6), subject to Labor Code Sections 510 and 550-556.

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

28. Labor Code section 510 states:

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

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order to calculate the amount to be paid to an employee for any hour of overtime work.

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

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

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

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

33. At all relevant times during the applicable limitations period, Defendants failed to compensate Plaintiff and the Aggrieved Employees for all hours worked, including, but not limited to overtime wages for all overtime hours they worked at the correct rates of pay.

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

B. UNLAWFUL DEDUCTIONS

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

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employer to said employee." The Defendants deducted wages from the wages earned by Reyes Villagra and all of the other Aggrieved Employees for in violation of Labor Code § 221. Accordingly, Reyes Villagra seeks an award of civil penalties against the Defendants on behalf of himself and all of the other Aggrieved Employees as follows: $100 for each aggrieved employee for each initial violation of Labor Code § 221, and $200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of Labor Code § 221, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 225.5).

C. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE STATEMENTS

36. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved Employees were entitled to receive, bi-weekly or at the time of each payment of wages, an accurate itemized statement showing:

1. Gross wages earned;

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

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

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

5. Net wages earned;

6. The inclusive dates of the period for which the employee

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is paid;

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

8. The name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer; and

9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Lab.Code § 266(a).

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

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

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

C. The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682 of the California

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Labor Code, the name and address of the legal entity that secured the services of the employer during the pay period; D. The name of the employee and only the last four digits of his or his social security number or an employee identification number other than a social security number; and

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

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

39. As alleged herein, at all relevant times during the applicable limitations period, Defendants violated California Labor Code section 226 because they did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code section 226. Defendants failed to state in the wage statements they issued to Plaintiff and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above).

40. Defendants' failure to provide Plaintiff and the other Aggrieved Employees with accurate wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the other Aggrieved Employees with accurate wage statements but intentionally provided wage statements that Defendants knew were not accurate.

41. Similarly, section 7(C) of the Wage Order states

> Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing:

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(1) all deductions;

(2) the inclusive dates of the period for which the employee is paid;

(3) the name of the employee or the employee's social security number; and

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

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

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

D. UNTIMELY WAGES DURING EMPLOYMENT

43. Labor Code § 204 states:

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

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

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

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

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly,

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> biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

44. Defendants failed to compensate Plaintiff and the Aggrieved Employees for all hours worked at the correct rates of pay, including overtime. Defendants failed to provide Plaintiff and the Aggrieved Employees with all meal and rest periods in compliance with California laws. Defendants also failed to provide Plaintiff and the Aggrieved Employees with all premium wages on workdays they failed to provide them with one or more meal or rest periods in compliance with California laws. As a result, Defendants failed to timely pay all earned minimum, overtime, and premium wages due during employment within the time periods set by California Labor Code section 204.

E. UNTIMELY FINAL WAGES

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

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

47. By failing to pay earned minimum and premium wages to Plaintiff and the Aggrieved Employees, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

48. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff and the Aggrieved Employees all of their earned and unpaid wages (described above) have been willful in that, at all relevant times, Defendants have

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deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order, even though at all relevant times, they have had the ability to comply with those legal requirements.

F. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS

49. Labor Code § 1174 states:

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

50. Labor Code § 1174.5 states:

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

51. Section 7 of the Wage Order states:

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

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

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

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

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

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

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

…

(E) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three (3) years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

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

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53. On information and belief, Defendants have willfully failed to maintain the records required by § 1174 and Wage Order, including, but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Plaintiff and the Aggrieved Employees.

54. Accordingly, Reyes Villagra seeks an award of civil penalties against the Defendants on behalf of himself and all of the other Aggrieved Employees as follows: (1) $500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and (2) $100 for each aggrieved employee for each initial violation of Labor Code section 1198, and $200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

G. CIVIL PENALTIES SOUGHT

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

56. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 221, 226, 510, 1174, 1194, 1197, 1198, and related Labor Code statutes.

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

58. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved Employees are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 221, 226, 510, 1174, 1194, 1197, 1198, and related Labor Code statutes during the applicable

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limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars ($100.00) for each aggrieved employee for each initial violation and two hundred dollars ($200.00) for each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 221, one hundred dollars ($100.00) for each aggrieved employee for each initial violation and two hundred dollars ($200.00) for each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 225.5).

C. For violations of California Labor Code § 226, two hundred fifty dollars ($250.00) per employee for initial violation and one thousand dollars ($1,000.00) per employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

D. For violations of California Labor Code §§ 510 and 512, fifty dollars ($50.00) for each aggrieved employee for each initial violation for pay period for which the employee was underpaid and one hundred dollars ($100.00) for each underpaid employee for each pay period for which the employee was underpaid (penalty amounts established by California Labor Code § 558).

E. For violations of California Labor Code § 1174, five hundred dollars ($500.00) for each Aggrieved Employee for each initial violation (penalty amounts established by Labor Code § 1174.5).

F. 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

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violations were intentionally committed) (penalty amounts established by California Labor Code § 1197.1).

G. For violations of California Labor Code §§ 201, 202, 203, 1194, and 1198, one hundred dollars ($100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars ($200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

H. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS

59. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated April 20, 2022, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of Plaintiff's letter to the LWDA dated April 20, 2022 is attached hereto as Exhibit A. The LWDA has not responded to Plaintiff's letter.

60. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved Employees are entitled to an award of civil penalties, reasonable attorneys' fees, and costs in connection with their claims for civil penalties.

V. PRAYER FOR RELIEF

61. WHEREFORE, Plaintiff, on behalf of himself and the Aggrieved Employees, prays for relief and judgment against Defendants as follows:

A. Civil penalties;

B. Costs of suit;

C. Reasonable attorneys' fees; and

D. Such other relief as the Court deems just and proper.

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VI. DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all other Aggrieved Employees, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: July 17, 2022

By: _____

DAVID G. SPIVAK
CHRISTINA J. PREJEAN
Attorneys for Plaintiff,
GENARO REYES VILLAGRA,
and all others similarly situated

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EXHIBIT A

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SPIVAK LAW

Stacy Sussman <stacy@spivaklaw.com>

Thank you for your Other Response or Document Submission

1 message

DIR PAGA Unit <lwdadonotreply@dir.ca.gov> Wed, Apr 20, 2022 at 10:23 AM
To: stacy@spivaklaw.com

04/20/2022 10:22:33 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Other Response or Document Submission
If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

Doc ID: f032ea3831ee44dbaa2e50be00ce662b5776656c

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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

April 20, 2022

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

Re: Genaro Reyes Villagra / Innovative Produce

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Genaro Reyes Villagra (hereafter "Reyes Villagra" or "Complainant") provides notice that Innovative Produce, Inc., a California corporation, and related entities (collectively "the Innovative Produce Employers" or "the Employers") violated his rights and those of all other individuals the Innovative Produce Employers have employed or otherwise contracted with in California as hourly and piece rate non-exempt employees, including but not limited to farm workers, produce pickers, harvesters, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the "Aggrieved Employees") under Labor Code sections 201, 202, 203, 204, 221, 226, 510, 1174, 1194, 1197, 1198, and related Labor Code statutes. On behalf of himself and all other Aggrieved Employees, Reyes Villagra hereby provides this notice to the Labor & Workforce Development Agency and the Innovative Produce Employers and their agents and representatives.

At all relevant times, the Innovative Produce Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Reyes Villagra and all of the other Aggrieved Employees are "employees" within the meaning of Industrial Welfare Commission Order No. 14-2001 (hereafter "the Wage Order") section 2, subdivision (E) and "Aggrieved Employees" within the meaning of Labor Code section 2699(c).

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Statement of Facts

In approximately 2016, the Innovative Produce Employers began to employ Reyes Villagra in Santa Maria in the position of hourly, non-exempt farm worker. The Innovative Produce Employers continuously employed him in that capacity until on or about August 9, 2021 when his employment ended.

At all relevant times, the Innovative Produce Employers issued wages to Reyes Villagra and all of the other Aggrieved Employees on a biweekly basis and paid them by the hour. At all relevant times, the Innovative Produce Employers classified Reyes Villagra and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Innovative Produce Employers failed to compensate Reyes Villagra and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. Reyes Villagra and the other Aggrieved Employees often worked more than 10 hours per day. However, the Innovative Produce Employers usually only credited Reyes Villagra and the other Aggrieved Employees with nine or less hours of work per day to avoid paying all regular, overtime, and minimum wages earned. Additionally, Reyes Villagra and the other Aggrieved Employees non-discretionary bonuses during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Innovative Produce Employers failed to pay Villagra and all of the other Aggrieved Employees overtime premium wages on such bonus compensation.

The Innovative Produce Employers unlawfully deducted wages belonging to Reyes Villagra and all of the other Aggrieved Employees. The Innovative Produce Employers deducted hours worked from the total daily hours worked by Reyes Villagra and the other Aggrieved Employees.

At all relevant times, the Innovative Produce Employers failed to issue to Reyes Villagra and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Innovative Produce Employers knowingly and intentionally failed to state on the wage statements they issued to Reyes Villagra and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all overtime wages earned, all doubletime wages earned, all minimum wages earned, all regular wages earned, all

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unlawfully deducted wages, all earned wages subject to discount, address of employer, and the employer's name and address. Instead of listing the legal address of the Innovative Produce Employers, the Innovative Produce Employers only listed a post office box on the wage statements they issued to Reyes Villagra and the other Aggrieved Employees.

The Innovative Produce Employers also failed to timely pay Reyes Villagra and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Innovative Produce Employers failed to maintain accurate employee records of Reyes Villagra and all of the other Aggrieved Employees. Defendant did not maintain records of the start and stop times of the work Reyes Villagra and the other Aggrieved Employees worked, instead maintaining only incomplete reports of the total hours worked per day.

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

(a) The Innovative Produce Employers failed to pay Reyes Villagra and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;

(b) The Innovative Produce Employers unlawfully deducted wages belonging to Reyes Villagra and all of the other Aggrieved Employees;

(c) The Innovative Produce Employers knowingly and intentionally failed to provide Reyes Villagra and all of the other Aggrieved Employees with accurate wage statements;

(d) The Innovative Produce Employers willfully failed to timely pay Reyes Villagra and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Innovative Produce Employers and when their employment ended; and

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(e) The Innovative Produce Employers failed to maintain accurate employment records pertaining to Reyes Villagra and all of the other Aggrieved Employees.

Accordingly, Reyes Villagra now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Innovative Produce Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in an agricultural occupation whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "employed in an agricultural occupation" to mean,

(1) The preparation, care, and treatment of farm land, pipeline, or ditches, including leveling for agricultural purposes, plowing, discing, and fertilizing the soil;

(2) The sowing and planting of any agricultural or horticultural commodity;

(3) The care of any agricultural or horticultural commodity,; as used in this subdivision, "care" includes, but is not limited to, cultivation, irrigation, weed control, thinning, heating, pruning, or tying, fumigating, spraying, and dusting;

(4) The harvesting of any agricultural or horticultural commodity, including but not limited to, picking, cutting, threshing, mowing, knocking off, field chopping, bunching, baling, balling, field packing, and placing in field containers or in the vehicle in which the commodity will be hauled, and transportation on the farm or to a place of first processing or distribution;

(5) The assembly and storage of any agricultural or horticultural commodity, including but not limited to, loading, road siding, banking, stacking, binding, and piling;

(6) The raising, feeding and management of livestock, fur bearing animals, poultry, fish, mollusks, and insects, including but not limited to herding, housing, hatching, milking, shearing, handling eggs, and extracting honey;

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(7) The harvesting of fish, as defined by Section 45 of the Fish and Game Code, for commercial sale;

(8) The conservation, improvement or maintenance of such farm and its tools and equipment.

Wage Order, § 2(D).

At all relevant times during the applicable limitations period, the Innovative Produce "Employers, Reyes Villagra, and all of the Aggrieved Employees were covered by the Wage Order because Reyes Villagra and all of the Aggrieved Employees worked for the Innovative Produce Employers as farm workers, and similar occupations. Accordingly, Reyes Villagra and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

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

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

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

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

In relevant part, Labor Code section 1194 states:

(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of

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> this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

In relevant part, Labor Code section 510 states:

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

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

> (A) The following overtime provisions are applicable to employees eighteen (18) years of age or over and to employees sixteen (16) or seventeen (17) years of age who are not required by law to attend school:
>
> (1) Such employees shall not be employed more than ten (10) hours in any one workday or more than six (6) days in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over ten (10) hours in any workday and for the first eight (8) hours on the seventh (7th) day of work and double the employee's regular rate of pay for all hours worked over eight (8) on the seventh (7th) day of work in the workweek.
>
> (2) For employers of more than 25 employees:
>
> (a) Starting January 1, 2019, an employee shall not be employed more than nine and one-half (9 1/2) hours per workday or fifty-five (55) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over nine and one-half (9 1/2) hours in any one workday or more than fifty-five (55) hours in any one workweek.

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(b) Starting January 1, 2020, an employee shall not be employed more than nine (9) hours per workday or fifty (50) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over nine (9) hours in any one workday or more than fifty (50) hours in any one workweek.

(c) Starting January 1, 2021, an employee shall not be employed more than eight and one-half (8 1/2) hours per workday or forty-five (45) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight and one-half (8 1/2) hours in any one workday or more than forty-five (45) hours in any one workweek.

(d) Starting January 1, 2022, an employee shall not be employed more than eight (8) hours per workday or work in excess of forty (40) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight (8) hours in any workday or more than forty (40) hours in any workweek and double the employee's regular rate of pay for all hours worked over twelve (12) hours in any one workday.

(3) For employers of 25 or fewer employees:

(a) Starting January 1, 2022, the overtime standards and compensation in subsection (2)(a) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.

(b) Starting January 1, 2023, the overtime standards and compensation in subsection (2)(b) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.

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(c) Starting January 1, 2024, the overtime standards and compensation in subsection (2)(c) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.

(d) Starting January 1, 2025, the overtime standards and compensation in subsection (2)(d) above, shall apply to any employee who works over the specified numbers of hours in any one workday or workweek.

…

(B) An employee may be employed on seven (7) workdays in one workweek with no overtime pay required when the total hours of employment during such workweek do not exceed 30 and the total hours of employment in any one workday thereof do not exceed six (6), subject to Labor Code Sections 510 and 550-556.

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

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

Reyes Villagra and the other Aggrieved Employees often worked more than 10 hours per day. However, the Innovative Produce Employers usually only credited Reyes Villagra and the other Aggrieved Employees with nine or less hours of work per day to avoid paying all regular, minimum, and overtime wages earned. Additionally, Reyes Villagra and the other Aggrieved Employees non-discretionary bonuses during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Innovative Produce Employers failed to pay Villagra and all of the other Aggrieved Employees overtime premium wages on such bonus compensation. Additionally, on occasions when they did pay for overtime hours worked, the Innovative Produce Employers failed to pay Villagra and all of the other

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Aggrieved Employees such overtime pay at the correct rates, instead paying for overtime hours at lower rates or the regular rates of pay.

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

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

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

2. $100 for each aggrieved employee for each initial violation of Labor Code § 1194, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));

3. $100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and $250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount

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sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and

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

Unlawful Deductions
(Lab. Code § 221)

Under Labor Code § 221, "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." The Innovative Produce Employers deducted wages from the wages earned by Reyes Villagra and all of the other Aggrieved Employees for hours worked and similar deductions in violation of Labor Code § 221. Accordingly, Reyes Villagra seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows: $100 for each aggrieved employee for each initial violation of Labor Code § 221, and $200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of Labor Code § 221, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 225.5).

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

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

1. Gross wages earned;

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

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

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

5. Net wages earned;

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

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

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

9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Similarly, section 7(C) of the Wage Order states

> Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing:
>
> (1) all deductions;
>
> (2) the inclusive dates of the period for which the employee is paid;
>
> (3) the name of the employee or the employee's social security number; and
>
> (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

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

At all relevant times during the applicable limitations period, the Innovative Produce Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Innovative Produce Employers failed to state in the wage statements they issued to Reyes Villagra and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Innovative Produce Employers knowingly and intentionally failed to state on the wage statements they issued to Reyes Villagra and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all overtime wages earned, all doubletime wages earned, all minimum wages earned, all regular wages earned, all unlawfully deducted wages, all earned wages subject to discount, address of employer, and the employer's name and address and similar information. Instead of listing the legal address of the Innovative Produce Employers, the Innovative Produce Employers only listed a post office box on the wage statements they issued to Reyes Villagra and the other Aggrieved Employees. Accordingly, Reyes Villagra seeks civil penalties for the Labor Code violations that the Innovative Produce Employers have committed against him and all of the other Aggrieved Employees as follows: $250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and $1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

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

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the

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following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Innovative Produce Employers failed to compensate Reyes Villagra and all of the other Aggrieved Employees for wages earned, including overtime wages, at the intervals stated above. As a result, the Innovative Produce Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Reyes Villagra now seeks civil penalties for the Labor Code violations that the Innovative Produce Employers have committed against him and all of the other Aggrieved Employees as follows: $100 for each aggrieved employee for each initial violation of Labor Code section 204, and $200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

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

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

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

The Innovative Produce Employers failed to pay Reyes Villagra and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Reyes Villagra, including

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overtime wages and similar forms of compensation. By failing to pay Reyes Villagra and all of the other Aggrieved Employees as set forth above at the end of employment, the Innovative Produce Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Reyes Villagra seeks civil penalties from the Innovative Produce Employers as follows:

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

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

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

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

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

> Every person employing labor in this state shall:
>
> ...
>
> (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
>
> (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate

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> paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

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

Section 7 of Wage Order states,

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

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

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

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

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

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

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

…

(E) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three (3) years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

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

The Innovative Produce Employers failed to compensate Reyes Villagra and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all overtime wages earned, all doubletime wages earned, all minimum wages earned, all regular wages earned, all unlawfully deducted wages, all earned wages subject to discount, address of employer, and the employer's name and address. As a result, the Innovative Produce Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Reyes Villagra and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Reyes Villagra seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. $500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and

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

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Genaro Reyes Villagra will seek

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both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,

David Spivak

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cc: Mr. Genaro Reyes Villagra

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EXHIBIT 6

Pursuant to CRC 2.259 this document has been electronically filed by the Superior Court of California, County of Santa Barbara, on 2/16/2024 BD

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Attorneys for Plaintiff,
GENARO REYES VILLAGRA, and all others similarly situated

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA
02/21/2024
Darrel E. Parker, Executive Officer
BY Willoughby, Norma
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA
(*UNLIMITED JURISDICTION*)

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

Plaintiff,

vs.

INNOVATIVE PRODUCE, INC., a California corporation; and DOES 1–50, inclusive,

Defendants.

LEAD CASE NO. 22CV02747
[Consolidated with 22CV02744]

[PROPOSED] FIRST AMENDED CLASS ACTION

COMPLAINT FOR:

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

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6. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.; and
7. Civil Penalties (Lab. Code §§ 2698, *et seq.*).

JURY TRIAL DEMANDED

Plaintiff, Genaro Reyes Villagra (hereafter "Plaintiff" or "Reyes Villagra"), on behalf of himself and all others similarly situated, complains and alleges as follows:

I. INTRODUCTION

1. Plaintiff brings this class and representative action for alleged violations of the California Labor Code, Industrial Welfare Commission Order No. 14-2001 (hereafter "the Wage Order"), and the California Business and Professions Code against Defendants Innovative Produce, Inc., a California corporation, and Does 1 through 50, inclusive (collectively "Defendants").

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

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

(B) Provide all meal periods;

(C) Authorize and permit all rest breaks and recovery periods;

(D) Pay premium wages for unprovided or noncompliant meal periods;

(E) Pay premium wages for unprovided or noncompliant rest breaks;

(F) To keep accurate records required by law;

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

(H) Timely pay wages upon termination of employment;

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

///

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II. THE PARTIES

3. Plaintiff Genaro Reyes Villagra is a resident of California.

4. Defendant Innovative Produce, Inc. is a corporation organized and existing under the laws of California and also a citizen of California based on Plaintiff's information and belief.

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

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

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

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

III. CLASS ALLEGATIONS

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

10. **Class Definition:** The Class is defined as follows: All persons Defendants

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employed in California as hourly, non-exempt employees, including but not limited to farm workers, produce pickers, harvesters, individuals performing work comparable to the aforementioned, compensated comparably to the aforementioned, individuals in similar positions, at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is entered in this action ("Class" or "Class Members").

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

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

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

A. Whether Defendants failed to pay all wages earned to Class Members for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages, including at the intervals required by law;

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

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

D. Whether Defendants unlawfully deducted wages from Class Members;

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

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

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

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

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

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

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

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

IV. STATEMENT OF FACTS

18. The Wage Order applies to "all persons employed in an agricultural occupation whether paid on a time, piece rate, commission, or other basis" Wage Order, § 1. The Wage Order defines "employed in an agricultural occupation" to mean

> (1) The preparation, care, and treatment of farm land, pipeline, or ditches, including leveling for agricultural purposes, plowing, discing, and fertilizing the soil;
>
> (2) The sowing and planting of any agricultural or horticultural commodity;

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(3) The care of any agricultural or horticultural commodity; as used in this subdivision, "care" includes, but is not limited to, cultivation, irrigation, weed control, thinning, heating, pruning, or tying, fumigating, spraying, and dusting;

(4) The harvesting of any agricultural or horticultural commodity, including but not limited to, picking, cutting, threshing, mowing, knocking off, field chopping, bunching, baling, balling, field packing, and placing in field containers or in the vehicle in which the commodity will be hauled, and transportation on the farm or to a place of first processing or distribution;

(5) The assembly and storage of any agricultural or horticultural commodity, including but not limited to, loading, road siding, banking, stacking, binding, and piling;

(6) The raising, feeding and management of livestock, fur bearing animals, poultry, fish, mollusks, and insects, including but not limited to herding, housing, hatching, milking, shearing, handling eggs, and extracting honey;

(7) The harvesting of fish, as defined by Section 45 of the Fish and Game Code, for commercial sale;

(8) The conservation, improvement or maintenance of such farm and its tools and equipment.

Wage Order, § 2(D). At all relevant times during the applicable limitations period, the Innovative Produce "Employers, Reyes Villagra, and all of the Class Members were covered by the Wage Order because the Defendants operated, and Reyes Villagra, and all of the Class Members worked for, one or more establishments operated as agriculture businesses. Accordingly, Reyes Villagra and all of the other Class Members are entitled to the protections the Wage Order provides.

19. In approximately 2016, the Defendants began to employ Reyes Villagra in Santa Maria in the position of hourly, non-exempt farm worker. The Defendants continuously employed him in that capacity until on or about August 9, 2021 when his employment ended.

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

21. At all relevant times, the Defendants willfully misclassified Reyes Villagra and all of the other Class Members as independent contractors. At all relevant times with regard to Reyes

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Villagra and all of the other Class Members, the Defendants . At all relevant times, Reyes Villagra and all of the other Class Members were employees of the Defendants. The Defendants engaged, suffered, and permitted them to work. The Defendants knew or should have known their actions of misclassifying Reyes Villagra and all of the other Class Members as independent contractors violated California law.

22. At all relevant times, the Defendants failed to compensate Reyes Villagra and all of the other Class Members for all hours worked at the applicable minimum or regular rates of pay. Reyes Villagra and the other Class Members usually worked from 6:00 a.m. to 5:30 p.m. Monday through Friday. However, the Defendants usually only credited Reyes Villagra and the other Class Members with nine hours of work per day to avoid paying all regular and minimum wages earned.

23. At all relevant times, the Defendants failed to compensate Reyes Villagra and all of the other Class Members at the correct rates of pay for all overtime hours. Reyes Villagra and Class Members worked overtime that either altogether went unpaid, or which was paid, but at an incorrect rate. Additionally, Reyes Villagra and the other Class Members non-discretionary bonuses during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Defendants failed to pay Villagra and all of the other Class Members overtime premium wages on such bonus compensation.

24. At all relevant times, the Defendants failed to compensate Reyes Villagra and all of the other Class Members at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek.

25. At all relevant times, the Defendants failed to provide Reyes Villagra and all of the other Class Members with all timely 30-minute, off-duty meal periods. The Defendants also failed to pay premium wages for days on which it failed to provide Reyes Villagra and all of the other Class Members with meal periods as required by law.

26. At all relevant times, the Defendants failed to authorize and permit Reyes Villagra and all of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof, or recovery periods as required by law. The Defendants also failed to pay premium wages for days on which it failed to authorize and permit Reyes Villagra and all of the other Class Members to take rest breaks as required by law.

27. At all relevant times, the Defendants unlawfully deducted wages belonging to

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Reyes Villagra and all of the other Class Members. The Defendants deducted hours worked from the total daily hours worked by Reyes Villagra and the other Class Members, and engaged in other unlawful and unauthorized deductions.

28. At all relevant times, the Defendants failed to issue to Reyes Villagra and all of the other Class Members complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on the wage statements they issued to Reyes Villagra and all of the other Class Members the unpaid wages discussed above. The wage statements fail to state all overtime wages earned, all doubletime wages earned, all minimum wages earned, all regular wages earned, all unlawfully deducted wages, all earned wages subject to discount, address of employer, the employer's name and address, and related information. Instead of listing the legal address of the Defendants, the Defendants only listed a post office box on the wage statements they issued to Reyes Villagra and the other Class Members. In addition to this, Defendants failed to keep accurate records of similar information that the law, including but not limited to Labor Code §1174 and 8 CCR §11140, Sec. 7, required them to keep.

29. At all relevant times, the Defendants also failed to timely pay Reyes Villagra and all of the other Class Members all earned wages as described above during and at the conclusion of employment, or at the regularly scheduled intervals established by law.

30. At all relevant times, the Defendants failed to maintain accurate employee records of Reyes Villagra and all of the other Class Members. Defendants did not maintain records of the start and stop times of the work Reyes Villagra and the other Class Members worked, instead maintaining only incomplete reports of the total hours worked per day.

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

A. Not provided with all off duty meal periods;

B. Not authorized and permitted to take all rest break periods and recovery periods;

C. Not paid one hour's pay for each workday in which Defendants failed to authorize and permit them to take one or more timely rest periods or recovery periods;

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

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E. Not paid all wages earned, including, but not limited to, minimum, regular, overtime, and doubletime wages for work performed;

F. Suffering from unlawful deductions;

G. Suffering from Defendant's failure to keep accurate records;

H. Not provided with accurate and complete wage statements; and

I. Not timely paid all earned and unpaid wages at the time their employment ended.

FIRST CAUSE OF ACTION

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

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

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

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

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

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

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

35. Section 3 of the Wage Order states:

> (A) The following overtime provisions are applicable to employees eighteen (18) years of age or over and to employees sixteen (16) or seventeen (17) years of age who are not required by law to attend school:
>
> (1) Such employees shall not be employed more than ten (10) hours in any one workday or more than six (6) days in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over ten (10) hours in any workday and for the first eight (8) hours on the seventh (7th) day of work and double the employee's regular rate of pay for all hours worked over eight (8) on the seventh (7th) day of work in the workweek.
>
> (2) For employers of more than 25 employees:

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(a) Starting January 1, 2019, an employee shall not be employed more than nine and one-half (9 1/2) hours per workday or fifty-five (55) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over nine and one-half (9 1/2) hours in any one workday or more than fifty-five (55) hours in any one workweek.

(b) Starting January 1, 2020, an employee shall not be employed more than nine (9) hours per workday or fifty (50) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over nine (9) hours in any one workday or more than fifty (50) hours in any one workweek.

(c) Starting January 1, 2021, an employee shall not be employed more than eight and one-half (8 1/2) hours per workday or forty-five (45) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight and one-half (8 1/2) hours in any one workday or more than forty-five (45) hours in any one workweek.

(d) Starting January 1, 2022, an employee shall not be employed more than eight (8) hours per workday or work in excess of forty (40) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight (8) hours in any workday or more than forty (40) hours in any workweek and double the employee's regular rate of pay for all hours worked over twelve (12) hours in any one workday.

(3) For employers of 25 or fewer employees:

(a) Starting January 1, 2022, the overtime standards and compensation in subsection (2)(a) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.

(b) Starting January 1, 2023, the overtime standards and compensation in subsection (2)(b) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.

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(c) Starting January 1, 2024, the overtime standards and compensation in subsection (2)(c) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.

(d) Starting January 1, 2025, the overtime standards and compensation in subsection (2)(d) above, shall apply to any employee who works over the specified numbers of hours in any one workday or workweek.

…

(B) An employee may be employed on seven (7) workdays in one workweek with no overtime pay required when the total hours of employment during such workweek do not exceed 30 and the total hours of employment in any one workday thereof do not exceed six (6), subject to Labor Code Sections 510 and 550-556.

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

37. Labor Code section 510 states:

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

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

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

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

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employee under conditions that violate the Wage Order.

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

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

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

B. UNLAWFUL WAGE DEDUCTIONS

44. Under Labor Code § 221, "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." The Defendants deducted wages from the wages earned by Reyes Villagra and all of the other Class Members for in violation of Labor Code § 221.

45. 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' deduction of wages belonging to Plaintiff and the other Class Members in violation of California law.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

Lab. Code §§ 226.7 and 512

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

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

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

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

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

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

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

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

> (A) An employer may not employ an employee for a work period of more than five (5) hours without providing the employee with 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 employer and employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to.
>
> (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the —7 employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

(See California Labor Code, Section 512)

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

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

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

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

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

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

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

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owed for all meal periods not provided to them.

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

THIRD CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT REST BREAKS AND RECOVERY PERIODS

Lab. Code § 226.7

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

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

59. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7 and 1198, 8 CCR §3395, and the Wage Order.

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

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

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

> Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3½) hours. Authorized rest period time shall be counted, as hours worked for which there shall be no deduction from wages.

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

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

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and Health Standards Board, or the Division of Occupational Safety and Health.

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

63. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof. They were also entitled to take other recovery periods, in addition to their rest periods, when the law and circumstances of the day so required.

64. Defendants intentionally failed to authorize and permit Plaintiff and the Class Members to take all 10-minute rest periods free from any work duties in accordance with the Wage Order. Defendants denied Plaintiff and the Class Members recovery periods when they were entitled to them.

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

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

67. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to

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take all rest breaks required by California law.

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

69. Defendants failed to pay Plaintiff the additional wages required by California Labor Code § 226.7 for all rest breaks 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 Members with additional wages for all rest breaks not provided to them as required by California Labor Code § 226.7.

70. 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 rest breaks not provided to them.

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

FOURTH CAUSE OF ACTION

FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS

Lab. Code § 226

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

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

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

1. Gross wages earned;

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

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

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

5. Net wages earned;

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

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

8. The name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer; and

9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Lab.Code § 266(a).

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

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

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

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

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

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

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

76. As alleged herein, at all relevant times during the applicable limitations period, Defendants violated California Labor Code section 226 because they did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code section 226. Defendants failed to state in the wage statements they issued to Plaintiff and the other Class Members all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). Defendants knowingly and intentionally did not issue either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, statements to Plaintiff and the Class Members that state all overtime wages earned, all doubletime wages earned, all minimum wages earned, all regular wages earned, all unlawfully deducted wages, all earned wages subject to discount, address of employer, and the employer's name and address. Instead of listing the legal address of the Defendants, the Defendants only listed a post office box on the wage statements they issued to Reyes Villagra and the other Class Members.

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

78. Similarly, section 7(C) of the Wage Order states:

> Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing:
>
> (1) all deductions;

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(2) the inclusive dates of the period for which the employee is paid;

(3) the name of the employee or the employee's social security number; and

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

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

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

FIFTH CAUSE OF ACTION

WILLFUL FAILURE TO TIMELY PAY FINAL WAGES

(Lab. Code §§ 201, 202, and 203)

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

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

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

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

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

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84. The Defendants failed to pay Reyes Villagra and all of the other Class Members whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Reyes Villagra, including overtime wages.

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

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

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

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION

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

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

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

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

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

91. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class Members were deprived of regular wages, minimum wages, overtime wages, doubletime wages, and comparable money and property.

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

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

SEVENTH CAUSE OF ACTION

CIVIL PENALTIES

(Lab. Code §§ 2698, *et seq.*)

(By Plaintiff and the Aggrieved Employees against all Defendants)

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

95. The "Aggrieved Employees" are all persons Defendants employed in California as non-exempt hourly employees, including but not limited to caregivers, housekeepers, nurses, medication technicians, and workers employed in comparable positions, at any time during the period beginning January 2, 2019, and ending on the date that final judgment is rendered in this action (the "PAGA Period").

96. At all relevant times during the applicable limitations period, Plaintiff and the Aggrieved Employees have been non-exempt employees of Defendants and entitled to the benefits and protections of the California Labor Code and the Wage Order.

97. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved Employees were entitled to receive, semimonthly or at the time of each payment of wages, an accurate itemized statement showing, among other items, 1) gross wages earned; 2) total hours worked, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; 3) net wages earned; and 4) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

98. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer injury if the employer fails to provide a wage statement. Additionally, an employee is deemed to suffer injury if the employer fails to provide accurate and complete information as required by

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California Labor Code § 226(a) and the employee cannot "promptly and easily determine" from the wage statement alone one or more of the following:

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

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

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

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

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

100. As alleged herein, Defendants failed to provide Plaintiff and the Aggrieved Employees all wages owed, including but not limited to, all regular and overtime wages owed at the correct rates. As a result, Defendants have failed to properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked by employees, and other requirements of California Labor Code § 226. As a result, Defendants have violated California Labor Code § 226.

101. Defendants' failure to provide Plaintiff and the Aggrieved Employees with accurate wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the Aggrieved Employees with accurate wage statements but intentionally provided wage statements that Defendants knew were not accurate.

102. As a result of being provided with inaccurate wage statements by Defendants, Plaintiff and the Aggrieved Employees have suffered injury. Their legal rights to receive accurate wage statements were violated and they were misled about the amount of wages they had actually earned and were owed. In addition, the absence of accurate information on their wage statements prevented immediate challenges to Defendants' unlawful pay practices, has required discovery

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and mathematical computations to determine the amounts of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay records and/or has led to the submission of inaccurate information about wages to state and federal government agencies. Further, Plaintiff and the Aggrieved Employees were not able to ascertain from the wage statements whether Defendants complied with their obligations under California Labor Code § 226(a).

103. Labor Code § 1174 states:

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

104. Labor Code § 1174.5 states:

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

105. Section 7 of the Wage Order states,

> (a) Every employer shall keep accurate information with respect to each employee including the following:
>
> 1. Full name, home address, occupation, and social security number.

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

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

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

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

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

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

107. On information and belief, Defendants have willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Plaintiff and the Aggrieved Employees.

108. 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

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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.

109. Because of Defendants' failure to pay Plaintiff and the Aggrieved Employees regular and overtime wages for off-the-clock work and premium wages for unprovided rest and meal periods within the time periods set by California Labor Code § 204, Defendants failed to timely pay all wages due during employment to Plaintiff and the Aggrieved Employees.

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

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

112. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved Employees are entitled to recover civil penalties for each of Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198 during

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the applicable limitations period in the following amounts:

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

B. For violations of California Labor Code § 221, one hundred dollars ($100.00) for each aggrieved employee for each initial violation and two hundred dollars ($200.00) for each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 225.5).

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

D. For violations of California Labor Code §§ 510 and 512, fifty dollars ($50.00) for each Aggrieved Employee for each initial violation and one hundred dollars ($100.00) for each Aggrieved Employee for each subsequent violation (penalty amounts established by California Labor Code § 558).

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

F. 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 established by California Labor Code § 1197.1).

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

H. For all other violations stated in Plaintiff's PAGA notice or for which

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Plaintiff is entitled to recover under the law.

113. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letters dated April 20, 2022 and October 6, 2023, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of Plaintiff's letter to the LWDA dated April 20, 2022 is attached hereto as **Exhibit A**. The LWDA has not responded to Plaintiff's letter. A true and correct copy of Plaintiff's letter to the LWDA dated October 6, 2023 is attached hereto as **Exhibit B**. The LWDA has not responded to Plaintiff's letter.

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

V. PRAYER FOR RELIEF

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

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

B. An order that Plaintiff be appointed class representative;

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

D. Unpaid wages, including minimum, regular, overtime, double-time, split shift, vacation, missed meal period, missed rest period, nonproductive time, rest and recovery time, and reporting time wages;

E. Liquidated damages;

F. Statutory penalties, including waiting time penalties;

G. Civil Penalties;

H. Restitution;

I. Declaratory relief;

J. Actual damages;

K. Pre-judgment interest;

L. Costs of suit;

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M. Reasonable attorneys' fees; and

N. Such other relief as the Court deems just and proper.

VI. DEMAND FOR JURY TRIAL

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: February 9, 2024

By: David Spivak

DAVID G. SPIVAK and LAUREN R. DAVIS, Attorneys for Plaintiff, GENARO REYES VILLAGRA, and all others similarly situated

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EXHIBIT A

THE SPIVAK LAW FIRM
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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

April 20, 2022

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

Re: Genaro Reyes Villagra / Innovative Produce

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Genaro Reyes Villagra (hereafter "Reyes Villagra" or "Complainant") provides notice that Innovative Produce, Inc., a California corporation, and related entities (collectively "the Innovative Produce Employers" or "the Employers") violated his rights and those of all other individuals the Innovative Produce Employers have employed or otherwise contracted with in California as hourly and piece rate non-exempt employees, including but not limited to farm workers, produce pickers, harvesters, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the "Aggrieved Employees") under Labor Code sections 201, 202, 203, 204, 221, 226, 510, 1174, 1194, 1197, 1198, and related Labor Code statutes. On behalf of himself and all other Aggrieved Employees, Reyes Villagra hereby provides this notice to the Labor & Workforce Development Agency and the Innovative Produce Employers and their agents and representatives.

At all relevant times, the Innovative Produce Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Reyes Villagra and all of the other Aggrieved Employees are "employees" within the meaning of Industrial Welfare Commission Order No. 14-2001 (hereafter "the Wage Order") section 2, subdivision (E) and "Aggrieved Employees" within the meaning of Labor Code section 2699(c).

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Statement of Facts

In approximately 2016, the Innovative Produce Employers began to employ Reyes Villagra in Santa Maria in the position of hourly, non-exempt farm worker. The Innovative Produce Employers continuously employed him in that capacity until on or about August 9, 2021 when his employment ended.

At all relevant times, the Innovative Produce Employers issued wages to Reyes Villagra and all of the other Aggrieved Employees on a biweekly basis and paid them by the hour. At all relevant times, the Innovative Produce Employers classified Reyes Villagra and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Innovative Produce Employers failed to compensate Reyes Villagra and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. Reyes Villagra and the other Aggrieved Employees often worked more than 10 hours per day. However, the Innovative Produce Employers usually only credited Reyes Villagra and the other Aggrieved Employees with nine or less hours of work per day to avoid paying all regular, overtime, and minimum wages earned. Additionally, Reyes Villagra and the other Aggrieved Employees non-discretionary bonuses during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Innovative Produce Employers failed to pay Villagra and all of the other Aggrieved Employees overtime premium wages on such bonus compensation.

The Innovative Produce Employers unlawfully deducted wages belonging to Reyes Villagra and all of the other Aggrieved Employees. The Innovative Produce Employers deducted hours worked from the total daily hours worked by Reyes Villagra and the other Aggrieved Employees.

At all relevant times, the Innovative Produce Employers failed to issue to Reyes Villagra and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Innovative Produce Employers knowingly and intentionally failed to state on the wage statements they issued to Reyes Villagra and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all overtime wages earned, all doubletime wages earned, all minimum wages earned, all regular wages earned, all

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unlawfully deducted wages, all earned wages subject to discount, address of employer, and the employer's name and address. Instead of listing the legal address of the Innovative Produce Employers, the Innovative Produce Employers only listed a post office box on the wage statements they issued to Reyes Villagra and the other Aggrieved Employees.

The Innovative Produce Employers also failed to timely pay Reyes Villagra and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Innovative Produce Employers failed to maintain accurate employee records of Reyes Villagra and all of the other Aggrieved Employees. Defendant did not maintain records of the start and stop times of the work Reyes Villagra and the other Aggrieved Employees worked, instead maintaining only incomplete reports of the total hours worked per day.

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

(a) The Innovative Produce Employers failed to pay Reyes Villagra and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;

(b) The Innovative Produce Employers unlawfully deducted wages belonging to Reyes Villagra and all of the other Aggrieved Employees;

(c) The Innovative Produce Employers knowingly and intentionally failed to provide Reyes Villagra and all of the other Aggrieved Employees with accurate wage statements;

(d) The Innovative Produce Employers willfully failed to timely pay Reyes Villagra and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Innovative Produce Employers and when their employment ended; and

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(e) The Innovative Produce Employers failed to maintain accurate employment records pertaining to Reyes Villagra and all of the other Aggrieved Employees.

Accordingly, Reyes Villagra now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Innovative Produce Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in an agricultural occupation whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "employed in an agricultural occupation" to mean,

(1) The preparation, care, and treatment of farm land, pipeline, or ditches, including leveling for agricultural purposes, plowing, discing, and fertilizing the soil;

(2) The sowing and planting of any agricultural or horticultural commodity;

(3) The care of any agricultural or horticultural commodity,; as used in this subdivision, "care" includes, but is not limited to, cultivation, irrigation, weed control, thinning, heating, pruning, or tying, fumigating, spraying, and dusting;

(4) The harvesting of any agricultural or horticultural commodity, including but not limited to, picking, cutting, threshing, mowing, knocking off, field chopping, bunching, baling, balling, field packing, and placing in field containers or in the vehicle in which the commodity will be hauled, and transportation on the farm or to a place of first processing or distribution;

(5) The assembly and storage of any agricultural or horticultural commodity, including but not limited to, loading, road siding, banking, stacking, binding, and piling;

(6) The raising, feeding and management of livestock, fur bearing animals, poultry, fish, mollusks, and insects, including but not limited to herding, housing, hatching, milking, shearing, handling eggs, and extracting honey;

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(7) The harvesting of fish, as defined by Section 45 of the Fish and Game Code, for commercial sale;

(8) The conservation, improvement or maintenance of such farm and its tools and equipment.

Wage Order, § 2(D).

At all relevant times during the applicable limitations period, the Innovative Produce "Employers, Reyes Villagra, and all of the Aggrieved Employees were covered by the Wage Order because Reyes Villagra and all of the Aggrieved Employees worked for the Innovative Produce Employers as farm workers, and similar occupations. Accordingly, Reyes Villagra and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

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

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

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

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

In relevant part, Labor Code section 1194 states:

(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of

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> this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

In relevant part, Labor Code section 510 states:

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

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

> (A) The following overtime provisions are applicable to employees eighteen (18) years of age or over and to employees sixteen (16) or seventeen (17) years of age who are not required by law to attend school:
>
> (1) Such employees shall not be employed more than ten (10) hours in any one workday or more than six (6) days in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over ten (10) hours in any workday and for the first eight (8) hours on the seventh (7th) day of work and double the employee's regular rate of pay for all hours worked over eight (8) on the seventh (7th) day of work in the workweek.
>
> (2) For employers of more than 25 employees:
>
> (a) Starting January 1, 2019, an employee shall not be employed more than nine and one-half (9 1/2) hours per workday or fifty-five (55) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over nine and one-half (9 1/2) hours in any one workday or more than fifty-five (55) hours in any one workweek.

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(b) Starting January 1, 2020, an employee shall not be employed more than nine (9) hours per workday or fifty (50) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over nine (9) hours in any one workday or more than fifty (50) hours in any one workweek.

(c) Starting January 1, 2021, an employee shall not be employed more than eight and one-half (8 1/2) hours per workday or forty-five (45) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight and one-half (8 1/2) hours in any one workday or more than forty-five (45) hours in any one workweek.

(d) Starting January 1, 2022, an employee shall not be employed more than eight (8) hours per workday or work in excess of forty (40) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight (8) hours in any workday or more than forty (40) hours in any workweek and double the employee's regular rate of pay for all hours worked over twelve (12) hours in any one workday.

(3) For employers of 25 or fewer employees:

(a) Starting January 1, 2022, the overtime standards and compensation in subsection (2)(a) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.

(b) Starting January 1, 2023, the overtime standards and compensation in subsection (2)(b) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.

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(c) Starting January 1, 2024, the overtime standards and compensation in subsection (2)(c) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.

(d) Starting January 1, 2025, the overtime standards and compensation in subsection (2)(d) above, shall apply to any employee who works over the specified numbers of hours in any one workday or workweek.

…

(B) An employee may be employed on seven (7) workdays in one workweek with no overtime pay required when the total hours of employment during such workweek do not exceed 30 and the total hours of employment in any one workday thereof do not exceed six (6), subject to Labor Code Sections 510 and 550-556.

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

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

Reyes Villagra and the other Aggrieved Employees often worked more than 10 hours per day. However, the Innovative Produce Employers usually only credited Reyes Villagra and the other Aggrieved Employees with nine or less hours of work per day to avoid paying all regular, minimum, and overtime wages earned. Additionally, Reyes Villagra and the other Aggrieved Employees non-discretionary bonuses during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Innovative Produce Employers failed to pay Villagra and all of the other Aggrieved Employees overtime premium wages on such bonus compensation. Additionally, on occasions when they did pay for overtime hours worked, the Innovative Produce Employers failed to pay Villagra and all of the other

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Aggrieved Employees such overtime pay at the correct rates, instead paying for overtime hours at lower rates or the regular rates of pay.

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

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

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

2. $100 for each aggrieved employee for each initial violation of Labor Code § 1194, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));

3. $100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and $250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount

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sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and

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

Unlawful Deductions
(Lab. Code § 221)

Under Labor Code § 221, "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." The Innovative Produce Employers deducted wages from the wages earned by Reyes Villagra and all of the other Aggrieved Employees for hours worked and similar deductions in violation of Labor Code § 221. Accordingly, Reyes Villagra seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows: $100 for each aggrieved employee for each initial violation of Labor Code § 221, and $200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of Labor Code § 221, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 225.5).

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

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

1. Gross wages earned;

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

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

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

5. Net wages earned;

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

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

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

9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Similarly, section 7(C) of the Wage Order states

> Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing:
>
> (1) all deductions;
>
> (2) the inclusive dates of the period for which the employee is paid;
>
> (3) the name of the employee or the employee's social security number; and
>
> (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

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

At all relevant times during the applicable limitations period, the Innovative Produce Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Innovative Produce Employers failed to state in the wage statements they issued to Reyes Villagra and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Innovative Produce Employers knowingly and intentionally failed to state on the wage statements they issued to Reyes Villagra and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all overtime wages earned, all doubletime wages earned, all minimum wages earned, all regular wages earned, all unlawfully deducted wages, all earned wages subject to discount, address of employer, and the employer's name and address and similar information. Instead of listing the legal address of the Innovative Produce Employers, the Innovative Produce Employers only listed a post office box on the wage statements they issued to Reyes Villagra and the other Aggrieved Employees. Accordingly, Reyes Villagra seeks civil penalties for the Labor Code violations that the Innovative Produce Employers have committed against him and all of the other Aggrieved Employees as follows: $250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and $1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

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

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the

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following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Innovative Produce Employers failed to compensate Reyes Villagra and all of the other Aggrieved Employees for wages earned, including overtime wages, at the intervals stated above. As a result, the Innovative Produce Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Reyes Villagra now seeks civil penalties for the Labor Code violations that the Innovative Produce Employers have committed against him and all of the other Aggrieved Employees as follows: $100 for each aggrieved employee for each initial violation of Labor Code section 204, and $200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

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

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

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

The Innovative Produce Employers failed to pay Reyes Villagra and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Reyes Villagra, including

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overtime wages and similar forms of compensation. By failing to pay Reyes Villagra and all of the other Aggrieved Employees as set forth above at the end of employment, the Innovative Produce Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Reyes Villagra seeks civil penalties from the Innovative Produce Employers as follows:

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

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

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

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

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

> Every person employing labor in this state shall:
>
> ...
>
> (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
>
> (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate

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> paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

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

Section 7 of Wage Order states,

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

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

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

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

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

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

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

…

(E) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three (3) years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

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

The Innovative Produce Employers failed to compensate Reyes Villagra and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all overtime wages earned, all doubletime wages earned, all minimum wages earned, all regular wages earned, all unlawfully deducted wages, all earned wages subject to discount, address of employer, and the employer's name and address. As a result, the Innovative Produce Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Reyes Villagra and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Reyes Villagra seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. $500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and

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

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Genaro Reyes Villagra will seek

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both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,

David Spivak

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cc: Mr. Genaro Reyes Villagra

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EXHIBIT B

THE SPIVAK LAW FIRM
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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

October 6, 2023

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

Attn: PAGA Administrator
California Division of Occupational Safety and Health (Cal/OSHA)
http://dir.tflaforms.net
Via Electronic Submission

Re: Genaro Reyes Villagra / Innovative Produce
LWDA Case No. LWDA-CM-882417-22

To Whom It May Concern:

This is a supplement to Genaro Reyes Villagra's letter of April 20, 2022 (enclosed).

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Genaro Reyes Villagra (hereafter "Reyes Villagra" or "Complainant") provides notice that Innovative Produce, Inc., a California corporation, and related entities (collectively "the Innovative Produce Employers" or "the Employers") violated his rights and those of all other individuals the Innovative Produce Employers have employed or otherwise contracted with in California as hourly and piece rate non-exempt employees, including but not limited to farm workers, produce pickers, harvesters, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the "Aggrieved Employees") under Labor Code sections 201, 202, 203, 204, 204b, 206, 207, 208, 210, 218.5, 218.6, 221, 225.5, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and related Labor Code statutes, in addition to related provisions of the applicable Wage Order governing Aggrieved Employees' employment with the Employers, including but not limited to 8 CCR 11140, Secs. 3, 4,

5, 7, 8, 9, 11, 12, 13, and 18. On behalf of himself and all other Aggrieved Employees, Reyes Villagra hereby provides this notice to the Labor & Workforce Development Agency and the Innovative Produce Employers and their agents and representatives.

At all relevant times, the Innovative Produce Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Reyes Villagra and all of the other Aggrieved Employees are "employees" within the meaning of Industrial Welfare Commission Order No. 14-2001 (hereafter "the Wage Order", codified at 8 CCR 11140) section 2, subdivision (E) and "Aggrieved Employees" within the meaning of Labor Code section 2699(c).

Statement of Facts

At all relevant times, the Innovative Produce Employers failed to provide Reyes Villagra and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods in violation of applicable law, including but not limited to Labor Code §512 and 8 C.C.R. §11140, Sec. 11, giving rise to penalties under Labor Code §558 and 8 CCR 11140, Sec. 18. In addition to other violations, the Innovative Produce Employers unlawfully deducted Aggrieved Employees pay as though they took legally compliant meal periods, though they did not, resulting in meal period violations and unlawful deductions of wages in violation of Labor Code §221, giving rise to penalties under Labor Code §225.5. The Innovative Produce Employers also failed to pay premium wages for days on which it failed to provide Reyes Villagra and all of the other Aggrieved Employees with meal periods as required by law, including but not limited to Labor Code §226.7, giving rise to penalties under Labor Code §§558 and 2699, in addition to 8 CCR §11140, Sec. 18.

In addition to unlawfully deducting Aggrieved Employees' pay as though they took meal periods in pay periods where they did not, the Innovative Produce Employers made other unlawful deductions from Aggrieved Employees' wages, that were not required by law nor authorized in writing by employees. As a result, the Innovative Produce Employers violated Labor Code §221, giving rise to penalties under Labor Code §225.5.

At all relevant times, the Innovative Produce Employers failed to authorize and permit Reyes Villagra and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof, or recovery periods required by law, thereby violating applicable law, including but not limited to 8 CCR

§11140, Sec. 12 and 8 CCR §3395. The Innovative Produce Employers also failed to pay premium wages for days on which it failed to authorize and permit Reyes Villagra and all of the other Aggrieved Employees to take rest breaks as required by law, including but not limited to Labor Code §226.7, giving rise to penalties under Labor Code §§558 and 2699, in addition to 8 CCR §11140, Sec. 18.

At all relevant times, the Innovative Produce Employers failed to pay Aggrieved Employees all pay due to them, whether at regularly applicable intervals required by law (including, but not limited to, Labor Code §§204, 204, and/or 204b) or at the time of discharge and/or quitting in violation of Labor Code §§201-203. This failure to pay resulted from, among other things, the Innovative Produce Employers' unlawful deduction of pay associated with meal periods that Aggrieved Employees did not take. On some occasions, the wages that Innovative Produce Employers failed to pay were not in dispute yet they failed to pay in violation of Labor Code §206, giving rise to penalties under Labor Code §2699. The Innovative Produce Employers failure to pay encompassed minimum wage and overtime violations, which violated Labor Code 510 and 8 CCR §11140, Secs. 3-4, giving rise to penalties under Labor Code §§558 and 1197.1.

In some situations, Innovative Produce Employers failed to abide by maximum hours of work and standard conditions of labor fixed by the applicable IWC Wage Order, in violation of Labor Code §1198, giving rise to penalties under Labor Code §2699. On some occasions, Aggrieved Employees worked split shifts, or reported to work and were sent home without being furnished half their scheduled shift, yet the Innovative Produce Employers did not pay split-shift premiums or reporting time pay, in violation of 8 CCR §11140, Secs. 4-5, giving rise to penalties under 8 CCR §11140, Sec. 18.

At all relevant times, the Innovative Produce Employers failed to issue legally compliant wage statements, as the wage statements failed to include information that includes, but is not limited to: gross wages earned, total hours worked, the number of piece-rate units earned and any applicable piece rate when employees were paid on a piece-rate basis, all deductions, net wages earned, the inclusive dates for the period for which the employee is paid, the name of the employee and either the last four of the employee's social security number or another employee identification number, the name and address of the employer, and all applicable hourly rates in effect during the pay period. This conduct violated Labor Code §226, giving rise to penalties under Labor Code §226.3. In addition, the Innovative Produce Employers failed to keep accurate records of similar information that the law, including but not limited to Labor Code §1174 and

8 CCR §11140, Sec. 7, required them to keep. This conduct violated said provisions, giving rise to penalties under Labor Code §1174.5 and 8 CCR §11140, Sec. 18. In some circumstances, the Innovative Produce Employers paid a piece-rate, yet failed to pay non-productive time and/or rest and recovery time as required by law, and failed to itemize either appropriately on Aggrieved Employees' wage statements. This conduct violated Labor Code §226.2, giving rise to penalties under Labor Code §§226.2 and/or 2699.

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

(a) The Innovative Produce Employers failed to provide Reyes Villagra and all of the other Aggrieved Employees all meal periods in compliance with California law;

(b) The Innovative Produce Employers failed to authorize and permit Reyes Villagra and all of the other Aggrieved Employees to take rest breaks and recovery periods in compliance with California law;

(c) The Innovative Produce Employers failed to compensate Reyes Villagra and all of the other Aggrieved Employees at one hour's pay for each day in which the Innovative Produce Employers failed to provide them with one or more meal periods as required by law; and

(d) The Innovative Produce Employers failed to compensate Reyes Villagra and all of the other Aggrieved Employees at one hour's pay for each day in which the Innovative Produce Employers failed to authorize and permit them to take one or more rest and/or recovery breaks as required by law;

(e) The Innovative Produce Employers unlawfully deducted wages from Reyes Villagra and all of the other Aggrieved Employees in violation of California law;

(f) The Innovative Produce Employers failed to pay Reyes Villagra and all of the other Aggrieved Employees all pay due to them, whether at regularly applicable intervals required by law (including, but not limited to, Labor Code §§204 and 204b) or at the time of discharge and/or quitting in

violation of Labor Code §§201-202, which failure included pay not in dispute, in violation of Labor Code §206. Such failure to pay encompassed mnimum wage and overtime violations, in violation of Labor Code §510 and 8 CCCR §11140, Secs. 3-4.

(g) The Innovative Produce Employers failed, with respect to Reyes Villagra and all of the other Aggrieved Employees, to abide by maximum hours of work and standard conditions of labor fixed by the applicable IWC Wage Order, in violation of Labor Code §1198.

(h) The Innovative Produce Employers failed to pay Reyes Villagra and all of the other Aggrieved Employees split shift differentials and/or reporting time pay when due to them, in violation of 8 CCR §11140, Secs. 4-5.

(i) The Innovative Produce Employers failed to issue to Reyes Villagra and to all other Aggrieved Employees legally compliant wage statements, in violation of Labor Code §226. Correspondingly, they failed to keep accurate records relating to Reyes Villagra's and all other Aggrieved Employees' employment, in violation of Labor Code §1174 and 8 CCR §11140, Sec. 7.

(j) The Innovative Produce Employers paid Reyes Villagra and other Aggrieved Employees a piece-rate, yet failed to accurately pay non-productive time and/or rest and recovery time as required by law, in violation of §226.2, and further failed to list such information accurately in employees' wage statements.

Accordingly, Reyes Villagra now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Innovative Produce Employers' alleged violations of the Labor Code and the Wage Order.

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

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

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

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

In relevant part, Labor Code section 512 states:

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

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

> (A) An employer may not employ an employee for a work period of more than five (5) hours without providing the employee with 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 employer and employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to.

> (A) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the —7 employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
>
> (See California Labor Code, Section 512)

In addition, Labor Code section 226.7 states:

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

At all relevant times, the Innovative Produce Employers failed to provide Reyes Villagra and all of the other Aggrieved Employees with all timely meal periods. The Innovative Produce Employers denied Reyes Villagra and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. Furthermore, the Innovative Produce Employers failed to pay premium wages for days on which they failed to provide Reyes Villagra and all of the other Aggrieved Employees with timely meal periods. Accordingly, Reyes Villagra now seeks civil penalties for these Labor Code violations that the Innovative Produce Employers have committed against him and all of the other Aggrieved Employees as follows:

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

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

3. $100 for each aggrieved employee for each initial violation of Labor Code section 1198, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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

Section 2(G) of the Wage Order states,

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

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

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

> Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3½) hours. Authorized rest period time shall be counted, as hours worked for which there shall be no deduction from wages.

In addition, Labor Code section 226.7 states:

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

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

(d) A rest or recovery period mandated pursuant to a state law, including, but not limited to, an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, shall be counted as hours worked, for which there shall be no deduction from wages. This subdivision is declaratory of existing law.

The Innovative Produce Employers failed to authorize and permit Reyes Villagra and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Innovative Produce Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Moreover, the Innovative Produce Employers failed to pay Reyes Villagra and all of the other Aggrieved Employees premium wages on workdays the Innovative Produce Employers failed to provide Reyes Villagra and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Reyes Villagra now seeks civil penalties for these Labor Code violations that the Innovative Produce Employers have committed against him and all of the other Aggrieved Employees as follows:

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

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

Conclusion

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

Sincerely,

David Spivak, Esq.
David@spivaklaw.com
Enclosure as stated
cc: Mr. Genaro Reyes Villagra
Mr. Louis M. Benowitz Esq.

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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

April 20, 2022

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

Re: Genaro Reyes Villagra / Innovative Produce

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Genaro Reyes Villagra (hereafter "Reyes Villagra" or "Complainant") provides notice that Innovative Produce, Inc., a California corporation, and related entities (collectively "the Innovative Produce Employers" or "the Employers") violated his rights and those of all other individuals the Innovative Produce Employers have employed or otherwise contracted with in California as hourly and piece rate non-exempt employees, including but not limited to farm workers, produce pickers, harvesters, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the "Aggrieved Employees") under Labor Code sections 201, 202, 203, 204, 221, 226, 510, 1174, 1194, 1197, 1198, and related Labor Code statutes. On behalf of himself and all other Aggrieved Employees, Reyes Villagra hereby provides this notice to the Labor & Workforce Development Agency and the Innovative Produce Employers and their agents and representatives.

At all relevant times, the Innovative Produce Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Reyes Villagra and all of the other Aggrieved Employees are "employees" within the meaning of Industrial Welfare Commission Order No. 14-2001 (hereafter "the Wage Order") section 2, subdivision (E) and "Aggrieved Employees" within the meaning of Labor Code section 2699(c).

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Statement of Facts

In approximately 2016, the Innovative Produce Employers began to employ Reyes Villagra in Santa Maria in the position of hourly, non-exempt farm worker. The Innovative Produce Employers continuously employed him in that capacity until on or about August 9, 2021 when his employment ended.

At all relevant times, the Innovative Produce Employers issued wages to Reyes Villagra and all of the other Aggrieved Employees on a biweekly basis and paid them by the hour. At all relevant times, the Innovative Produce Employers classified Reyes Villagra and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Innovative Produce Employers failed to compensate Reyes Villagra and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. Reyes Villagra and the other Aggrieved Employees often worked more than 10 hours per day. However, the Innovative Produce Employers usually only credited Reyes Villagra and the other Aggrieved Employees with nine or less hours of work per day to avoid paying all regular, overtime, and minimum wages earned. Additionally, Reyes Villagra and the other Aggrieved Employees non-discretionary bonuses during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Innovative Produce Employers failed to pay Villagra and all of the other Aggrieved Employees overtime premium wages on such bonus compensation.

The Innovative Produce Employers unlawfully deducted wages belonging to Reyes Villagra and all of the other Aggrieved Employees. The Innovative Produce Employers deducted hours worked from the total daily hours worked by Reyes Villagra and the other Aggrieved Employees.

At all relevant times, the Innovative Produce Employers failed to issue to Reyes Villagra and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Innovative Produce Employers knowingly and intentionally failed to state on the wage statements they issued to Reyes Villagra and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all overtime wages earned, all doubletime wages earned, all minimum wages earned, all regular wages earned, all

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unlawfully deducted wages, all earned wages subject to discount, address of employer, and the employer's name and address. Instead of listing the legal address of the Innovative Produce Employers, the Innovative Produce Employers only listed a post office box on the wage statements they issued to Reyes Villagra and the other Aggrieved Employees.

The Innovative Produce Employers also failed to timely pay Reyes Villagra and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Innovative Produce Employers failed to maintain accurate employee records of Reyes Villagra and all of the other Aggrieved Employees. Defendant did not maintain records of the start and stop times of the work Reyes Villagra and the other Aggrieved Employees worked, instead maintaining only incomplete reports of the total hours worked per day.

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

(a) The Innovative Produce Employers failed to pay Reyes Villagra and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;

(b) The Innovative Produce Employers unlawfully deducted wages belonging to Reyes Villagra and all of the other Aggrieved Employees;

(c) The Innovative Produce Employers knowingly and intentionally failed to provide Reyes Villagra and all of the other Aggrieved Employees with accurate wage statements;

(d) The Innovative Produce Employers willfully failed to timely pay Reyes Villagra and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Innovative Produce Employers and when their employment ended; and

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(e) The Innovative Produce Employers failed to maintain accurate employment records pertaining to Reyes Villagra and all of the other Aggrieved Employees.

Accordingly, Reyes Villagra now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Innovative Produce Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in an agricultural occupation whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "employed in an agricultural occupation" to mean,

(1) The preparation, care, and treatment of farm land, pipeline, or ditches, including leveling for agricultural purposes, plowing, discing, and fertilizing the soil;

(2) The sowing and planting of any agricultural or horticultural commodity;

(3) The care of any agricultural or horticultural commodity,; as used in this subdivision, "care" includes, but is not limited to, cultivation, irrigation, weed control, thinning, heating, pruning, or tying, fumigating, spraying, and dusting;

(4) The harvesting of any agricultural or horticultural commodity, including but not limited to, picking, cutting, threshing, mowing, knocking off, field chopping, bunching, baling, balling, field packing, and placing in field containers or in the vehicle in which the commodity will be hauled, and transportation on the farm or to a place of first processing or distribution;

(5) The assembly and storage of any agricultural or horticultural commodity, including but not limited to, loading, road siding, banking, stacking, binding, and piling;

(6) The raising, feeding and management of livestock, fur bearing animals, poultry, fish, mollusks, and insects, including but not limited to herding, housing, hatching, milking, shearing, handling eggs, and extracting honey;

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(7) The harvesting of fish, as defined by Section 45 of the Fish and Game Code, for commercial sale;

(8) The conservation, improvement or maintenance of such farm and its tools and equipment.

Wage Order, § 2(D).

At all relevant times during the applicable limitations period, the Innovative Produce "Employers, Reyes Villagra, and all of the Aggrieved Employees were covered by the Wage Order because Reyes Villagra and all of the Aggrieved Employees worked for the Innovative Produce Employers as farm workers, and similar occupations. Accordingly, Reyes Villagra and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

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

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

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

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

In relevant part, Labor Code section 1194 states:

(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of

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> this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

In relevant part, Labor Code section 510 states:

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

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

> (A) The following overtime provisions are applicable to employees eighteen (18) years of age or over and to employees sixteen (16) or seventeen (17) years of age who are not required by law to attend school:
>
> (1) Such employees shall not be employed more than ten (10) hours in any one workday or more than six (6) days in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over ten (10) hours in any workday and for the first eight (8) hours on the seventh (7th) day of work and double the employee's regular rate of pay for all hours worked over eight (8) on the seventh (7th) day of work in the workweek.
>
> (2) For employers of more than 25 employees:
>
> (a) Starting January 1, 2019, an employee shall not be employed more than nine and one-half (9 1/2) hours per workday or fifty-five (55) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over nine and one-half (9 1/2) hours in any one workday or more than fifty-five (55) hours in any one workweek.

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(b) Starting January 1, 2020, an employee shall not be employed more than nine (9) hours per workday or fifty (50) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over nine (9) hours in any one workday or more than fifty (50) hours in any one workweek.

(c) Starting January 1, 2021, an employee shall not be employed more than eight and one-half (8 1/2) hours per workday or forty-five (45) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight and one-half (8 1/2) hours in any one workday or more than forty-five (45) hours in any one workweek.

(d) Starting January 1, 2022, an employee shall not be employed more than eight (8) hours per workday or work in excess of forty (40) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight (8) hours in any workday or more than forty (40) hours in any workweek and double the employee's regular rate of pay for all hours worked over twelve (12) hours in any one workday.

(3) For employers of 25 or fewer employees:

(a) Starting January 1, 2022, the overtime standards and compensation in subsection (2)(a) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.

(b) Starting January 1, 2023, the overtime standards and compensation in subsection (2)(b) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.

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(c) Starting January 1, 2024, the overtime standards and compensation in subsection (2)(c) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.

(d) Starting January 1, 2025, the overtime standards and compensation in subsection (2)(d) above, shall apply to any employee who works over the specified numbers of hours in any one workday or workweek.

…

(B) An employee may be employed on seven (7) workdays in one workweek with no overtime pay required when the total hours of employment during such workweek do not exceed 30 and the total hours of employment in any one workday thereof do not exceed six (6), subject to Labor Code Sections 510 and 550-556.

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

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

Reyes Villagra and the other Aggrieved Employees often worked more than 10 hours per day. However, the Innovative Produce Employers usually only credited Reyes Villagra and the other Aggrieved Employees with nine or less hours of work per day to avoid paying all regular, minimum, and overtime wages earned. Additionally, Reyes Villagra and the other Aggrieved Employees non-discretionary bonuses during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Innovative Produce Employers failed to pay Villagra and all of the other Aggrieved Employees overtime premium wages on such bonus compensation. Additionally, on occasions when they did pay for overtime hours worked, the Innovative Produce Employers failed to pay Villagra and all of the other

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Aggrieved Employees such overtime pay at the correct rates, instead paying for overtime hours at lower rates or the regular rates of pay.

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

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

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

2. $100 for each aggrieved employee for each initial violation of Labor Code § 1194, and $200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));

3. $100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and $250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount

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sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and

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

Unlawful Deductions
(Lab. Code § 221)

Under Labor Code § 221, "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." The Innovative Produce Employers deducted wages from the wages earned by Reyes Villagra and all of the other Aggrieved Employees for hours worked and similar deductions in violation of Labor Code § 221. Accordingly, Reyes Villagra seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows: $100 for each aggrieved employee for each initial violation of Labor Code § 221, and $200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of Labor Code § 221, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 225.5).

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

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

1. Gross wages earned;

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

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

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

5. Net wages earned;

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

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

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

9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Similarly, section 7(C) of the Wage Order states

> Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing:
>
> (1) all deductions;
>
> (2) the inclusive dates of the period for which the employee is paid;
>
> (3) the name of the employee or the employee's social security number; and
>
> (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

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

At all relevant times during the applicable limitations period, the Innovative Produce Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Innovative Produce Employers failed to state in the wage statements they issued to Reyes Villagra and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Innovative Produce Employers knowingly and intentionally failed to state on the wage statements they issued to Reyes Villagra and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all overtime wages earned, all doubletime wages earned, all minimum wages earned, all regular wages earned, all unlawfully deducted wages, all earned wages subject to discount, address of employer, and the employer's name and address and similar information. Instead of listing the legal address of the Innovative Produce Employers, the Innovative Produce Employers only listed a post office box on the wage statements they issued to Reyes Villagra and the other Aggrieved Employees. Accordingly, Reyes Villagra seeks civil penalties for the Labor Code violations that the Innovative Produce Employers have committed against him and all of the other Aggrieved Employees as follows: $250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and $1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

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

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the

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following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Innovative Produce Employers failed to compensate Reyes Villagra and all of the other Aggrieved Employees for wages earned, including overtime wages, at the intervals stated above. As a result, the Innovative Produce Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Reyes Villagra now seeks civil penalties for the Labor Code violations that the Innovative Produce Employers have committed against him and all of the other Aggrieved Employees as follows: $100 for each aggrieved employee for each initial violation of Labor Code section 204, and $200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

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

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

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

The Innovative Produce Employers failed to pay Reyes Villagra and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Reyes Villagra, including

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overtime wages and similar forms of compensation. By failing to pay Reyes Villagra and all of the other Aggrieved Employees as set forth above at the end of employment, the Innovative Produce Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Reyes Villagra seeks civil penalties from the Innovative Produce Employers as follows:

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

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

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

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

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

> Every person employing labor in this state shall:
>
> ...
>
> (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
>
> (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate

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> paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

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

Section 7 of Wage Order states,

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

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

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

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

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

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

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

…

(E) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three (3) years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

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

The Innovative Produce Employers failed to compensate Reyes Villagra and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all overtime wages earned, all doubletime wages earned, all minimum wages earned, all regular wages earned, all unlawfully deducted wages, all earned wages subject to discount, address of employer, and the employer's name and address. As a result, the Innovative Produce Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Reyes Villagra and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Reyes Villagra seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. $500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and

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

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Genaro Reyes Villagra will seek

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both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,

David Spivak

David Spivak, Esq.
David@spivaklaw.com
cc: Mr. Genaro Reyes Villagra

Mr. Louis M. Benowitz Esq.
Benowitz Law Corporation
8605 Santa Monica Boulevard
PMB 97638
West Hollywood, CA 90069
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Innovative Produce, Inc.
c/o Mr. Michael Joseph Conway II Esq.
Sagaser Watkins & Wieland PC
5260 N Palm Ave
Ste 400
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mikec@sw2law.com

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PROOF OF SERVICE

State of California,
County of Los Angeles

1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 1801 Century Park East, 25th Fl, Los Angeles, CA 90067.

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

On Friday, February 09, 2024, I served the foregoing document described as **[PROPOSED] FIRST AMENDED COMPLAINT** on interested parties by placing a true and correct copy thereof enclosed in a sealed envelope, with postage fully prepaid, addressed as follows:

Ian B. Wieland, Esq.
Michael J. Conway II, Esq.
Tristan Matthews, Esq.
SAGASER, WATKINS & WIELAND PC
5260 N. Palm Avenue, Suite 400
Fresno, CA 93704
ian@sw2law.com
mikec@sw2law.com
tristan@sw2law.com
faye@sw2law.com

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

EXECUTED on Friday, February 09, 2024, at Los Angeles, California.

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

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

LIZZETT CORTEZ

EXHIBIT 7

Ian B. Wieland, State Bar No. 285721
Charles P. Hamamjian, State Bar No. 298685
Michael J. Conway II, State Bar No. 322030
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Attorneys for Defendant, INNOVATIVE PRODUCE, INC.

STATE OF CALIFORNIA
SUPERIOR COURT FOR THE COUNTY OF SANTA BARBARA

GENARO REYES VILLAGRA, as an "aggrieved employee" on behalf of himself and other similarly situated "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004, Plaintiff(s), v. INNOVATIVE PRODUCE, INC., a California corporation; and DOES 1-50, inclusive, Defendant(s).	Case No.: 22CV02747 [Consolidated with 22CV02744] **ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT** Complaint Filed: July 18, 2022 Trial Date: None Set

Defendant Innovative Produce, Inc. ("Defendant") hereby answers Plaintiff Genaro Reyes Villagra's ("Plaintiff") First Amended Class and Representative Action Complaint ("Complaint") as follows:

GENERAL DENIAL

Defendant generally denies each and every allegation contained therein and the whole thereof, pursuant to section 431.30 of the California Code of Civil Procedure. In addition, Defendant denies Plaintiff has sustained, or will sustain, any loss or damage in the manner or amount alleged, or otherwise, by reason of any act or omission, or any other conduct or absence thereof on the part of Defendant.

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AFFIRMATIVE DEFENSES

Defendant asserts the following affirmative and other defenses, which it designates, collectively, as "affirmative defenses." Defendant's designation of its defenses as "affirmative" is not intended in any way to alter Plaintiff's burden of proof with regard to any element of his causes of action. Defendant also expressly denies the existence of any alleged putative group of persons or "class" that Plaintiff purports to represent in this lawsuit. Defendant incorporates (as if fully set forth therein) this express denial each and every time they reference "Plaintiff."

1. **Failure to State a Claim.** As a separate and distinctive affirmative defense, Defendant alleges that the Complaint, and each and every alleged cause of action therein, fails to state facts sufficient to constitute a cause of action upon which relief can be granted.

2. **Class Action - Certification Prerequisites.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff cannot satisfy the prerequisites for class certification and therefore cannot represent the interest of others.

3. **Class Action – Standing.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff lacks standing to assert the legal rights or interests of others.

4. **Class Action - Lack of Predominance.** As a separate and distinctive affirmative defense, Defendant alleges that the types of claims alleged by Plaintiff on behalf of herself and/or the alleged putative group he purports to represent are matters in which individual questions dominate and thus are not appropriate for class/representative action treatment.

5. **Class Action - Lack of Numerosity.** As a separate and distinctive affirmative defense, Defendant alleges that the alleged putative group that Plaintiff purports to represent is not so numerous that joinder is impossible or impractical.

6. **Class Action - Lack of Typicality.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff is not similarly situated to other potential members of the alleged putative group he purports to represent, and he is an inadequate representative of the alleged putative group.

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7. **Class Action - Lack of Typicality.** As a separate and distinctive affirmative defense, Defendant alleges that certain of the interests of the alleged putative group are in conflict with the interests of all or certain subgroups of the members of the putative group.

8. **Class Action - Lack of Superiority.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff has not shown and cannot show that class or representative treatment of the purported causes of action in Complaint are superior to other methods of adjudicating the controversy.

9. **Lack of Manageability.** As a separate and distinctive affirmative defense, Defendant alleges that the Complaint and each purported cause of action alleged therein, cannot proceed as a purported class or representative action because of difficulties likely to be encountered that render the action unmanageable.

10. **Violation of Due Process.** As a separate and distinctive affirmative defense, Defendant alleges that certification of a class or acknowledgement of a representative group, as applied to the facts and circumstances of this case, would constitute a denial of Defendant's due process rights, both substantive and procedural, in violation of the United States Constitution and the California Constitution.

11. **Labor Code §§ 226.7 and 512 No Private Right of Action.** As a separate and distinctive affirmative defense, Defendant alleges that there is no private right of action for an employee to recover damages under Sections 226.7 and 512 of the California Labor Code.

12. **Labor Code §§ 226.7 and 512 - Compliance with Obligations.** As a separate and distinctive affirmative defense, Defendant alleges that they acted under a reasonable and good faith belief that it complied with its obligations, if any, under the California Labor Code, specifically including Sections 226.7 and 512 thereof, as to Plaintiff and all alleged aggrieved employees.

13. **No Failure to Provide Rest Periods.** As a separate and distinctive affirmative defense, Defendant alleges that they were not required to and/or did not fail to provide rest periods pursuant to the California Labor Code, applicable wage orders issued by the Industrial Welfare Commission, or any other basis.

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14. **Good Faith.** As a separate and distinctive affirmative defense, Defendant is informed and believes that further investigation and discovery will reveal, and on that basis alleges, that if any violation of the Labor Code or an Order of the Industrial Welfare Commission occurred, it was an act or omission made in good faith and Defendant has reasonable grounds for believing that its meal and rest period practices complied with applicable laws and that any such act or omission was not a violation of the Labor Code or any Order of the Industrial Welfare Commission such that Plaintiff and/or the alleged aggrieved employees are not entitled to any damages.

15. **De Minimis.** As a separate and distinctive affirmative defense, Defendant alleges that the Complaint and each cause of action therein, or some of them, are barred to the extent the work allegedly performed was de minimis in nature.

16. **Penalties Barred.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff's prayer for restitution pursuant to Business and Professions Code Section 17200 et seq. is barred with respect to penalties of any nature.

17. **Labor Code §226 - Lack of Injury.** As separate and distinctive affirmative defense, Plaintiff sustained no injury from any alleged failure by Defendant to comply with Labor Code section 226.

18. **Labor Code § 226 - Good Faith.** As a separate and distinctive affirmative defense, Defendant alleges that it acted in good faith at all times concerning Plaintiff.

19. **Labor Code § 226 - No Intentional Failure.** As a separate and distinctive affirmative defense, Defendant alleges that, even assuming arguendo that Plaintiff was not provided with proper itemized statements of wages and deductions, or that electronic wage statements do not comply with Labor Code, Plaintiffs are not entitled to recover damages or penalties because Defendant's alleged failure to comply with California Labor Code section 226(a) was not a "knowing and intentional failure" under California Labor Code section 226(e).

20. **Labor Code § 226.3 - Lack of Standing.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff lacks standing to bring this action for, and the court lacks jurisdiction to award, certain of the monetary penalties sought in the Complaint, including, but not limited to those penalties claimed pursuant to California Labor Code section 226.3, as such penalties

may only be imposed in a proceeding brought by the California Labor Commissioner.

21. **No Willful or Intentional Violation.** As a separate and distinctive affirmative defense, Defendant alleges that the Complaint fails to state a claim for penalties because Defendant did not willfully or intentionally violate the Labor Code.

22. **Labor Code §§ 201 and 202 - No Obligation.** As a separate and distinctive affirmative defense, Defendant alleges that the Complaint fails to state a claim for penalties in which relief may be granted under the California Labor Code because there exists a bona fide dispute as to the existence and/or extent of Defendant's obligations to Plaintiff and/or the alleged aggrieved employees under any applicable Labor Code provisions, including without limitation, Labor Code section 203.

23. **Failure to State a Claim for Attorneys' Fees and Costs.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff failed to state facts sufficient to constitute a claim for which attorneys' fees and costs may be awarded.

24. **Lack of Specificity.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff failed to allege special damages with requisite specificity.

25. **Statute of Limitations.** As a separate and distinctive affirmative defense, Defendant alleges that each purported cause of action set forth in the Complaint is barred in whole or in part by the applicable statue(s) of limitation, including without limitation, California Code of Civil Procedure sections 338(a), 340(a), and 250(a) and (b); Business and Professions Code section 17208, and Labor Code sections 203 and 226(a); and the one-year statute of limitations applicable to claims under the Private Attorney General Act, Labor Code sections 2698 et seq.

26. **Liquidated Damages.** As a separate and distinctive affirmative defense, Defendant alleges that it had a good faith and reasonable belief that it was in compliance with applicable law and that, accordingly no liquidated damages should be awarded to Plaintiff for any violation thereof that may be found to exist.

27. **Prejudgment Interest.** As a separate and distinctive affirmative defense, Defendant alleges that the Complaint fails to properly state a claim upon which prejudgment interest may be awarded, as the damages claimed are not sufficiently certain or proper to allow an award of

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prejudgment interest.

28. **Mitigation of Damages.** As a separate and distinct affirmative defense, Defendant alleges that it is informed and believe that a reasonable opportunity for investigation and discovery will reveal, and on that basis allege, Plaintiff failed to exercise reasonable care to mitigate his damages, if any were suffered, and that their right to recover against Defendant should be reduced and/or eliminated by such a failure.

29. **Waiver.** As a separate and distinctive affirmative defense, Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal, and on that basis allege, the Complaint and each cause of action set forth therein is barred by the equitable doctrine of waiver. Defendant reserves the right to amend their answer upon further investigation and discovery of facts supporting this defense.

30. **Estoppel.** As a separate and distinctive affirmative defense, Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal, and on that basis, allege, the Complaint and each cause of action set forth therein is barred by the equitable doctrine of estoppel. Defendant reserves the right to amend its answer upon further investigation and discovery of facts supporting this defense.

31. **Laches.** As a separate and distinctive affirmative defense, Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal, and on that basis allege, the Complaint and each cause of action set forth therein is barred by the equitable doctrine of laches. Defendant reserves the right to amend its answer upon further investigation and discovery of facts supporting this defense.

32. **Unclean Hands.** As a separate and distinctive affirmative defense, Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal, and on that basis, allege, the Complaint and each cause of action set forth therein are barred by the equitable doctrine of unclean hands. Defendant reserves the right to amend its answer upon further investigation and discovery of fact supporting this defense.

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33. **Breach of Duty.** As a separate and distinct affirmative defense, Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal, and on that basis allege, Plaintiff's claims are barred by his own breach of the duties owed to Defendant under California Labor Code sections 2854, 2856, 2857, 2858 and/or 2859.

34. **Preliminary and Postliminary Duties.** As a separate and distinctive affirmative defense, Defendant alleges that, assuming Plaintiff and alleged aggrieved employees are entitled to any overtime, the walking, riding, traveling and preliminary and postliminary activities of Plaintiff and the alleged aggrieved employees must be excluded from compensable hours of work.

35. **Adequate Remedy at Law.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff and alleged aggrieved employees are not entitled to equitable relief insofar as they have an adequate remedy at law.

36. **Portal-to-Portal Act Preemption.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff and the alleged aggrieved employees' state law claims are preempted by the exclusive remedy of the Fair Labor Standards Act and the Portal-to Portal Pay Act.

37. **Portal-to-Portal Act Preemption.** As a separate and distinctive affirmative defense, Defendant alleges that, assuming Plaintiff or members of the alleged aggrieved employees are entitled to any overtime, Defendant is entitled to a credit or set off. This credit or set off includes but is not limited to, amounts erroneously overpaid to Plaintiff and/or the alleged aggrieved employees, as well as work performed not to the benefit of the Defendant. The claims of Plaintiff and/or members of the alleged aggrieved employees are barred because they would be unjustly enriched if they prevailed on any of said claims.

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38. **Work Performed for Employee's Convenience.** As a separate and distinctive affirmative defense, Defendant alleges that the time Plaintiffs and the alleged aggrieved employees spent performing any task for was for their own convenience and is not compensable time.

39. **Accord and Satisfaction.** As a separate and distinctive affirmative defense, Defendant alleges Plaintiff's claims are barred by the doctrine of accord and satisfaction.

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Specifically, Plaintiff was properly and fully compensated for all work performed for Defendant, and Plaintiff's respective acceptances of these payments constitute an accord and satisfaction for all debts, if any, owed by Defendant to Plaintiff.

40. **No Damages.** As a separate and distinctive affirmative defense, Defendant alleges Plaintiff's claims are barred to the extent Plaintiff was not damaged by any alleged act, omission, or violation of statute or wage order allegedly committed by Defendant.

41. **Election of Remedies.** As a separate and distinctive affirmative defense, Defendant alleges Plaintiff's Complaint, and each claim and purported cause of action alleged therein, is barred in whole or in part to the extent that Plaintiff, and anyone he claims to represent, have previously obtained a final decision on any claims(s) within the scope of this lawsuit, whether before the California Department of Industrial Relations, California Division of Labor Standards Enforcement, other governmental agencies, or any court of competent jurisdiction. Such individuals are therefore precluded from recovering in this matter.\

42. **Ambiguity.** As a separate and distinctive affirmative defense, Defendant alleges Plaintiff's Complaint, and each alleged cause of action therein, does not describe the claims against Defendant with sufficient particularity and certainty to enable Defendant to determine what defenses exist. Defendant reserves the right to assert all defenses that may be pertinent to or arise from Plaintiff's claims.

43. **Failure to Exhaust Remedies Through the Labor Commissioner or Otherwise.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff's causes of action are barred to the extent that Plaintiff failed to exhaust available administrative remedies through the Labor Commissioner or other government agencies, including Plaintiffs' failures to exhaust administrative remedies as required pursuant to Labor Code section 2699.3 before filing a Labor Code Private Attorneys General Act of 2004 ("PAGA") action.

44. **ERISA Preemption.** As a separate and distinctive affirmative defense, Defendant alleges Plaintiff's Complaint, and each cause of action therein, is preempted by the Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.,* to the extent Plaintiff seeks damages for the alleged loss of any covered employee benefit.

45. **Bad Faith.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff has acted in bad faith, and therefore, barring Plaintiff from any and all recovery from the answering Defendant.

46. **Consent/Ratification.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff by reason of its knowledge, statements, and conduct, and by reason of the knowledge, statements, and conduct of its agents, has consented to and ratified the acts of Defendant barring Plaintiff from any and all recovery from Defendant.

47. **Offset.** As a separate and distinctive affirmative defense, Defendant alleges that money owed by Defendant to Plaintiff, if any, which Defendant denies, is offset either in whole or in part, by money owed and due to Defendant by Plaintiff barring Plaintiff from any and all recovery from the answering Defendant.

48. **Attorneys' Fees.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff's claims against Defendant are frivolous, unreasonable and groundless and, accordingly Defendant should recover all costs and attorneys' fees incurred herein.

49. **No Permission to Work.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff nor any alleged aggrieved employee were suffered or permitted to work during the time for which they were not paid the appropriate wage rate, including the overtime wage rate and provided lunch periods and rest periods in accordance with applicable law.

50. **No Knowledge.** As a separate and distinctive affirmative defense, Defendant alleges that if Plaintiff or any alleged aggrieved employee "worked" overtime hours for which overtime compensation was not paid, Defendant have no knowledge of such overtime "work" and such overtime "work" was undertaken without the consent, knowledge or permission of Defendant.

51. **Legitimate Business Reasons.** As a separate and distinctive affirmative defense, Defendant alleges that all actions taken with regard to Plaintiff and the alleged aggrieved employee, if any, were just, fair, honest, in good faith, privileged, and based upon legitimate business reasons.

52. **Scope.** As a separate and distinctive affirmative defense, Defendant alleges that any unlawful or other wrongful acts of any person(s) employed by Defendant were outside the scope of its authority and such act(s), if any, were not authorized, ratified, or condoned by Defendant, nor

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did Defendant know or have reason to be aware of such conduct.

53. **Conformity.** As a separate and distinctive affirmative defense, Defendant alleges that, at all times, its treatment of Plaintiff, and all alleged aggrieved employees, was in good faith, in conformity with and in reliance upon a written administrative regulation, order, ruling or interpretation of the federal Department of Labor Wage and Hour Division, the California Labor Commissioner, the California Industrial Welfare Commission, and/or on administrative practices and policies applicable to Defendant by federal and state agencies.

54. **Due Process.** As a separate and distinctive affirmative defense, Defendant alleges that, to the extent Plaintiff and the alleged aggrieved employee seek statutory or other penalties, such claims must comport with the due process requirements of *State Farm v. Campbell*, 538 U.S. 408 (2003).

55. **No Willful Failure to Pay.** As a separate and distinctive affirmative defense, Defendant alleges that the Complaint fails to state a claim for waiting time penalties, or otherwise, in that Defendant's alleged failure to pay wages at the time of discharge, if any, was not willful.

56. **No Knowledge or Intent.** As a separate and distinctive affirmative defense, Defendant alleges that the Complaint fails to state a claim for a violation of California Labor Code section 226, or otherwise, in that Defendant's alleged failure to maintain records, if any, was not knowing or intentional.

57. **Indemnification.** As a separate and distinctive affirmative defense, Defendant alleges that the Complaint fails to state a claim under Labor Code section 2802, or otherwise, in that any alleged expenses Plaintiff may have incurred while employed by Defendant, if any, were not the result of discharging his work duties for Defendant and were not necessary expenditures required to perform his work duties for Defendant.

58. **Notice and Exhaustion.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff's Complaint, and each claim and purported cause of action alleged therein, is barred to the extent Plaintiff, and any person on whose behalf relief is sought, failed to satisfy the notice and exhaustion requirements under California's Private Attorney General Act ("PAGA"), Labor Code section 2698 et seq.

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59. **Lack of Standing – PAGA.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff lacks standing to bring a claim as a private attorney general and/or representative of the State of California, and any of its agencies, departments, divisions, commissions, or boards, under PAGA.

60. **Lack of Standing-PAGA.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff lacks standing to bring an action as a representative of current and/or former aggrieved employees under PAGA.

61. **Arbitration Agreements.** As a separate and distinctive affirmative defense, Defendant alleges that any and all claims brought by the named Plaintiff on behalf of herself or the proposed class/representative group of aggrieved employees, or the claims of the alleged aggrieved employees, are subject to arbitration under the Federal Arbitration Act pursuant to arbitration agreements entered into by such employees and Defendant, or between employees and a third party who intended to benefit Defendant by entering into the arbitration agreement. Defendant further alleges that the named Plaintiff, or the claims of the alleged aggrieved employees, are barred by the failure to exhaust administrative and internal remedies by failing to timely initiate arbitration within the statute(s) of limitation.

62. **California Code of Civil Procedure §430.10(c).** As a separate and distinctive affirmative defense, Defendant alleges that any and all claims brought by the named Plaintiff on behalf of herself or the proposed representative group of aggrieved employees is barred pursuant to California Code of Civil Procedure §430.10(c) given that there is another action pending between the same parties on the same cause of action.

63. **Cured Violations.** As a separate and distinctive affirmative defense, Defendant alleges that any and all claims brought by the named Plaintiff on behalf of herself or the proposed class/representative group of aggrieved employees, or the claims of the alleged aggrieved employees, have been cured pursuant to Labor Code section 2699 et seq. and are thus not actionable.

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64. **Labor Code §208.** As a separate and distinctive affirmative defense, Defendant alleges that it is not liable for the violations alleged under Labor Code §203 as Plaintiffs were not discharged and did not quit their employment with Defendant and, to the extent they quit their employment, they did not comply with Labor Code §208 and are therefore not eligible to receive penalties under §203.

65. **Reservation of Rights.** As a separate and distinctive affirmative defense, Defendant alleges that Defendant presently has insufficient knowledge upon which to form a belief as to whether any additional, as yet unstated, affirmative defenses to the Complaint are applicable. Defendant reserves the right to assert additional affirmative defenses if appropriate.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays for relief as follows:

1. That Plaintiff takes nothing and that the Complaint be dismissed in its entirety with prejudice;
2. That judgment be entered in Defendant's favor;
3. That Defendant be awarded their attorneys' fees and costs of suit herein accordance with Labor Code § 218.5; and
4. That Defendant be awarded such other and further relief as the Court deems just and proper.

Dated: March 28, 2024

SAGASER WATKINS & WIELAND PC

By: _____

Ian B. Wieland
Michael J. Conway, II
Attorneys for Defendant,
INNOVATIVE PRODUCE, INC.

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PROOF OF SERVICE
(CODE CIV. PROC. § 1013)

STATE OF CALIFORNIA, COUNTY OF FRESNO

I am employed in the County of Fresno, State of California. I am over the age of 18 years and am not a party to the within action; my business address is 5260 North Palm Avenue, Suite 400, Fresno, California 93704.

On March 28, 2024, I served the following document(s) described as **ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** I deposited such envelope in the mail at Fresno, California. The envelope(s) was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

☐ **BY OVERNIGHT COURIER:** I sent such document(s) on March 28, 2024, by with postage thereon fully prepaid at Fresno, California.

☐ **BY FAX**: I sent such document by use of facsimile machine telephone number (559) 473-1483. Facsimile cover sheet and confirmation is attached hereto indicating the recipients' facsimile number and time of transmission pursuant to California Rules of Court Rule 2.306. The facsimile machine I used complied with California Rules of Court Rule 2.301(3) and no error was reported by the machine.

☐ **BY PERSONAL SERVICE:** I placed the above document in a sealed envelope. I caused said envelope to be handed to our messenger service to be delivered by hand to the above address(es).

☑ **BY EMAIL:** I sent such document by use of email to the email address(es) above. (CCP § 1013(a)) Such document was scanned and emailed to such recipient and email confirmation is attached hereto indicating the recipients' email address and time of receipt pursuant to CCP § 1013(g).

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

Executed on March 28, 2024, at Fresno, California.

Stephanie A Garcia

SERVICE LIST

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EXHIBIT 8

Sample size calculator

What margin of error can you accept? 5% is a common choice	32 %	The margin of error is the amount of error that you can tolerate. If 90% of respondents answer *yes*, while 10% answer *no*, you may be able to tolerate a larger amount of error than if the respondents are split 50-50 or 45-55. Lower margin of error requires a larger sample size.
What confidence level do you need? Typical choices are 90%, 95%, or 99%	95 %	The confidence level is the amount of uncertainty you can tolerate. Suppose that you have 20 yes-no questions in your survey. With a confidence level of 95%, you would expect that for one of the questions (1 in 20), the percentage of people who answer *yes* would be more than the margin of error away from the true answer. The true answer is the percentage you would get if you exhaustively interviewed everyone. Higher confidence level requires a larger sample size.
What is the population size? If you don't know, use 20000	126	How many people are there to choose your random sample from? The sample size doesn't change much for populations larger than 20,000.
What is the response distribution? Leave this as 50%	50 %	For each question, what do you expect the results will be? If the sample is skewed highly one way or the other,the population probably is, too. If you don't know, use 50%, which gives the largest sample size. See below under **More information** if this is confusing.
Your recommended sample size is	**9**	This is the minimum recommended size of your survey. If you create a sample of this many people and get responses from everyone, you're more likely to get a correct answer than you would from a large sample where only a small percentage of the sample responds to your survey.

Online surveys with Vovici have completion rates of 66%!

Alternate scenarios

With a sample size of	100	200	300	With a confidence level of	90	95	99
Your margin of error would be	**4.47%**	**0.00%**	**0.00%**	Your sample size would need to be	**7**	**9**	**15**

Save effort, save time. Conduct your survey online with Vovici.

More information

If 50% of all the people in a population of 20000 people drink coffee in the morning, and if you were repeat the survey of 377 people ("Did you drink coffee this morning?") many times, then 95% of the time, your survey would find that between 45% and 55% of the people in your sample answered "Yes".

The remaining 5% of the time, or for 1 in 20 survey questions, you would expect the survey response to more than the margin of error away from the true answer.

When you survey a sample of the population, you don't know that you've found the correct answer, but you do know that there's a 95% chance that you're within the margin of error of the correct answer.

Try changing your sample size and watch what happens to the *alternate scenarios*. That tells you what happens if you don't use the recommended sample size, and how M.O.E and confidence level (that 95%) are related.

To learn more if you're a beginner, read **Basic Statistics: A Modern Approach** and **The Cartoon Guide to Statistics**. Otherwise, look at the **more advanced books**.

In terms of the numbers you selected above, the sample size n and margin of error E are given by

$$x = Z(c/100)^2 r(100-r)$$

$$n = Nx/((N-1)E^2 + x)$$

$$E = \mathrm{Sqrt}[(N - n)x/n(N-1)]$$

where N is the population size, r is the fraction of responses that you are interested in, and $Z(c/100)$ is the critical value for the confidence level c.

If you'd like to see how we perform the calculation, view the page source. This calculation is based on the Normal distribution, and assumes you have more than about 30 samples.

About **Response distribution**: If you ask a random sample of 10 people if they like donuts, and 9 of them say, "Yes", then the prediction that you make about the general population is different than it would be if 5 had said, "Yes", and 5 had said, "No". Setting the response distribution to 50% is the most conservative assumption. So just leave it at 50% unless you know what you're doing. The sample size calculator computes the critical value for the normal distribution. Wikipedia has good articles on statistics.

How do you like this web page? ○ **Good as-is** ○ **Could be even better**

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EXHIBIT 9

Case title:	Genaro Reyes Villagra v. Innovative Produce, Inc.
Case no.:	22CV02744
Court:	Santa Barbara
Judge:	The Honorable Timothy J. Staffel, Dept. 3
Page subject:	**Data**

Important Dates

Unfair Competition, Bus.&Prof. § 17200 ("UCL") period begins:	Thursday, July 19, 2018
Lab.Code § 203 (waiting time penalties) period begins:	Friday, July 19, 2019
Lab.Code § 2699 (civil penalties) period begins:	Tuesday, April 20, 2021
Lab.Code § 226 (pay stub penalties) period begins:	Sunday, July 18, 2021
LWDA Notice:	Wednesday, April 20, 2022
Lawsuit:	Monday, July 18, 2022
Sample begin:	Wednesday, July 18, 2018
Sample end:	Friday, March 10, 2023
Sample calendar days:	1,696
Mediation:	Tuesday, July 18, 2023
Anticipated Settlement Period end date:	Wednesday, November 15, 2023
Settlement Period to Sample Period:	114.68%

Classes / Groups sizes

UCL Class Members:	116
UCL Workweeks:	13,093
UCL Wage Statements:	13,093
UCL Workdays:	65,465
UCL Calendar days:	1,825
UCL Months:	60.00
Waiting Time Penalties Class Members:	48
PAGA Aggrieved Employees:	67
PAGA Wage Statements:	4,093
Wage Statement Class Members:	13,093
Wage Statement Class Wage Statements:	403

Averages

Average Hourly Rate:	$	15.88
Average Overtime Rate:	$	23.82
Average Doubletime Rate:	$	31.76
Average Work Hours Per Day:		8.96
Average Work Hours Per Week:		48.12
Average Workdays Per Week:		5.00
Workdays to Calendar Days (%):		71.43%
Paycycle:		
Paychecks Per Year:		

Case title:		Genaro Reyes Villagra v. Innovative Produce, Inc.
Case no.:		22CV02744
Court:		Santa Barbara
Judge:		The Honorable Timothy J. Staffel, Dept. 3
Page subject:		**Unpaid wages**
Authority:		Lab.Code §§ 510, 1194, 1194.2, and 1198
Percentage of shifts exactly 9 hours long		20.6%
Pecentage of shifts rounded to quarter hour:		97.8%
Average Hourly Rate:	$	15.88
Unpaid hours per pay week:		6.00
Actionable workweeks:		13,093
Interest:		10%
Unpaid wages:	$	1,372,251.14
Liquidated damages:	$	1,372,251.14

Case title:	Genaro Reyes Villagra v. Innovative Produce, Inc.
Case no.:	22CV02744
Court:	Santa Barbara
Judge:	The Honorable Timothy J. Staffel, Dept. 3
Page subject:	**Unpaid Overtime on nondiscretionary compensation on bonuses**

Average Hourly Rate:	$	15.88
Average Overtime Rate:	$	23.82
Average Doubletime Rate:	$	31.76
Average Work Hours Per Day:		8.96
Average Work Hours Per Week:		48.12
Average Workdays Per Week:		5.00
Monthly non-discretionary compensation:		
Weekly non-discretionary compensation:	$	-
Workday non-discretionary compensation:		#DIV/0!
Hourly non-discretionary compensation:		#DIV/0!
Unpaid hourly non-discretionary overtime pay on nondiscretionary compensation:		#DIV/0!
Average overtime hours per week:		12.5
UCL Workweeks:		13,093.00
Interest rate:		10%
Unpaid non-discretionary overtime pay on nondiscretionary compensation:	$	-

Case title:		Genaro Reyes Villagra v. Innovative Produce, Inc.
Case no.:		22CV02744
Court:		Santa Barbara
Judge:		The Honorable Timothy J. Staffel, Dept. 3
Page subject:		**Itemized Wage Statements**
Authority:		Lab.Code § 226
Wage Statement Class Members:		13,093
Wage Statement Class Wage Statements:		403
Initial penalty:	$	50.00
Subsequent penalty:	$	100.00
Statutory wage statement penalties:	$	689,950.00

Case title:		Genaro Reyes Villagra v. Innovative Produce, Inc.
Case no.:		22CV02744
Court:		Santa Barbara
Judge:		The Honorable Timothy J. Staffel, Dept. 3
Page subject:		**Waiting Time / Final Wages**
Authority:		Lab.Code § 203
Waiting Time Penalties Class Members:		48
Days waiting:		30
Average Hourly Rate:	$	15.88
Average Overtime Rate:	$	23.82
Average Doubletime Rate:	$	31.76
Average Work Hours Per Day:		8.96
Regular Hours Per Day:		8.00
Overtime Hours Per Day:		0.96
Doubletime Hours Per Day:		-
Waiting time penalties:	$	215,866.37

Case title: Genaro Reyes Villagra v. Innovative Produce, Inc.
Case no.: 22CV02744
Court: Santa Barbara
Judge: The Honorable Timothy J. Staffel, Dept. 3
Page subject: **PAGA Civil Penalties**
Authority: Lab.Code §§ 2698, *et seq.*

Labor Code violation	Labor Code Civil Penalty Statute	Initial penalty	Subsequent penalty	Pay periods	Total
Minimum wages (Lab.Code § 1197):	Lab.Code § 1197	$ 100.00	$ 250.00	4,093	$ 1,023,100.00
Overtime wages (Lab.Code § 510):	Lab.Code § 558	$ 50.00	$ 100.00	4,093	$ 409,250.00
Improper pay stubs (Lab.Code § 226):	Lab.Code § 226.3	$ 250.00	$ 1,000.00	4,093	$ 4,092,250.00
Untimely wages (Lab.Code §§ 201-204):	Lab.Code § 2699	$ 100.00	$ 200.00	4,093	$ 818,500.00
Total:					**$ 6,343,100.00**

Case title:	Genaro Reyes Villagra v. Innovative Produce, Inc.
Case no.:	22CV02744
Court:	Santa Barbara
Judge:	The Honorable Timothy J. Staffel, Dept. 3
Page subject:	**Totals**
Authority:	Various

Restitution			Reduction		Demand
Unpaid wages:	$	1,372,251.14	25%	$	1,029,188.36
Liquidated damages:	$	1,372,251.14	25%	$	1,029,188.36
Unpaid OT on nondiscretionary compensation:	$	-		$	-
Restitution subtotal:	$	2,744,502.29		$	2,058,376.72
Penalties					
Statutory wage statement penalties:	$	689,950.00	50%	$	344,975.00
Waiting time penalties:	$	215,866.37	50%	$	107,933.18
Minimum wages (Lab.Code § 1197):civil penalties:	$	1,023,100.00	50%	$	511,550.00
Overtime wages (Lab.Code § 510):civil penalties:	$	409,250.00	100%	$	-
Improper pay stubs (Lab.Code § 226):civil penalties:	$	4,092,250.00	100%	$	-
Untimely wages (Lab.Code §§ 201-204):civil penalties:	$	818,500.00	100%	$	-
Penalties subtotal:	$	7,248,916.37		$	964,458.18
Grand total:	**$**	**9,993,418.66**		**$**	**3,022,834.90**

EXHIBIT 10

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CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court
FEB 24 2010
John A. Clarke, Executive Officer/Clerk
BY MARY GARCIA, Deputy

Attorney for Plaintiffs,
ALINA GHRDILYAN, EVGENIA SULTANIAN, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

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

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

Plaintiffs,

vs.

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

Defendants.

Case No.: BC430633

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

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

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

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

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

INTRODUCTION

1. This action arises out of the allegedly unlawful labor practices of Defendants in California. Through this class and collective action, Plaintiffs seek to represent the below-defined classes and subclasses of persons who Defendants have allegedly committed labor law violations against including, but not limited to, wage underpayments. As a result of the allegedly unlawful labor conduct described herein, Plaintiffs now seek declaratory and injunctive relief, damages, restitution, penalties, and other proper relief on behalf of himself and other similarly situated persons.

PARTIES AND CONDUCT

A. Plaintiffs and Class Members

2. During the applicable time period, Plaintiff ALINA GHRDILYAN, an individual, was employed in a position that she alleges Defendants have classified as non-exempt from the overtime requirements of the California Labor Code and the applicable wage order(s).

3. During the applicable time period, Plaintiff EVGENIA SULTANIAN, an individual, was employed in a position that she alleges Defendants have classified as non-exempt from the overtime requirements of the California Labor Code and the applicable wage order(s).

4. At relevant times during the applicable limitations periods, Plaintiffs allege that Defendants have failed to compensate them and Defendants' other California employees for all of the hours that they have worked, failed to compensate them for all of the overtime hours that they have worked at overtime rates, failed to provide them with all required rest and meal periods, failed to pay them additional required wages for rest and meal periods, improperly denied earned wages that Defendants without authorization deducted from paychecks or required reimbursement for, failed to indemnify for necessary expenditures, failed to timely pay

all final wages owed, caused them to forfeit vested vacation pay, and/or intentionally failed to provide them with accurate written wage statements.

B. Defendants

5. Defendant RJ FINANCIAL, INC. is a corporation organized under the laws of California. It was at all relevant times a "person" under Labor Code § 18.

6. Defendant RAMIL ABALKHAD (also known as Randy Abalkhad), an individual residing in the County of Los Angeles, State of California, was at all relevant times the chief executive officer of Defendant RJ FINANCIAL, INC. At all relevant times, ABALKHAD acted on behalf of RJ FINANCIAL, INC. and oversaw RJ FINANCIAL, INC.'s accounting and bookkeeping and all administrative functions, including payroll. The company maintained books and records by staff members under his direction. At all relevant times, ABALKHAD was a "person acting on behalf of an employer" (RJ FINANCIAL, INC. and the Doe Defendants) who caused to be violated the provisions of the Labor Code regulating hours and days of work in orders of the Industrial Welfare Commission as described below under Labor Code § 558. Also, he was at all relevant times a "person" under Labor Code § 18.

7. Plaintiffs are ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but are informed and believe and thereon allege that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sue these defendants by such fictitious names. Plaintiffs will amend the complaint to allege the true names and capacities of the DOE defendants when ascertained.

8. Plaintiffs are informed and believe and thereon allege that, at all relevant times herein, all defendants were the agents, employees and/or servants, masters or employers of the remaining defendants, and in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment, and with the approval and ratification of each of the other defendants.

9. At all relevant times, in perpetrating the acts and omissions alleged herein, defendants, and each of them, acted pursuant to and in furtherance of a policy and practice of

not paying Plaintiffs and other members of the below-described classes in accordance with applicable California labor laws as alleged herein.

10. Plaintiffs are informed and believe and thereon allege that each and every one of the acts and omissions alleged herein were performed by, and/or attributable to, all defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other defendants, and that said acts and failures to act were within the course and scope of said agency, employment and/or direction and control.

CLASS ACTION ALLEGATIONS

11. Plaintiffs incorporate paragraphs 1 through 10 of this Complaint as if fully alleged herein.

12. Plaintiffs bring this action on behalf of themselves and all others similarly situated as a class action pursuant to California Code of Civil Procedure § 382. Plaintiffs seek to represent the following classes and subclasses of current, future, and/or former employees of Defendants defined below:

> **Wages Class:** All persons employed by Defendants in California who have not been paid for all hours worked during the period beginning four (4) years prior to the filing of this action and ending on the date that final judgment is entered in this action.
>
> **Overtime Class:** All persons employed by Defendants in California who have not been paid at the legally required overtime rates for all hours worked in excess of eight (8) hours in one (1) day and/or forty (40) hours in one (1) week during the period beginning four (4) years prior to the filing of this action and ending on the date that final judgment is entered in this action.
>
> **Rest Periods Class:** All persons employed by Defendants in California who were not provided with a net rest period of at least ten (10) minutes per each four (4) hour work period, or major portion thereof, during the period beginning four (4) years prior to the filing of this action and ending on the date that final judgment is entered in this action.
>
> **Meal Periods Class:** All persons employed by Defendants in California who were not provided with uninterrupted thirty (30) minute meal periods during each work period of five (5) or more hours during the period beginning four (4) years prior to the filing of this action and ending on the

THE SPIVAK LAW FIRM

date that final judgment is entered in this action.

Vacation Pay Class: All persons employed by Defendants in California who earned vested paid vacation days without receiving compensation for each vested paid vacation day during the period beginning four (4) years prior to the filing of this action and ending on the date that final judgment is entered in this action.

Unauthorized Deduction Class: All persons employed by Defendants in California whose wages were deducted by Defendants without statutory authority or written consent during the period beginning four (4) years prior to the filing of this action and ending on the date that final judgment is entered in this action.

Inaccurate Wage Statement Class: All persons employed by Defendants in California, including but not limited to members of the **Wages Class, Overtime Class, Rest Period Class, Meal Period Class,** and/or **Unauthorized Deduction Class** during the period beginning four (4) years prior to the filing of this action and ending on the date that judgment is entered in this action.

Former Employee Class: All persons employed by Defendants in California, including, but not limited to, members of the **Wages Class, Overtime Class, Rest Period Class, Meal Period Class, Unauthorized Deduction Class,** and/or **Inaccurate Wage Statement Class** whose employment with Defendants ended during the period beginning four (4) years prior to the filing of this action and ending on the date that final judgment is entered in this action, who either: a) were discharged and not paid all wages owed on or before the day of termination; or b) resigned without notice and were not paid all wages owed within 72 hours of resignation; or c) resigned with 72 hours notice and were not paid all wages owed on or before the day of quitting.

Indemnification Class: All persons employed by Defendants in California, including, but not limited to, members of the **Wages Class, Overtime Class, Rest Period Class, Meal Period Class, Unauthorized Deduction Class**, and/or **Inaccurate Wage Statement Class,** who Defendants failed to indemnify for all necessary expenditures incurred by such employees in direct consequence of the discharge of their duties during the period beginning four (4) years prior to the filing of this action and ending on the date that final judgment is entered in this action.

UCL Class: All persons who are members of the **Wages Class, Rest Period Class, Meal Period Class, Overtime Class, Inaccurate Wage Statement Class, Former Employee Class, Unauthorized Deduction**

Class, and/or **Indemnification Class,** who have been employed by Defendants in California at any time during the period beginning four (4) years prior to the filing of this action and ending on the date that final judgment is entered in this action.

All-Inclusive Class: All members of the **Wages Class, Overtime Class, Rest Periods Class, Meal Periods Class, Inaccurate Wage Statement Class, Unauthorized Deduction Class, Former Employee Class,** and/or **Indemnification Class.**

13. This action has been brought and may be maintained as a class action pursuant to California Code of Civil Procedure § 382 because there is a well-defined community of interest among the persons who comprise readily ascertainable class.

14. Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this case as a class action.

15. The class members are so numerous that the individual joinder of each individual class member is impractical. While Plaintiffs do not currently know the exact number of class members, Plaintiffs are informed and believe and thereon allege that the actual number of class members exceeds the minimum number required for numerosity purposes under California law.

16. Common questions of law and fact exist as to all class members and predominate over any questions which affect only individual class members. These questions include, but are not limited to:

A. Do Defendants maintain policies or practices that systematically cause the **Wages Class** not to be paid for all hours worked?

B. Have members of the **Overtime Class** been paid at the legally required overtime rates for all hours worked in excess of eight (8) hours in one (1) day?

C. Do Defendants maintain policies or practices that systematically cause the **Overtime Class** not to be paid at overtime rates for all overtime hours worked?

D. Did Defendants fail to provide members of the **Rest Period Class** with all legally required rest periods in violation of California law?

E. Did Defendants fail to provide members of the **Meal Period Class** with all legally required meal periods in violation of California law?

F. Did Defendants fail to pay members of the **Rest Period Class** the

additional wages required for rest periods that were not provided?

G. Did Defendants fail to pay members of the **Meal Period Class** the additional wages required for meal periods that were not provided?

H. Did Defendants deduct wages from the paychecks of members of the **Unauthorized Deduction Class** without written consent?

I. Did Defendants intentionally fail to provide members of the **Inaccurate Wage Statement Class** with accurate written wage statements?

J. Did Defendants intentionally fail to indemnify members of the **Indemnification Class** for all necessary expenditures incurred by the members of the class in direct consequence of the discharge of their duties?

K. Are the vacation days received by members of the **Vacation Pay Class** subject to forfeiture?

L. Did Defendants fail to timely pay **Former Employee Class** all final wages owed following termination or discharge?

M. Are Defendants liable to members of the **Former Employee Class** for continuation wages under California Labor Code § 203?

N. Did Defendants engage in unfair competition within the meaning of California Business & Professions Code §§ 17200, *et seq.*, with respect to members of the **UCL Class?**

O. Are class members entitled to prejudgment interest?

P. Are class members entitled to attorneys' fees?

17. Plaintiffs' claims are typical of the other class members' claims. Plaintiffs are informed and believe and thereon allege that Defendants have a policy or practice of failing to comply with the California Labor Code and the California Business and Professions Code as alleged herein.

18. Plaintiffs will fairly and adequately represent and protect the interests of the other class members. Plaintiffs have no interests adverse to the interests of the other class members. In addition, Plaintiffs are represented by counsel experienced in wage and hour class

action cases.

19. A class action is vastly superior to other available means for fair and efficient adjudication of the 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 moneys owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

FIRST CLAIM FOR RELIEF

FAILURE TO PAY ALL EARNED HOURLY WAGES IN VIOLATION OF THE CALIFORNIA LABOR CODE

(By Plaintiffs, the Wages Class, and the Overtime Class)

20. Plaintiffs incorporate paragraphs 1 through 19 of the Complaint as if fully alleged herein.

21. At all relevant times, Plaintiffs and the other members of the **Wages Class** and the **Overtime Class** have been entitled to the protections of the California Labor Code, including California Labor Code §§ 204, 510, and applicable Wage order(s). These protections include the rights to be timely paid all wages earned at the legally required rates for all hours worked.

22. California Labor Code § 510(a) requires employers to compensate employees at one and one-half times their regular rates of pay for:

A. All hours worked in excess of eight hours in one workday;

B. All hours worked in excess of forty hours in one workweek; and,

C. The first eight hours worked on a seventh consecutive workday during a workweek.

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23. California Labor Code § 510(a) also requires employers to compensate employees at two times their regular rates of pay for:

A. All hours worked in excess of twelve hours in one day; and,

B. All hours worked in excess of eight hours on a seventh consecutive workday during a workweek.

24. During the applicable limitations period, Plaintiffs have worked more than eight hours in one workday, more than forty hours in one workweek, and eight or more hours on a seventh consecutive workday without being paid for all of those hours at the rates required under California Labor Code § 510(a).

25. Plaintiffs are informed and believe and thereon allege that Defendants have maintained a policy or practice of not compensating him and the other members of the **Wages Class** for all hours worked. Additionally, Plaintiffs are informed and believe and thereon allege that Defendants have maintained a policy or practice of not compensating the other members of the **Wages Class** and the **Overtime Class** at the rates required under California Labor Code § 510(a) for all hours worked in excess of eight hours in one day, all hours worked in excess of forty hours in one week, the first eight hours on a seventh consecutive workday, and all worked hours in excess of eight hours on a seventh consecutive workday.

26. As a result of Defendants' conduct, Plaintiffs, on behalf of themselves and the other members of the **Wages Class** and the **Overtime Class**, seeks declaratory and injunctive relief, damages for unpaid overtime wages, interest thereon, costs of suit, and reasonable attorney's fees pursuant to California Labor Code § 1194(a).

SECOND CLAIM FOR RELIEF

FAILURE TO PROVIDE REST AND MEAL PERIODS

(By Plaintiffs, the Rest Period Class, and the Meal Period Class)

27. Plaintiffs incorporate paragraphs 1 through 26 of the Complaint as if fully alleged herein.

28. At all relevant times, Plaintiffs and other members of the **Rest Period Class** and **Meal Period Class** have been employees of Defendants covered by California Labor Code §§

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226.7 and 512, and Wage order 11.

29. Pursuant to the applicable wage order(s), Defendants are required to provide Plaintiffs and the other members of the **Rest Period Class** with net rest periods of a least ten (10) minutes for each four (4) hour work period, or major portion thereof, during any given workday.

30. Pursuant to California Labor Code § 226.7, Defendants are required to pay Plaintiffs and the other members of the **Rest Period Class** one (1) additional hour of wages for each rest period not provided in accordance with the applicable wage order(s).

31. During the applicable limitations period, Defendants failed to provide Plaintiffs with net rest periods of at least ten (10) minutes for every four (4) hours work period, or major portion thereof, and failed to pay them the required additional wages for rest periods not provided to her.

32. Plaintiffs are informed and believe and thereon allege that Defendants maintain a policy or practice of failing to provide other members of the **Rest Period Class** with net rest periods of at least ten (10) minutes for every four (4) hours worked and of failing to pay them the required additional wages for rest periods not provided to them.

33. Pursuant to California Labor Code § 512 and Industrial Welfare Commission Order 7-2001, Defendants are required to provide Plaintiffs and the other members of the **Meal Period Class** with an uninterrupted thirty (30) minute meal period for each five (5) hour work period during any given workday.

34. Pursuant to California Labor Code § 226.7, Defendants are required to pay Plaintiffs and the other members of the **Meal Period Class** one (1) additional hour of wages for each meal period not provided in accordance with Wage order 11.

35. During the applicable limitations period, Defendants failed to provide Plaintiff with an uninterrupted thirty (30) minute meal period for each five (5) hour work period, including a second uninterrupted thirty (30) minute meal period on days he worked more than ten (10) hours, and failed to pay him the required additional wages for rest periods not provided to her.

36. Plaintiffs are informed and believe and thereon allege that Defendants maintain a policy or practice of failing to provide other members of the **Meal Period Class** with uninterrupted thirty (30) minute meal periods for each five (5) hour work period, including second uninterrupted thirty (30) minute meal periods on days they worked more than ten (10) hours, and failed to pay him the required additional wages for meal periods not provided to her.

37. Plaintiffs on behalf of themselves and the other members of the **Rest Period Class** and the **Meal Period Class**, seeks declaratory and injunctive relief, damages for unpaid wages owed, interest thereon and costs of suit pursuant to California Labor Code § 218.6, and reasonable attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

THIRD CLAIM FOR RELIEF

FORFEITURE OF VACATION PAY

(By Plaintiffs and the Vacation Pay Class)

38. Plaintiffs incorporate paragraphs 1 through 37 of the Complaint as if fully alleged herein.

39. Under California Labor Code § 227.3 and applicable case law, vested paid vacation benefits and other similar forms of paid time off that earned based on labor performed are considered wages and cannot be subject to forfeiture without providing compensation for forfeited days at the applicable rates required by law.

40. Pursuant to written company policies, members of the **California Vacation Pay Class** have earned vested paid vacation days, including, but not limited to, "Personal Holidays" and/or "Management Recognition Days," that are explicitly subject to unpaid forfeiture pursuant to written company policies if they are not used within specified time periods.

41. During the applicable limitations period, Plaintiff has earned vested paid vacation days, including, but not limited to, "Personal Holidays" and "Management Recognition Days," without being compensated by Defendants for each vested paid vacation day.

42. Plaintiff is informed and believes and thereon alleges that Defendants have maintained policies or practices of causing members of the **California Vacation Pay Class** to forfeit vested paid vacation days, including, but not limited to, "Personal Holidays" and/or

"Management Recognition Days," without compensating them for each vested paid vacation day.

43. As a result of the above, Plaintiff seeks declaratory and injunctive relief, damages for unpaid wages owed, interest thereon and costs of suit pursuant to California Labor Code § 218.6, and reasonable attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

FOURTH CLAIM FOR RELIEF

FAILURE TO PROVIDE ACCURATE, WRITTEN WAGE STATEMENTS

(By Plaintiffs and the All-Inclusive Class)

44. Plaintiffs incorporate paragraphs 1 through 43 of the Complaint as if fully alleged herein.

45. At all relevant times, Plaintiffs and the other members of the **All-Inclusive Class** have been employees of Defendants entitled to the benefits and protections of California Labor Code § 226. Pursuant to California Labor Code § 226(a), Plaintiffs and the other class members were entitled to receive, semimonthly or at the time of each payment of wages, an accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable hourly rates in effect during the pay period; and d) the corresponding number of hours worked at each hourly rate by the employee.

46. Defendants failed to provide Plaintiffs accurate itemized statements in accordance with California Labor Code § 226(a) because Plaintiffs' wage statements did not, among other things, accurately reflect all of the hours that they actually worked, the descriptions for all of the hours they actually worked, and the corresponding rates of pay for all of the hours they actually worked.

47. Plaintiffs are informed and believe and thereon allege that, at all relevant times during the applicable limitations period, Defendants maintained a policy or practice of not providing the other members of the **All-Inclusive Class** wage statements did not, among other things, accurately reflect all of the hours that they actually worked, the descriptions for all of the hours they actually worked, and the corresponding rates of pay for all of the hours they actually

worked.

48. Defendants' failure to provide Plaintiffs and the other members of the **All-Inclusive Class** with accurate wage statements was knowing and intentional. Defendants had the ability to provide Plaintiffs and the other class members with accurate wage statements but intentionally provided wage statements that Defendants knew were not accurate.

49. As a result of being provided with inaccurate wage statements by Defendants, Plaintiffs and the other members of the **All-Inclusive Class** have suffered an injury. Their legal rights to receive accurate wage statements were violated and they were misled about the amount of wages they had actually earned and were owed. In addition, the absence of accurate information on their wage statements prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and mathematical computations to determine the amounts of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay records, and/or has led to the submission of inaccurate information about wages and amounts deducted from wages to state and federal government agencies.

50. Pursuant to California Labor Code § 226(e), Plaintiffs and the other members of the **All-Inclusive Class** are entitled to recover the greater of actual damages, or penalties of fifty dollars ($50) for the initial pay period in which a violation of California Labor Code § 226(a) occurred and one hundred dollars for each violation of California Labor Code § 226(a) in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000) per class member, and are also entitled to an award of costs and reasonable attorney's fees.

FIFTH CAUSE OF ACTION

FAILURE TO TIMELY PAY ALL FINAL WAGES

(Cal. Lab. Code §§ 201-203)

(By Plaintiffs and the Former Employee Class)

51. Plaintiffs incorporate paragraphs 1 through 50 of the Complaint as if fully alleged herein.

52. At all relevant times, Plaintiffs and the members of the **Former Employee Class** were employees of Defendants covered by California Labor Code § 201 or California Labor

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Code § 202. Pursuant to California Labor Code § 201 or California Labor Code § 202, Plaintiffs and the members of the **Former Employee Class** were entitled to payment of all wages earned and unpaid prior to the termination of their employment. Members of the **Former Employee Class** who are discharged employees were entitled to payment of their earned and unpaid wages no later than the day on which their employment was terminated. Members of the **Former Employee Class** who resigned were entitled to payment of their earned and unpaid wages within 72 hours after giving notice of resignation or, if they had given at least 72 hours previous notice, no later than the day their employment terminated.

53. Defendants failed to timely pay Plaintiffs all final wages earned and unpaid prior to the termination of his employment with Defendants, including, but not limited to, additional earned wages for rest and meal periods not provided to them, and earned wages in the forms of vested paid vacation time and unlawfully deducted wages, in accordance with California Labor Code § 201. Plaintiffs are informed and believe and thereon allege that, at relevant times during the applicable limitations period, Defendants maintained a policy or practice of not providing members of the **Former Employee Class** with a final paycheck encompassing all wages owed upon termination or discharge of employment, including, but not limited to, additional earned wages for rest and meal periods not provided to them, and/or earned wages in the forms of vested paid vacation time and/or unlawfully deducted wages, in accordance with California Labor Code § 201 or California Labor Code § 202.

54. Defendants' failure to pay Plaintiffs and members of the **Former Employee Class** all wages earned prior to termination in accordance with California Labor Code § 201 or California Labor Code § 202 was willful. Plaintiffs are informed and believe and thereon allege that Defendants had the ability to pay all wages earned by members of the **Former Employee Class** prior to termination in accordance with California Labor Code § 201 or California Labor Code § 202, but intentionally adopted policies or practices incompatible with the requirements of California Labor Code § 201 or California Labor Code § 202.

55. Pursuant to California Labor Code § 201 or California Labor Code § 202, Plaintiffs and the members of the **Former Employee Class** are entitled to all wages earned

prior to the termination of their employment that Defendants did not pay them as well as continuations of their wages, from the days their earned and unpaid wages were due upon the termination of their employment until paid, up to a maximum of thirty (30) days, in amounts subject to proof.

56. Accordingly, Plaintiffs and the members of the **Former Employee Class** are entitled to recover the full amount of their unpaid wages and interest thereon pursuant to California Labor Code § 218.6, continuation wages under California Labor Code § 203, reasonable attorney's fees, and costs of suit.

SIXTH CLAIM FOR RELIEF

UNAUTHORIZED DEDUCTIONS

(By Plaintiffs and the Unauthorized Deductions Class)

57. Plaintiffs incorporate paragraphs 1 through 56 of the Complaint as if fully alleged herein.

58. California Labor Code §§ 221 and 224 prohibit an employer from taking deductions from an employee's wages without the employee's express written consent or other legal authority for doing so.

59. At relevant times during the applicable limitations period, Defendants deducted wages from Plaintiffs' paychecks without their express written consent or other legal authority for doing so. Plaintiffs are informed and believe and thereon allege that, at relevant times during the applicable limitations period, Defendants deducted wages from the paychecks of members of the **Unauthorized Deduction Class** without their express written consent or other legal authority for doing so.

60. By reason of the above, Plaintiffs and the members of the **Unauthorized Deductions Class** are entitled to restitution for all unpaid amounts due and owing to within four years (4) of the date of the filing of the Complaint until the date of entry of judgment. Further, Plaintiffs, on behalf of themselves and the members of the **Unauthorized Deductions Class,** seek interest thereon pursuant to California Labor Code § 218.6, costs pursuant to California Labor Code § 218.6, and reasonable attorney's fees pursuant to California Code of Civil

Procedure § 1021.5.

SEVENTH CLAIM FOR RELIEF

FAILURE TO INDEMNIFY

(By Plaintiffs and the Indemnification Class)

61. Plaintiffs incorporate paragraphs 1 through 60 of the Complaint as if fully alleged herein.

62. 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." California Labor Code § 452 of the Labor Code authorizes employers to prescribe the weight, color, quality, texture, style, form, and make of uniforms required to be worn by their employees. However, the Wage Orders impose an obligation on an employer that requires uniforms to be worn by its nonexempt employees as a condition of employment to provide and maintain such uniforms, regardless of the amount of the employees' compensation. The applicable wage order states, "When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term "uniform" includes wearing apparel and accessories of distinctive design or color." If the employer does not choose to maintain employees' uniforms itself where it is required to do so, the Division of Labor Standards Enforcement takes the position that the employer may pay each affected employee a weekly maintenance allowance of an hour's pay at the state minimum wage rate ($7.50 as of January 1, 2007, and $8.00 as of January 1, 2008) in lieu of maintaining the uniforms, assuming that an hour is a realistic estimate of the time involved in maintaining the uniforms. The term "uniform" is defined to include wearing apparel and accessories of distinctive design or color.

63. At relevant times during the applicable limitations period, Defendants required Plaintiffs and the members of the **Indemnification Class** to purchase and maintain uniforms and apparel unique to Defendants at their expense. Defendants failed to indemnify Plaintiffs and the members of the **Indemnification Class** for such expenditures.

64. By reason of the above, Plaintiffs and the members of the **Indemnification Class**

are entitled to restitution for all unpaid amounts due and owing to within four years (4) of the date of the filing of the Complaint until the date of entry of judgment. Further, Plaintiffs, on behalf of themselves and the members of the **Indemnification Class,** seeks interest thereon pursuant to California Labor Code § 218.6, costs pursuant to California Labor Code § 218.6, and reasonable attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

EIGHTH CLAIM FOR RELIEF

UNFAIR COMPETITION

(By Plaintiffs and the California All-Inclusive Class)

65. Plaintiffs incorporate paragraphs 1 through 64 of the Complaint as if fully alleged herein.

66. The unlawful conduct of Defendants alleged herein amounts to and constitutes unfair competition within the meaning of California Business & Professions Code §§ 17200, *et seq*. California Business & Professions Code §§ 17200, *et seq*., protects against unfair competition and allows a person who has suffered an injury-in-fact and has lost money or property as a result of an unfair, unlawful, or fraudulent business practice to seek restitution on her own behalf and on behalf of other similarly situated persons in a class action proceeding.

67. As a result of Defendants' violations of the California Labor Code as during the applicable limitations period as alleged herein, Plaintiffs have suffered an injury-in-fact and have lost money or property in the form of earned wages. Specifically, Plaintiffs have lost money or property as a result of not being paid for hours worked, not being paid at legal overtime rates for all overtime hours worked, not being paid additional required wages for rest and meal periods not provided to them, being provided with inaccurate written wage statements that have had the effect of concealing other wage underpayments, Defendants' improper deductions, and Defendants' failure to reimburse for necessary expenditures, and Defendants' failure to timely pay all wages due or owed upon termination or resignation.

68. Plaintiffs are informed and believe that other similarly situated persons have been subject to the same unlawful policies or practices of Defendants, including not being paid for all wages earned, not being paid at overtime rates for all overtime hours worked, not being

paid additional required wages for rest and meal periods not provided to them, being provided with inaccurate written wage statements that have had the effect of concealing other wage underpayments, Defendants' improper deductions, and Defendants' failure to reimburse for necessary expenditures, and/or Defendants' failure to timely pay all wages due or owed upon termination or resignation.

69. Due to its unfair and unlawful business practices in violation of the California Labor Code as alleged herein, Defendants have gained a competitive advantage over other comparable companies doing business in the State of California that comply with their legal obligations to compensate employees for all earned wages and to provide them with reasonable means of verifying that they have been paid all earned wages with accurate written wage statements.

70. Pursuant to California Business & Professions Code § 17203, Plaintiffs, on behalf of themselves and the other members of the **All-Inclusive Class**, seek declaratory and injunctive relief, and restitution of all monies rightfully belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful and unfair business practices.

71. Plaintiffs and the other members of the **All-Inclusive Class** are entitled to recover reasonable attorney's fees in connection with their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

NINTH CLAIM FOR RELIEF

CIVIL PENALTIES

(By Plaintiffs and the All-Inclusive Class)

72. Plaintiffs incorporate paragraphs 1 through 71 of the Complaint as if fully alleged herein.

73. During the applicable time period, Defendants violated California Labor Code §§ 204, 223, 226(a), 226.7, 227.3, 510, 512, and 1194.

74. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of himself and other current or former employees, to bring a civil action to recover civil

penalties pursuant to the procedures specified in California Labor Code § 2699.3.

75. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiffs and the other aggrieved employees of Defendants are entitled to recover civil penalties for Defendants' violations of California Labor Code §§ 200, 201, 202, 203, 204, 224, 226(a), 226.7, 227.3, 510, 512, 1194 and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code §§ 200, 201, 202, 203, 224, 226.7, 1194, and 2802, one hundred dollars ($100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars ($200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2));

B. For violations of California Labor Code § 204, one hundred dollars ($100.00) for each aggrieved employee for each initial violation and two hundred dollars ($200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210);

C. For violations of California Labor Code § 226(a), two hundred fifty dollars ($250.00) per employee for initial violation and one thousand dollars ($1,000.00) per employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3); and,

D. For violations of California Labor Code §§ 510 and 512, fifty dollars ($50.00) for each aggrieved employee for each initial violation for pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages and one hundred dollars ($100.00) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages (penalty amounts established by California Labor Code § 558).

76. Plaintiffs have complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letters dated January 8 and February 19, 2010, Plaintiffs gave written notice by certified mail to the Labor and Workforce Development Agency

("LWDA") and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Plaintiffs anticipate that the LWDA will soon provide Plaintiffs with written notice that it does not intend to investigate the violations of the California Labor Code alleged herein.

77. Pursuant to California Labor Code § 2699(g), Plaintiffs and the other members of the **All-Inclusive Class** are entitled to an award of reasonable attorney's fees and costs in connection with their claims for civil penalties.

PRAYER FOR RELIEF

78. WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, prays for relief and judgment against Defendants as follows:

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

B. An order that Plaintiffs be appointed class representatives;

C. An order that counsel for Plaintiffs be appointed class counsel;

D. Declaratory relief;

E. Injunctive relief;

F. Actual damages;

G. Liquidated damages;

H. Restitution;

I. Civil penalties;

J. Statutory penalties;

K. Pre-judgment interest;

L. Costs of suit;

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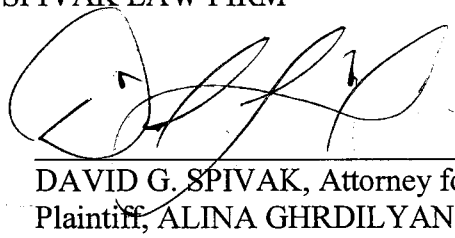
M. Reasonable attorney's fees; and

N. Such other relief as the Court deems just and proper.

Respectfully submitted,

THE SPIVAK LAW FIRM

Date: February 23, 2010

By: 

DAVID G. SPIVAK, Attorney for Plaintiff, ALINA GHRDILYAN, EVGENIA SULTANIAN, and all others similarly situated

THE SPIVAK LAW FIRM

EXHIBIT 11

CASE NUMBER: BC430633
CASE NAME: ALINA GHRDILYAN, ET AL., VERSUS
RJ FINANCIAL, ET AL.,
LOS ANGELES, CALIFORNIA MONDAY, APRIL 23, 2012
DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE
APPEARANCES: (SEE TITLE PAGE.)
REPORTER: ANGELA Z. PARADELA, CSR NO. 9659
TIME: A.M. SESSION

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT:)

THE COURT: OKAY. THANK YOU VERY MUCH. I'M GOING TO ASK YOU LAWYERS TO WAIT FOR JUST A MOMENT.

AS YOU CAN PROBABLY TELL, FROM THE QUESTIONS AND THE WAY I'VE BEEN TAKING NOTES, SO FORTH, I HAVE A CASE IN MIND AND I HAVE BEEN WORKING ON IT BOTH WHILE YOU'VE BEEN WITH ME AND DURING THE RECESSES LIKE WEEKENDS AND NIGHTS. JUST A SECOND. I HAVE TWO MORE THINGS I HAVE TO BRING OUT. I WILL DO SOME MORE WORK WITH YOU.

(A PAUSE IN THE PROCEEDINGS.)

THE COURT: OKAY. YOU PROBABLY ALREADY GOT THE IMPRESSION THAT I AM A JUDGE WHO TRIES TO DOCUMENT AND SHOW THE LEGAL PREMISES FOR PROCEDURAL STEPS WE TAKE, AND I INTEND TO DO THAT. I JUST WANT TO TELL YOU WHAT I'M GOING TO DO HERE AND I GUESS I WILL START THIS WAY.

I SAID I AM GOING TO BRING OUT TWO THINGS. I BROUGHT OUT ONLY ONE.

(A PAUSE IN THE PROCEEDINGS.)

THE COURT: THE -- I'M GOING TO CALL YOUR ATTENTION TO SOME CASES THAT HAVEN'T BEEN CITED. I'M GOING TO DEAL WITH THE MERITS OF YOUR CLIENTS'S CASE. SO HERE WE GO.

UNDER CALIFORNIA CONSTITUTION ARTICLE VI, SECTION 6 AND GOVERNMENT CODE 68070(B) AND 68603(A), THE CALIFORNIA JUDICIAL COUNCIL HAS CONSTITUTIONALLY GRANTED AND LEGISLATIVELY AFFIRMED POWER TO ADOPT RULES, REPORT ADMINISTRATION PRACTICE AND PROCEDURE THAT ARE CONSISTENT WITH STATUTES. THE CALIFORNIA RULES OF COURT HAVE THE FORCE OF LAW AND BINDING AS PROCEDURAL STATUTES AS LONG AS THEY ARE CONSISTENT WITH LEGISLATIVE ENACTMENTS AND CONSTITUTIONAL GUARANTEES.

I WILL CITE YOU THREE CASES WHERE THAT POINT IS MADE. THEY ARE IN RE JUAN -- THAT'S J-U-A-N -- C., (1993), 20 CALIFORNIA APPELLATE 4TH, 748, PARTICULARLY AT PAGES 752 TO 753; ALICIA T. VERSUS COUNTY OF LOS ANGELES, (1990), 222 CALIFORNIA APPELLATE 3D 869 AT 884, AND OATS VERSUS OATS. OATS IS SPELLED O-A-T-S, (1983) 14 CALIFORNIA APPELLATE 3D 416 AT 420. THIS IS HOW THE OATS VERSUS OATS COURT EXPRESSED THIS VIEW.

RULES OF COURT HAVE THE FORCE OF POSITIVE LAW. THEY ARE AS BINDING ON THIS COURT AS PROCEDURAL STATUTES UNLESS THEY TRANSCEND LEGISLATIVE ENACTMENTS OR CONSTITUTIONAL GUARANTEES.

SO THE HIERARCHY THEN WOULD BE CONSTITUTION, STATUTES AND CALIFORNIA RULES OF COURT, AND THEN CASE LAW.

I SAY THAT BECAUSE THE CASE OF WHITTINGTON

VERSUS MCKINNEY -- WHITTINGTON IS SPELLED W-H-I-T-I-N-G-T-O-N, VERSUS MCKINNEY, CAPITAL M, C, CAPITAL K, I-N-N-E-Y, (1991), 234 CALIFORNIA APPELLATE 3D 123 -- CRITICIZED THE CONDUCT OF A NOW FORMER JUDGE, I BELIEVE, AT THE ORANGE COUNTY SUPERIOR COURT, WHO ANNOUNCED A DECISION, GAVE A STATEMENT OF DECISION ORALLY AND SAID IF YOU WANTED A WRITTEN STATEMENT OF DECISION, YOU COULD MAKE REFERENCE TO THE COURT TRANSCRIPT. THAT CASE, WHITTINGTON VERSUS MCKINNEY WAS, AS I SAY, DECIDED IN 1991.

IN 2010, EFFECTIVE JANUARY 1, 2010, THE CALIFORNIA RULES OF COURT WERE AMENDED WITH RESPECT TO, AMONG OTHER PROVISIONS OF THE CALIFORNIA RULES OF COURT, RULE 3.1590 HAVING TO DO WITH ANNOUNCEMENT OF TENTATIVE DECISION AND STATEMENT DECISION AND JUDGMENT.

THE (C) SUBSECTION OF RULE 15 -- RULE 3.1590 WAS AMENDED BY THE ELIMINATION OF SOME PROVISIONS AND BY BEING INSERTION OF OTHER PROVISIONS. I'M GOING TO REFER TO THE (C) SUBSECTION.

IT READS NOW, (READING:)

THE COURT IN ITS TENTATIVE DECISION MAY:

STATE THAT IT IS THE COURT'S PROPOSED STATEMENT OF DECISION, SUBJECT TO A PARTY'S OBJECTION UNDER SUBSECTION (G);

(2) INDICATE THAT THE COURT WILL PREPARE A STATEMENT OF DECISION;

(3) ORDER A PARTY TO PREPARE A STATEMENT OF DECISION; OR

(4) DIRECT THAT THE TENTATIVE DECISION

WILL BECOME THE STATEMENT OF DECISION UNLESS, WITHIN 10 DAYS AFTER ANNOUNCEMENT OR SERVICE OF THE TENTATIVE DECISION, A PARTY SPECIFIES THOSE PRINCIPAL CONTROVERTED ISSUES AS TO WHICH THE PARTY IS REQUESTING A STATEMENT OF DECISION OR MAKES PROPOSALS NOT INCLUDED IN THE TENTATIVE DECISION.

NOW, I WILL NOT USE METHOD TWO. THAT'S THE COURT WILL PREPARE A STATEMENT OF DECISION. I WILL USE EITHER (1), (3), OR (4) EITHER SAYING THAT THIS IS A PROPOSED STATEMENT OF DECISION SUBJECT TO OBJECTIONS UNDER SUBSECTION (G), OR ORDER A PARTY TO PREPARE A STATEMENT OF DECISION, OR DIRECT THAT THE TENTATIVE DECISION WILL BECOME THE STATEMENT OF DECISION UNLESS WITHIN TEN DAYS A PARTY SPECIFIES PRINCIPAL CONTROVERTED ISSUES AS TO WHICH THE PARTY IS REQUESTING A STATEMENT OF DECISION OR MAKES PROPOSALS NOT INCLUDED IN THE TENTATIVE DECISION.

I WOULD LIKE TO HEAR FROM BOTH SIDES NOW CONCERNING WHICH OF THREE ALTERNATIVES WHICH I PROPOSED THEY PREFER, AND THEN I WILL MAKE THE DECISION CONCERNING THAT THAT IS PROPER. LET'S START WITH THE DEFENSE. DEFENDANT?

MR. SABZEVAR: YOUR HONOR, I PREFER THAT THE COURT ISSUES A STATEMENT OF DECISION ITSELF AND NOT LEAVE IT TO THE PARTIES OR TEN DAYS.

THE COURT: I TOLD YOU I'M NOT GOING TO PREPARE A STATEMENT OF DECISION. I'M GOING TO USE EITHER METHOD (1), (3), OR (4). (1) IS THIS IS THE PROPOSED STATEMENT OF DECISION SUBJECT TO OBJECTIONS UNDER (D). (3) IS ORDER A

PARTY TO PREPARE A STATEMENT OF DECISION; OR (4), DIRECT THAT THE TENTATIVE DECISION WILL BECOME THE STATEMENT OF DECISION UNLESS WITHIN TEN DAYS AFTER ANNOUNCEMENT OR SERVICE OF THE TENTATIVE DECISION, THE PARTY SPECIFIES THOSE PRINCIPAL CONTROVERTED ISSUES AS TO WHICH THE PARTY IS REQUESTING A STATEMENT OF DECISION OR MAKES PROPOSALS NOT INCLUDED IN THE TENTATIVE DECISION.

MR. SABZEVAR: DEFENSE PREFERENCE IS NUMBER ONE.

THE COURT: STATE THAT THIS IS THE COURT'S STATEMENT OF DECISION SUBJECT TO A PARTY'S OBJECTION UNDER (G)?

MR. SABZEVAR: YES, YOUR HONOR.

THE COURT: PLAINTIFF?

MR. SPIVAK: WE PREFER TO WRITE THE DECISION, YOUR HONOR, ONCE THE COURT HAS MADE ITS POSITION KNOWN.

THE COURT: ALL RIGHT.

MR. SPIVAK: BY "WE" I MEAN WE BELIEVE IT SHOULD BE PREVAILING PARTY.

THE COURT: UH-HUH. I'M GOING TO USE -- I APPRECIATE -- I'M GOING TO USE METHOD (4). THIS TENTATIVE DECISION WILL BECOME THE STATEMENT OF DECISION UNLESS WITHIN TEN DAYS AFTER ANNOUNCEMENT, AND SO FORTH. THAT'S 3.1590(C)(4).

SO WHAT I'M GOING TO DO NOW IS ANNOUNCE A TENTATIVE WHICH, AS YOU CAN SEE, IS ALSO A CONDITIONAL STATEMENT OF DECISION.

THIS CASE CAME BEFORE ME PRESIDING IN THIS DEPARTMENT 41 ON THE 10TH OF APRIL, 2012, FOR TRIAL WITHOUT

JURY. DAVID G. SPIVAK, STATE BAR 179684, APPEARED AS ATTORNEY FOR PLAINTIFFS ALINA GHRDILYAN AND EVGENIA SULTANIAN, AND F. MICHAEL SABZEVAR, STATE BAR 172312 APPEARED AS ATTORNEY FOR DEFENDANT, RAMIL ABALKHAD.

THE CASE WAS SUBMITTED FOR DECISION TODAY, THE 23RD OF APRIL, 2012.

IN THIS CASE, TWO PLAINTIFFS CLAIM THAT DEFENDANT ABALKHAD IS LIABLE TO THEM ON VARIOUS EMPLOYMENT-DERIVED THEORIES INCLUDING AND ESPECIALLY FOR PENALTIES AND THAT THEY CAN ENFORCE VARIOUS REMEDIES AGAINST THEM UNDER THE LABOR CODE PRIVATE ATTORNEY GENERAL ACT, WHICH IS AT LABOR CODE 2698, AND FOLLOWING.

IN OPEN COURT ON THE 10TH OF APRIL, 2012, THE ATTORNEYS CONFIRMED THAT THE OPERATIVE PLEADINGS ARE THE PLAINTIFFS'S FIRST AMENDED COMPLAINT, ET CETERA, FILED FEBRUARY 24, 2010, AND THE DEFENDANT'S ANSWER TO THEIR FIRST AMENDED COMPLAINT FILED SEPTEMBER 13, 2010. I WILL MAKE A COUPLE OF QUICK COMMENTS ABOUT THOSE TWO DOCUMENTS NOW.

THE FULL NAME OF THE PLAINTIFFS'S OPERATIVE PLEADING IS FIRST AMENDED COMPLAINT FOR -- AND THEN THERE ARE NINE THEORIES LISTED: FAILURE TO COMPENSATE EMPLOYEES FOR ALL HOURS WORKED; NUMBER TWO IS FAILURE TO PROVIDE BOTH REST AND MEAL PERIODS; NUMBER THREE IS FORFEITURE OF VESTED VACATION BENEFITS; NUMBER FOUR IS FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS; NUMBER FIVE IS FAILURE TO TIMELY PAY ALL FINAL WAGES; NUMBER SIX IS UNAUTHORIZED DEDUCTIONS; NUMBER SEVEN IS FAILURE TO INDEMNIFY; NUMBER EIGHT IS UNFAIR COMPETITION; AND NUMBER NINE IS CIVIL PENALTIES.

THE DEFENDANT'S ANSWER TO THE FIRST AMENDED COMPLAINT WAS ON A JUDICIAL COUNCIL FORM PLEADING.

INSOFAR AS IT'S PERTINENT TO THIS PORTION OF MY ANALYSIS, LABOR CODE 2699 READS, (READING:)

> SUBSECTION (A), NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ANY PROVISION OF THIS CODE THAT PROVIDES FOR A CIVIL PENALTY TO BE ASSESSED AND COLLECTED BY THE LABOR AND WORKFORCE DEVELOPMENT AGENCY OR ANY OF ITS DEPARTMENTS, DIVISIONS, COMMISSIONS, BOARDS, AGENCIES, OR EMPLOYEES FOR A VIOLATION OF THIS CODE MAY, AS AN ALTERNATIVE, BE RECOVERED THROUGH A CIVIL ACTION BROUGHT BY AN AGGRIEVED EMPLOYEE ON BEHALF OF HIMSELF OR HERSELF AND OTHER CURRENT OR FORMER EMPLOYEES PURSUANT TO THE PROCEDURES SPECIFIED IN SECTION 2699.3.

THE PLAINTIFFS HAD ORIGINALLY DENOMINATED THIS CASE AS A CLASS ACTION AND THEY CONTINUED THAT DESIGNATION THROUGH VARIOUS OTHER FILINGS, BUT THEY HAVE NEVER OBTAINED AN ORDER CERTIFYING THE CLASS. THEY CLAIM, THOUGH, THAT THEY ARE ENTITLED TO PROCEED ON BEHALF OF OTHERS PURSUANT TO THE CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL ACT AS TO DEFENDANT ABALKHAD.

THE PLAINTIFFS HAD TRIED THIS CASE BEFORE ME SOLELY AS TO CAUSE OF ACTION NINE. THEY CONCEDE THAT THIS CASE IS STAYED IN THIS COURT IN PART BECAUSE OF THE FACT THAT DEFENDANT RJ FINANCIAL, INC., ORIGINALLY THE ONLY NAMED DEFENDANT, BUT BY VIRTUE OF THE FIRST AMENDED PLEADING, A

CODEFENDANT, THAT CORPORATION IS A DEBTOR IN CHAPTER 11 PROCEEDING, WHICH IS STILL PENDING.

PURSUANT TO 11 U.S.C. 362, THIS CASE WOULD BE STAYED AS TO THAT PARTY. BUT MR. ABALKHAD HAS NOT BEEN SHOWN TO BE A DEBTOR IN A BANKRUPTCY PROCEEDING AND DURING CLOSING ARGUMENT OF THE 17TH OF APRIL, 2012, MR. SPIVAK CONFIRMED HIS CLIENTS HAVE CLAIMS PENDING IN THE BANKRUPTCY CASE. THAT WILL MEAN THAT THE CASE CAN PROCEED AND HAS PROCEEDED ON THE BASIS PLEADED AGAINST MR. ABALKHAD AS AN INDIVIDUAL. ALTHOUGH BECAUSE OF 11 U.S.C. 362, IT IS STAYED AS TO THE CORPORATION.

THE PERSONS WHO GAVE TESTIMONY AT THE TRIAL WERE JOSEPH HARSANY, H-A-R-S-A-N-Y, AN EMPLOYEE OF PAYROLL CHECK WRITING SERVICE USED BY THE DEFENDANTS; BREK OYAMA -- BREK IS SPELLED B-R-E-K; AND OYAMA IS O-Y-A-M-A, MR. SPIVAK'S PARALEGAL; RAMIL ABALKHAD, ONE OF THE DEFENDANTS, THE PRESIDENT AND CHIEF EXECUTIVE OFFICER OF DEFENDANT RJ FINANCIAL AND, INDEED, THAT -- APPARENTLY THAT COMPANY'S ONLY OFFICER AND ONLY DIRECTOR. THE FOURTH WITNESS WAS ALINA GHRDILYAN, ONE OF THE PLAINTIFFS, AND THE FIFTH WAS EVGENIA SULTANIAN, ONE OF THE PLAINTIFFS, THE OTHER PLAINTIFF.

I'M GOING TO REFER TO THE LABOR CODE PRIVATE ATTORNEY GENERAL ACT IN THE WAY THE ATTORNEYS HAVE -- IT SEEMS TO ME TO BE SERVICEABLE -- AND I'M GOING TO REFER -- I'M GOING TO USE THE ACRONYM PAGA, P-A-G-A.

PAGA ACTIONS DO NOT HAVE BEEN MAINTAINED AS CLASS ACTIONS. THEY CAN BE, BUT THEY ARE NOT REQUIRED TO BE. THE AUTHORITY ON THAT IS ARIAS VERSUS SUPERIOR COURT, (2009),

46 CALIFORNIA 4TH, 969, 981 TO 982.

WE WILL GO INTO RECESS NOW. COME BACK AT 1:30, PLEASE.

(AT 11:58 A.M., A LUNCH RECESS WAS TAKEN.)

(THE FOLLOWING PROCEEDINGS WERE HELD AT 1:47 P.M.)

THE COURT: NOW, WE WILL GO BACK TO THE GHRDILYAN AGAINST RJ CASE.

OKAY. WHEN WE LEFT, I HAD, I THINK, TALKED ABOUT SOME GENERAL POINTS OF LAW HAVING TO DO WITH PAGA ACTIONS, AND I WILL JUST OVERLAP SLIGHTLY.

I WAS SAYING THAT PAGA ACTIONS DO NOT HAVE TO BE HAVE MAINTAINED AS CLASS ACTIONS. THEY CAN BE, BUT ARE NOT REQUIRED TO BE. AND ONE OF AUTHORITIES ON THAT IS ARIAS, A-R-I-A-S, VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH 969 FROM PAGES 981 TO 982. PAGA IS NOT THE EMPLOYEE'S EXCLUSIVE REMEDY. THEY MAY SEPARATELY OR CONCURRENTLY SEEK OTHER REMEDIES. LABOR CODE 2699(G) AND CALIBER BODY WORKS VERSUS SUPERIOR COURT, (2005) 134 CALIFORNIA APPELLATE 4TH 365 AT 375.

THE KINDS OF PENALTIES THAT PAGA PLAINTIFFS CAN SEEK TO RECOVER, ASSUMING THAT THE FACTS SUPPORT IT, ARE THOSE FOR FAILURE TO PAY STATUTORILY PRESCRIBED WAGES -- THAT'S LABOR CODE 210 -- UNLAWFULLY WITHHELD WAGES -- THAT'S LABOR CODE 225.5 -- OR FOR VIOLATING, FOR EXAMPLE, AN INDUSTRIAL WELFARE COMMISSION ORDER -- THAT'S LABOR CODE 558. AN AGGRIEVED EMPLOYEE -- THAT WOULD MEAN ANYONE EMPLOYED BY THE ALLEGED VIOLATOR AND AGAINST WHOM ONE OR MORE VIOLATIONS WAS COMMITTED -- AND I PICKED UP THAT DEFINITION FROM LABOR CODE 2699(C) AND FROM THE COMMENTS IN AMALGAMATED TRANSIT UNION VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH 993 AT 1004 TO 1005 -- AN AGGRIEVED EMPLOYEE CAN SUE TO RECOVER CIVIL PENALTIES FOR VIOLATIONS OF THE LABOR CODE ON BEHALF OF

HIMSELF, OR HERSELF, AND OTHER CURRENT OR FORMER EMPLOYEES AGAINST WHOM ONE OR MORE OF THE ALLEGED VIOLATIONS WAS COMMITTED. THAT'S LABOR CODE 2699(G)(1).

THE ATTORNEYS HAVE FROM TIME TO TIME REFERRED TO WHAT THEY HAVE CALLED THE BRINKER CASE.

NOW, WHAT THEY ARE REFERRING TO IS THE CASE ENTITLED BRINKER RESTAURANT CORPORATION VERSUS SUPERIOR COURT, REAL PARTY IN INTEREST, HOHNBAUM H-O-H-N-B-A-U-M. THE VERSION OF THAT THAT I HAVE USED IN MY ANALYSIS AND PREPARATION IS THE VERSION THAT WAS PRINTED AT 2012 DAILY JOURNAL, DAILY APPELLATE REPORT, PAGE 4615, AND FOLLOWING.

I HAVE BEEN REQUIRED TO EVALUATE THE TESTIMONY OF THE PARTY WITNESSES IN THIS CASE, THAT IS, MS. GHRDILYAN, MS. SULTANIAN, AND MR. ABALKHAD WITH SOME CAUTION AND RESERVATIONS. THOSE THREE PERSONS IN THEIR CAPACITIES AS WITNESSES ARGUED AND WRANGLED WITH THE QUESTIONERS DURING TRIAL, AND SOME OF THAT WAS PROVOKED BY THE QUESTIONERS; SOME OF IT WAS NOT. THAT BECOMES AN IMPORTANT FACTOR IN EVALUATING RELATIVE CREDIBILITIES UNDER EVIDENCE CODE 780(A). THOSE THREE PARTIES ALL HAVE AN INTEREST, BIAS, AND OTHER MOTIVE FOR SLANTING THEIR TESTIMONY, OBVIOUSLY, AND THAT BECOMES SIGNIFICANT UNDER EVIDENCE CODE 780(F) AND EVIDENCE CODE 780(J).

MR. ABALKHAD HAS SUFFERED FELONY CONVICTIONS ON HIS PLEA OF NOLO CONTENDERE AS TO PERJURY AND TAX EVASION AND DID NOT OWN UP TO THAT COMPLETELY IN DISCOVERY. THAT'S EVIDENCE -- THAT BECOMES PERTINENT UNDER EVIDENCE CODE 780(E) AND EVIDENCE CODE 780(H), AND EVIDENCE CODE 780(I) AND IS

COMMENTED ON IN THE CASE OF RUSHEEN, R-U-S-H-E-E-N, VERSUS DREWS, D-R-E-W-S, (2002) 99 CALIFORNIA APPELLATE 4TH 279 AT PAGES 283 TO 284.

ASPECTS OF THE TESTIMONY OF THESE WITNESSES, THESE THREE PEOPLE AS WITNESSES, WERE EXAGGERATED AND OVERSTATED. THAT BECOMES PERTINENT UNDER EVIDENCE CODE 780(B).

FURTHERMORE, EVIDENCE CODE SECTION 412 PROVIDES THAT IF WEAKER AND LESS SATISFACTORY EVIDENCE IS OFFERED WHEN IT WAS IN -- WHEN IT WAS WITHIN THE POWER OF THE PARTY TO PRODUCE STRONGER AND MORE SATISFACTORY EVIDENCE, THE EVIDENCE ACTUALLY OFFERED SHOULD BE VIEWED WITH DISTRUST. THIS, OF COURSE, IS A PERMISSIBLE INFERENCE AND NOT A MANDATORY ONE, BUT THIS COURT HAS, AS THE LAW INDICATES, TAKEN THIS INTO CONSIDERATION.

BUT ALL THAT HAVING BEEN SAID, THE COURT DOES NOT ACCEPT MR. SABZEVAR'S INVITATION TO REJECT THE ENTIRETY OF THE PLAINTIFFS'S TESTIMONY. INSTEAD, THIS COURT HAS HAD TO ACCEPT THE PART OF THE TESTIMONY OF THE WITNESSES WHICH THIS COURT FOUND -- HAS FOUND TO BELIEVE TRUE AND -- AND WILL REJECT THE REST. THIS IS PRECISELY WHAT THE COURT -- PARDON ME -- IS AUTHORIZED TO DO OR ANY FINDER OF FACT WOULD BE AUTHORIZED TO DO. ONE MODEL FOR THAT IS CACI INSTRUCTION 107, FOURTH PARAGRAPH.

THE DATES INVOLVED IN THIS CASE -- AND THE DATES BECOME SIGNIFICANT -- ARE AS FOLLOWS. MS. SULTANIAN WAS HIRED ON -- IN NOVEMBER, 2007, AND WAS FIRED ON NOVEMBER 19, 2009. MS. GHRDILYAN WAS HIRED IN AUGUST, 2008, AND WAS

FIRED ON DECEMBER 3, 2009. ONE OF THE QUESTIONS WHICH I HAVE BEEN CALLED UPON TO ANSWER IS WHETHER MR. ABALKHAD AS AN INDIVIDUAL WAS AN EMPLOYER OF PLAINTIFFS AND -- UNDER WAGE ORDER 7. I FIND THAT HE WAS NOT. BUT I FIND THAT THE THEORIES OF LIABILITY UNDER -- I SHOULD BACK OFF. BUT I FIND THAT THE OTHER BASES FOR ASSERTING LIABILITY ON THE PART OF MR. ABALKHAD DO HAVE MERIT, AND LIABILITY DOES ATTACH TO HIM UNDER THOSE THEORIES.

THE THEORIES I'M REFERRING TO ARE LABOR CODE 558 TO WHICH LABOR CODE 510 AND 512 ARE APPENDED OR INCLUDED SUBSTANTIVE PROVISIONS AND LABOR CODE 1197.1 TO WHICH THE SUBSTANTIVE PROVISIONS OF LABOR CODE 1198 AND THE WAGE ORDER ARE ASSOCIATED THEORIES OF LIABILITY.

IN OTHER WORDS, I AM FINDING THAT UNDER 558 LABOR CODE AND 1197.1 LABOR CODE FOR THE SUBSTANTIVE REASONS REFERRED TO IN THE OTHER TWO SOURCES AS TO EACH OF THOSE SECTIONS, THAT IS 510 AND 512 LABOR CODE, AND 1193 AND WAGE ORDER, LIABILITY CAN ATTACH TO MR. ABALKHAD AND UNDER THE CIRCUMSTANCES OF THIS CASE, WILL ATTACH.

I'M GOING TO MAKE A FINDING ON THAT, AS YOU WILL SEE, IN FAVOR OF -- PARDON ME -- OF THE PLAINTIFFS'S POSITION.

NOW, I SAY IN FAVOR OF THE PLAINTIFFS'S POSITION BECAUSE THAT MEANS NOT JUST IN FAVOR OF THE PLAINTIFFS BUT SINCE WE HAVE A PAGA ACTION, I AM REFERRING TO THE PLAINTIFFS'S POSITION.

NOW -- PARDON ME. I WILL SAY THIS.

AS YOU CAN TELL, I AM AT SOME PAINS TO GO

THROUGH THE LEGAL REASONING AND STEPS PREPARATORY TO REACHING A DECISION IN THIS CASE WITH SOME CARE BECAUSE IT MAY VERY WELL BE THAT THIS CASE WILL REACH ITS WAY INTO THE APPELLATE COURTS AND THAT IT IS ALSO POSSIBLE THAT THE APPELLATE COURTS MAY DECIDE THIS CASE IN A PUBLISHED OPINION, AND I WILL SAY THAT THE DETERMINATION I HAVE MADE ABOUT ABALKHAD AS AN EMPLOYER -- I SAID THAT HE'S NOT -- OR ABALKHAD AS A POTENTIALLY LIABLE PARTY UNDER LIABILITY-ENHANCING STATUTES OTHER THAN LABOR CODE 558 AND LABOR CODE 1197.1, THAT IS, THE ABALKHAD-FAVORING DETERMINATIONS I HAVE MADE ON THOSE POINTS, ARE NOT BEYOND REASONABLE ARGUMENT.

MY DECISION IS, AS I HAVE EXPRESSED IT, AND I BELIEVE THAT I AM CORRECT -- BUT I -- BUT I DO RECOGNIZE THAT THERE ARE ARGUMENTS THAT CAN BE MADE -- AND THEY HAVE BEEN MADE HERE IN THIS COURTROOM -- ON THOSE POINTS.

I HAVE COMPARED THE EMPLOYEE HANDBOOKS, EXHIBIT 3 AND EXHIBIT D. IT APPEARS TO ME THAT EXHIBIT D FROM THE EVIDENCE IN THIS CASE WAS NOT SUPPLIED BY ABALKHAD DURING THE DISCOVERY PHASE OF THIS CASE. THE PARTICULAR PROVISIONS THAT I AM DEALING WITH ARE THOSE HAVING TO DO WITH OVERTIME AND LUNCH AND EXHIBIT 3 IS COMMENTED ON BY THE PLAINTIFFS AS BEING DEFICIENT BECAUSE THEY SAY THAT A LUNCH PERIOD MUST BE PROVIDED AFTER FIVE HOURS OF WORK, NOT SIX HOURS OF WORK, AND THE PLAINTIFFS'S POSITION IS THAT THAT WAS THE ONLY PERTINENT EMPLOYEE HANDBOOK.

I THINK THE PLAINTIFFS ARE RIGHT AS TO BOTH THOSE CONTENTIONS. EXHIBIT 3 BEARS THE DATE OF JANUARY, 2003. PLAINTIFFS ADMIT THAT THIS IS THE CORRECT DATE. THAT

IS, IT SEEMS TO ME, THE OPERATIVE EMPLOYEE HANDBOOK. EXHIBIT D WHICH HAS DIFFERENT PROVISIONS IN IT CONCERNING THE SAME TOPICS WAS, IN MY VIEW, FIRST NOT PRODUCED DURING DISCOVERY; SECOND, A WRITING THAT CAME INTO EXISTENCE IN AUGUST, 2010, SUBSTANTIAL PERIOD OF TIME AFTER THE PLAINTIFFS HAD ALREADY HAD THEIR EMPLOYMENT TERMINATED AND INDEED AUGUST, 2010, IS EVEN AFTER THE PRESENT SUIT WAS FILED. THIS CAN BE SEEN FROM EXHIBIT D PAGE 17, SECOND FULL PARAGRAPH.

AS I HAVE SAID, THIS SUIT WAS FILED ON THE 28TH OF JANUARY, 2010.

ONE OF THE COMPLICATING FACTORS IN THIS CASE -- AND THE LAWYERS HAVE RECOGNIZED IT, AND IT'S OBVIOUS TO ANYONE WITH ANY LEGAL EXPERIENCE -- IS THAT ALTHOUGH THE LAWSUIT ORIGINALLY NAMED RJ FINANCIAL, INC., THAT DEFENDANT IS A DEBTOR IN A CHAPTER 11 BANKRUPTCY. AS I HAVE SAID, THE CASE IS OBVIOUSLY STAYED AS TO THAT PARTY, BUT THE PLAINTIFFS HAVE HAD TO REORGANIZE THEIR CASE TO PRESS IT AGAINST MR. ABALKHAD WHO IS NOT IN BANKRUPTCY AND IT SEEMS TO ME THEY HAVE DONE SO SUCCESSFULLY.

THERE IS NO SERIOUS QUESTION BETWEEN THE SIDES CONCERNING THE FOLLOWING PROPOSITIONS OF LAW. AN EMPLOYEE IS ENTITLED TO OVERTIME COMPENSATION FOR WORK IN EXCESS OF EIGHT HOURS IN ONE WORKDAY, FOR WORKING IN EXCESS OF 40 HOURS IN ONE WORKWEEK, AND FOR WORK ON THE SEVENTH DAY IN ONE WORK WEEK. THE OVERTIME COMPENSATION DIFFERS, BUT THOSE ARE OVERTIME ITEMS.

IT IS ALSO TRUE -- BY THE WAY, THIS IS PROVIDED FOR UNDER LABOR CODE 510(A). IT'S ALSO TRUE THAT

EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EMPLOYEES WHO ARE SPECIFICALLY EXEMPTED BY THE CALIFORNIA INDUSTRIAL WELFARE AND COMMISSION ARE EXEMPT FROM THE HOURS WORKED AND DAYS WORKED PER WEEK LIMITATIONS AS PROVIDED FOR IN LABOR CODE 515 BUT -- PARDON ME -- THE PLAINTIFFS IN THIS CASE DO NOT FALL INTO THAT EXEMPTED CATEGORY AND INDEED THE DEFENDANT DOES NOT CLAIM THAT THEY DO.

FOR THE REASONS THAT I HAVE MENTIONED EARLIER ABOUT THE RESERVATIONS WITH WHICH THE TESTIMONY OF THE WITNESSES HAVE TO BE INTERPRETED WITH, I DO NOT ATTEMPT TO SUMMARIZE ALL THE TESTIMONY OF ALL THE WITNESSES.

IT IS ALSO TRUE THAT SUCCESSFUL EMPLOYEE PLAINTIFFS WHO ARE AWARDED UNPAID OVERTIME ARE ENTITLED TO INTEREST ACCRUING FROM THE DATE ON WHICH THE RIGHT TO RECOVER THEIR OVERTIME VESTS. THIS WOULD BE ON THE MODEL INDICATED IN CIVIL CODE 3287(A) COMPUTED TO THE DATE OF ENTRY OF JUDGMENT. THIS IS LABOR CODE 1194(A), AND IT'S ALSO DISCUSSED IN ESPINOSA VERSUS CLASSIC PIZZA, WHICH IS A CASE THAT APPEARS IN 114 CALIFORNIA APPELLATE 4TH. THE PARTICULAR PASSAGE THAT I'M MAKING REFERENCE TO IS AT PAGE 975.

THE TERM "WILLFUL" UNDER THE LABOR CODE -- THIS APPEARS IN LABOR CODE 203 -- IT MEANS ONLY THAT AN EMPLOYER INTENTIONALLY FAILED OR REFUSED TO PERFORM AN ACT THAT WAS REQUIRED TO BE DONE. THAT POINT IS MADE IN BARNHILL VERSUS ROBERT SAUNDERS & COMPANY, (1981) 125 CALIFORNIA APPELLATE 3D 1 AT PAGES 7 AND 8.

OBVIOUSLY, IN THE CURRENT CASE, UNLIKE THE SITUATION IN BARNHILL, THERE'S NO EVIDENCE OF OFFSET. I'M

CITING BARNHILL JUST FOR THE PURPOSE OF THE DEFINITION OF THE WORD "WILLFUL."

I WILL MAKE A COUPLE OF OTHER POINTS.

I RECOGNIZE THE INTENSITY WITH WHICH THE DEFENSE HAS MAINTAINED THAT THIS IS A CASE DRIVEN BY ATTORNEYS AND ATTORNEY'S FEES ON THE PLAINTIFFS'S SIDE. FOR THE REASONS THAT I HAVE MENTIONED PREVIOUSLY, THAT IS, THAT ONE OF THE PURPOSES OF PAGA IS PRECISELY TO INCENTIVIZE ATTORNEYS TO -- TO FILE AND TO PROSECUTE SUCH CASES -- THAT ARGUMENT EXISTS AND IT DOES HAVE A CERTAIN AMOUNT OF OCCURRENCE, BUT I DO NOT REGARD IT AS BEING A STRONG ARGUMENT. IT IS THE PURPOSE OF THE LAW PRECISELY TO PROVIDE AN INCENTIVE FOR ATTORNEYS WHO MIGHT OTHERWISE BE UNABLE TO HANDLE CASES OF THIS TYPE TO BE ABLE TO HANDLE CASES OF THIS TYPE.

I WILL SAY THAT APPLICATIONS FOR ATTORNEYS'S FEES, IF ANYBODY CLAIMS ENTITLEMENT TO ANY, CAN BE MADE BY POST-JUDGMENT MOTION FOR ALLOWANCE OF ATTORNEY'S FEES AS PARTS OF COSTS UNDER CIVIL CODE 1717(A), IF THAT'S WHAT APPLIES, OR UNDER THE CORRESPONDING STATUTE IN THE LABOR CODE. AND THE METHOD OF MAKING A POST-JUDGMENT MOTION FOR ALLOWANCE IS REFERRED TO IN SUCH CASES AS ALLSTATE INSURANCE VERSUS LEW, (1996) 46 CALIFORNIA APPELLATE 4TH 174 -- 1794 AT 1797, AND BANKES VERSUS LUCAS -- BANKES IS SPELLED B-A-N-K-E-S, VERSUS LUCAS -- (1992) 9 CALIFORNIA -- 9 CALIFORNIA APPELLATE 4TH, 365 AT 370.

I CITE THOSE TWO CASES NOT FOR THE PROPOSITION THAT THEY APPLY IN LABOR CASES OR THAT THEY ARE DISPOSITIVE

ON THE ISSUE OF THE AMOUNT OF LEGAL FEES BUT JUST TO SHOW THAT THAT IS AN APPROPRIATE TIME TO MAKE APPLICATIONS FOR FEES.

IN THE PREMISES OF THIS CASE, THOUGH, FOR REASONS THAT I WILL EXPLAIN IN JUST A SECOND, THE APPLICATION FOR ATTORNEY'S FEES, IF THERE IS GOING TO BE ONE ON THE PART OF THE PLAINTIFFS'S ATTORNEY, SHOULD BE, IT SEEMS TO ME, MADE AFTER DISTRIBUTION OF ALL THE FUNDS THAT WILL BE DISTRIBUTED UNDER MY AWARD WHICH I'M GOING TO MAKE UNDER PAGA SO THAT WE DON'T HAVE THE SITUATION WHERE THE ATTORNEY IS PAID, PLAINTIFFS'S ATTORNEY IS PAID FIRST OR SEEKS PAYMENT FIRST WITHOUT ALSO DOING ALL THE, IT SEEMS TO ME, RATHER LABORIOUS WORK THAT'S GOING TO BE REQUIRED UNDER PAGA, AND IT'S 25 PERCENT, 75 PERCENT SHARING ARRANGEMENT WITH THE PLAINTIFFS TO GET 25 PERCENT AND WITH THE STATE OF CALIFORNIA TO GET THE 75 PERCENT.

SO I'M GOING TO TREAT THAT ASPECT OF THIS CASE AS CALLING FOR ATTORNEY FEE MOTIONS, IF ANY ARE TO BE MADE, AT A TIME AFTER THAT STEP OF CONCURSUS OF CLAIMS AND DISTRIBUTION OF FUNDS HAS EITHER BEEN COMPLETELY FINISHED OR HAS BEEN FINISHED WITH THE EXCEPTION OF A FEW SMALL MINISTERIAL ACTS.

PARDON ME.

WITH RESPECT TO THE -- TO THE REMEDIES, IT SEEMS TO ME THAT THE EVIDENCE STRONGLY SUPPORTS THE PLAINTIFFS'S ARGUMENTS AS TO WHAT I WILL CALL THE 558-510-512 THEORY AND THE 1197.1-1198-WORK ORDER THEORY.

I THINK THAT THE EVIDENCE ESTABLISHES

VIOLATIONS OF THOSE SUBSTANTIVE PROVISIONS AND THAT THE EVIDENCE ESTABLISHES A RIGHT TO RECOVER ON BEHALF OF THE PAGA-AGGRIEVED EMPLOYEES AND ON BEHALF OF THE PLAINTIFFS BUT IN AMOUNTS THAT ARE DIFFERENT FROM THOSE -- THE THEORIES ARE THOSE ADVOCATED BY MR. SPIVAK AND HIS CLIENTS. THE AMOUNTS ARE AMOUNTS THAT I AM GOING TO ALTER, THOUGH, AS WILL BE CLEAR.

WITH RESPECT TO THE GHRDILYAN 558-510-512 LABOR CODE RECOVERY, I AM GOING TO AWARD $7,654.60 -- THAT'S EXACTLY AS CALCULATED BY MR. SPIVAK AND THOSE ARE -- THAT'S IN FAVOR OF MS. GHRDILYAN AND AGAINST MR. ABALKHAD.

WITH RESPECT TO THE 1197.1 THEORY, WITH 1198 AND WORK ORDER BEING THE SUBSTANTIVE BASES, I AGREE WITH MR. SPIVAK THAT MS. GHRDILYAN'S RECOVERY SHOULD BE $14,218 AND THAT COMES OUT TO A TOTAL OF 21,872.60 FOR GHRDILYAN.

WITH RESPECT TO SULTANIAN, MY DETERMINATION IS THAT REGARDING THE LABOR CODE 558-510-512 THEORY, MS. SULTANIAN IS ENTITLED TO RECOVERY AGAINST MR. ABALKHAD OF $5,264.19, AND WITH RESPECT TO HER THEORY UNDER 1197.1 LABOR CODE, MS. SULTANIAN IS ENTITLED TO RECOVER AGAINST MR. ABALKHAD $13,936.50. TOTAL IS $19,200.69, AND THAT'S THE AMOUNT THAT SULTANIAN IS ENTITLED TO RECOVER ON HER ACCOUNT AGAINST MR. ABALKHAD.

THIS NOW BRINGS US TO THE AWARD IN FAVOR OF THE SO-CALLED AGGRIEVED EMPLOYEES.

MY DETERMINATION IS THAT THE AGGRIEVED EMPLOYEES'S CLAIMS ARE VALID AND MERITORIOUS CLAIMS; THAT THEY CAN BE AND HAVE BEEN VALIDLY ASSERTED BY, PROSECUTED BY

THE TWO PLAINTIFFS IN OUR CASE.

I AM GOING, HOWEVER, NOT TO ACCEPT THE DOLLAR FIGURES IN THE ULTIMATE SENSE THAT MR. SPIVAK AND HIS CLIENTS HAVE ADVOCATED. IN DOING THIS, I AM GOING TO SPECIFICALLY EXERCISE MY POWERS, WHICH IT SEEMS TO ME ARE IN THE NATURE OF JUDICIAL DISCRETION, TO REDUCE THE AMOUNT OF RECOVERY FROM THE AMOUNTS ADVOCATED BY MR. SPIVAK AND HIS CLIENTS.

WITH RESPECT TO THE LABOR CODE 558, 510, AND 512 THEORIES, AS TO THE AGGRIEVED EMPLOYEES, MY DETERMINATION IS THAT THE AMOUNT WHICH MR. ABALKHAD MUST PAY IS NOT THE $2,164,278 AMOUNT THAT MR. SPIVAK ARGUED FOR BUT RATHER $125,000.

WITH RESPECT TO THE 1197.1-1198-WAGE-ORDER CLAIM, MY DETERMINATION IS THAT THE AMOUNT THAT MR. ABALKHAD WILL BE REQUIRED TO PAY IS NOT $3,269,490, WHICH WAS THE AMOUNT ADVOCATED BY MR. SPIVAK ON BEHALF OF HIS CLIENTS BUT RATHER $200,000.

NOW, THAT COMES OUT TO A TOTAL THEN OF $325,000.

NOW, IN DOING THIS, I HAVE EXERCISED MY DISCRETION TAKING INTO CONSIDERATION THE FOLLOWING POINTS. I AGREE WITH MR. SPIVAK'S CHARACTERIZATION OF MR. ABALKHAD AS A PERSON WHO WAS INADEQUATELY OBSERVANT OF CALIFORNIA LAW. MR. SPIVAK REFERS TO HIM AS A "SCOFFLAW." THAT'S A JOURNALISTIC RATHER THAN A -- A LEGAL TERM. BUT I THINK HE DID HAVE THE INTENTION SIMPLY OF TRYING TO RUN THINGS THROUGH AND GET OFF AS CHEAPLY AS HE COULD WHILE HE WAS RUNNING HIS BUSINESSES.

BUT I ALSO FIND THAT ONE OF THE PROBLEMS IN THE OPERATION OF HIS BUSINESS WAS THAT HE GOT IN WAY OVER HIS HEAD. HE SIMPLY EXPANDED BEYOND HIS OR HIS CORPORATION'S CAPACITY PROPERLY TO RUN THESE BUSINESSES. HE RAN THEM AS THOUGH HE WERE RUNNING A KIND OF SMALL OPERATIONS OUT OF HIS HIP POCKET, AND I RECOGNIZE THAT THAT IS NOT A PRAISEWORTHY BEHAVIOR, BUT IT SEEMS TO ME THAT IT IS NOT BEHAVIOR OF A HIGHLY BLAMEWORTHY SENSE AND THAT IT IS BEHAVIOR WHICH MERITS A REDUCTION OR SOFTENING OF THE PENALTIES.

NOW, I WILL ALSO SAY THE FOLLOWING. IF ON APPEAL, THE APPELLATE COURT DETERMINES THAT I AM MISTAKEN CONCERNING THE POTENTIAL OTHER THEORIES OF LIABILITY ASSERTED BY MR. SPIVAK AND HIS CLIENTS AGAINST MR. ABALKHAD, I WILL TELL YOU WHAT I WOULD HAVE AWARDED ON THOSE THEORIES SO THAT IT MAY BE THAT THE APPELLATE COURT CAN SIMPLY TAKE WHAT I HAVE SAID HERE AND RATHER THAN MAKING A DISPOSITION WHICH REMANDS THE CASE FOR FURTHER CALCULATION OF DAMAGES, THE APPELLATE COURT CAN SIMPLY INSERT THE MONETARY REMEDY THAT I WOULD HAVE INSERTED MYSELF HAD I NOT BEEN PERSUADED THAT MR. ABALKHAD WAS NOT LIABLE EXCEPT UNDER THE THEORIES THAT I HAVE MADE REFERENCE TO.

HAD THAT BEEN DONE, I WOULD HAVE AWARDED AN ADDITIONAL $200,000 AS TO THE AGGRIEVED EMPLOYEES.

NOW, I WILL SAY THAT THESE AMOUNTS ARE, I RECOGNIZE, EXTREMELY LENIENT AND PERMISSIVE TO MR. ABALKHAD. IN OTHER WORDS, THIS IS NOT A CASE WHERE THE COURT HAS TRIED TO SOCK IT TO HIM. IT IS, RATHER, A CASE IN WHICH I HAVE TREATED IT AS A SERIES OF OFFENSES BUT ONE AS TO WHICH

MR. ABALKHAD SHOULD BE GIVEN AT LEAST SOME LENIENCY IN THE FASHIONING OF A REMEDY. I THINK THAT'S IT. LET ME ASK THE LAWYERS.

FIRST OF ALL, PLAINTIFFS'S LAWYER. ARE THERE OTHER MATTERS AS TO WHICH YOUR CLIENTS CONTEND I SHOULD MAKE A STATEMENT OF SOME KIND OR A FINDING OF SOME KIND?

MR. SPIVAK: WAS THERE SOME FINDING AS TO THE ADDITIONAL $200,000 WITH RESPECT TO THE INDIVIDUAL PLAINTIFFS, YOUR HONOR?

YOU SPOKE TO THE OTHER CLAIMS WHICH PERHAPS WOULD AFFECT THE APPELLATE COURT SHOULD IT SEND BACK FOR CALCULATION.

THE COURT: YEAH.

MR. SPIVAK: I KNOW YOU GAVE AN AGGRIEVED EMPLOYEE NUMBER BUT NOT FOR THE TWO PLAINTIFFS.

THE COURT: SHOW ME -- JUST A SECOND. COULD YOU, PLEASE, TURN BACK TO -- OH, I GUESS I OUGHT TO SAY THAT. LET ME DO THAT NOW.

THE PLAINTIFFS CONTEND THAT THERE WERE THESE WRONGS AS TO BOTH THEMSELVES AND AS TO THE AGGRIEVED EMPLOYEES, AND I WILL JUST REFER TO THEM IN SHORT, COMPRESSED TERMS. AND ESSENTIALLY IT BOILS DOWN TO I THINK NINE THEORIES AND I WILL ENUMERATE THEM NOW: OVERTIME, REST AND MEAL PERIODS, WAGE STATEMENT, IN OTHER WORDS, LABOR CODE 226, UNPAID TRAVEL EXPENSES AND MILEAGE -- THAT'S FOUR -- OFF-THE-CLOCK WORK, UNTIMELY PAYMENT OF WAGES, VACATION PAY AT TERMINATION, AND FAILURE FAIRLY TO ADVISE THE EMPLOYEES OF CHANGE IN THE COMMISSION STRUCTURE SO THAT WHAT HAPPENED WAS

THAT THEY WERE MADE TO DO WORK WITHOUT KNOWING -- WITHOUT, AS IT TURNED OUT, WHAT THE ULTIMATE PAYMENT FOR IT WAS GOING TO BE.

EACH OF THOSE CONTENTIONS -- EACH OF THOSE THEORIES IS A THEORY THAT WOULD BE DECIDED IN FAVOR OF THE PLAINTIFFS AND AGAINST THE -- AND AGAINST THE DEFENDANT ABALKHAD EXCEPT FOR MY DETERMINATION THAT HE INDIVIDUALLY IS NOT LIABLE. BUT IF HE IS LIABLE, THAT IS, IF THE APPELLATE COURT DECIDES THAT I HAVE MADE AN ERROR REGARDING EXCESSIVELY NARROW INTERPRETATION OF THE LABOR CODE PROVISIONS, I WOULD AWARD EACH OF THE PLAINTIFFS AS PENALTIES $60,000 EACH; 60 PLUS 60 IS 120.

NOW, I WILL SAY, AGAIN, I RECOGNIZE THAT THIS IS WAY BELOW THE PLAINTIFFS'S TARGET NUMBER, BUT IT IS A NUMBER THAT I THINK IS APPROPRIATE.

NOW, I WANT TO SAY SOMETHING ELSE ABOUT THIS, AND THIS IS A COMPLICATION CREATED BY FACTORS THAT I HAD REFERRED TO PREVIOUSLY. THIS IS THE BANKRUPTCY OF THE CORPORATION.

WHAT I AM SAYING CONCERNING THESE OTHER PENALTIES AND OTHER AMOUNTS, THAT IS, AMOUNTS I AM NOT ACTUALLY AWARDING ARE FOR THE BENEFIT OF THE APPELLATE COURT IN ASSISTING IT TO FRAME A DISPOSITIONAL ORDER IF THE CASE IS SENT BACK TO THE SUPERIOR COURT UPON A REVERSAL IN PART OR IN WHOLE.

I WANT TO PUT THESE PEOPLE IN A POSITION SO THEY WILL HAVE A REMEDY ON BOTH SIDES WITHOUT THE NECESSITY OF THE SUPERIOR COURT HAVING TO REVISIT THIS AND BY THE

SUPERIOR COURT TELLING THE APPELLATE COURT WHAT THE SUPERIOR COURT WOULD HAVE DONE HAD THE SUPERIOR COURT'S REASONING NOT FORECLOSED IT.

I AM EXTREMELY CONCERNED TO STATE THIS IN THAT WAY SO THAT THE BANKRUPTCY PROCEEDINGS ARE NOT IN SOME WAY SPOILED OR IMPROPERLY AFFECTED BY THE WORK DONE HERE IN THE -- IN THE TRIAL COURT. AND I AM TRYING TO SUPPLY ALL OF THE INFORMATION THAT I CAN WHILE STILL BEING TRUE TO AND OBSERVANT OF THE NECESSITY FOR TRYING TO ACHIEVE AS MUCH FINALITY AS I CAN WHILE STILL ASSISTING IN THE LITIGATION PROCESS AS MUCH AS THIS COURT CAN.

NOW, I HAVE PREVIOUSLY DISCUSSED AND I WILL MAKE A PART OF MY STATEMENT OF DECISION HERE THE SET OF DATES THAT PIVOT AROUND THE APPEAL. AS I HAVE SAID PREVIOUSLY, THE CASE THAT I HAVE BEEN TRYING, THIS CASE, WAS FILED ON THE 26TH OF JANUARY, 2010. THE DEFENDANT WAS AT THAT TIME ONLY RJ FINANCIAL, AND THE CASE WAS DENOMINATED A CLASS ACTION. A LITTLE LESS THAN MONTH AFTER THAT, ON THE 24TH OF FEBRUARY, 2010, THE PLAINTIFFS FILED A FIRST AMENDED COMPLAINT. THEY ADDED MR. ABALKHAD AS A NAMED DEFENDANT. THEY CONTINUED WITH THE DESIGNATION OF THIS CASE AS A CLASS ACTION.

ON THE 8TH OF MARCH, 2010, THE PLAINTIFFS FILED A 170.6 AS TO JUDGE WILLIAM FAHEY OF THIS COURT.

ON THE 22ND OF MARCH, 2010, THE LAWYER WHO THE TESTIMONY HAS IDENTIFIED AS MR. SANFORD FREY, F-R-E-Y -- THAT NAME ALSO APPEARS ON THE DOCUMENT I'M GOING TO DESCRIBE -- FILED A NOTICE OF STAY AS TO THE CORPORATE DEFENDANT, REFERRING TO THE CHAPTER 11 BANKRUPTCY. THAT BANKRUPTCY

PETITION APPEARS TO HAVE BEEN FILED ON THE 7TH OF JANUARY, 2010, THAT IS, BEFORE THE CASE WAS EVER FILED.

THAT ACCOUNTS FOR THE MODIFICATION OF THE NAME OF THE PARTIES TO INCLUDE ABALKHAD AS AN INDIVIDUAL. I THINK IT IS THAT OBVIOUS THAT -- BUT I WANT TO MAKE IT VERY, VERY CLEAR THAT THIS IS NOT ONLY OBVIOUS, BUT IT IS A FACT THAT -- THIS CASE IS STAYED AS TO THE RJ FINANCIAL CORPORATION UNDER THE STATUTORY CITATION I HAVE GIVEN, 11 U.S.C. 362.

MR. ABALKHAD'S DEFAULT WAS TAKEN IN THIS CASE AND IN AUGUST OF 2010, HE MOVED TO SET ASIDE THE DEFAULT. IN THAT SET OF PAPERS, THERE WAS THE CLAIM MADE THAT PLAINTIFFS ADDED ABALKHAD ON THE 26TH OF MARCH, 2010. AS I HAVE INDICATED, THAT WAS NOT TRUE. IT WAS ON THE 26TH -- 24TH OF FEBRUARY, 2010, BUT THAT WAS NOT A SIGNIFICANT INACCURACY BECAUSE IN THE COURT'S VIEW, ABALKHAD WAS ENTITLED TO HAVE THE DEFAULT SET ASIDE.

NOW IS THERE ANYTHING THAT I AM SUPPOSED TO SAY?

MR. SPIVAK: I DON'T THINK SO, YOUR HONOR.

THE COURT: OKAY. HOW ABOUT YOU, MR. SABZEVAR?

MR. SABZEVAR: NO, YOUR HONOR.

THE COURT: ALL RIGHT. HERE'S WHAT I'M GOING TO DO THEN.

I'M GOING TO SET A HEARING OUT IN THE FUTURE. FIRST OF ALL, THE STATEMENT OF DECISION IS SUFFICIENT IF IT STATES ALL THE FACTS. IT NEED NOT STATE EVIDENTIARY FACTS. I THINK THE STATEMENT OF DECISION I HAVE MADE DOES THAT.

SECONDLY, I'M GOING TO ORDER THE PLAINTIFFS

THROUGH COUNSEL TO PREPARE, SERVE, OBTAIN APPROVAL AS TO FORM FROM DEFENDANT ABALKHAD. THIS MAY REQUIRE A MEET AND CONFER AND COURT EXPECTS COUNSEL TO BE ATTENTIVE AND COOPERATIVE IN THIS REGARD. SO SUBMIT THAT TO DEFENSE COUNSEL AND LODGE WITH THE COURT A JUDGMENT SUITABLE FOR COURT'S SIGNATURE IN CONFORMITY WITH THE FOREGOING.

I AM GOING TO ORDER ALSO THAT THE PARTIES AND/OR COUNSEL PICK UP ALL EXHIBITS LODGED WITH THE CLERK AND ALL EXHIBITS MARKED AND/OR RECEIVED IN EVIDENCE, EACH SIDE TO PICK UP THE ITEM PROFFERED BY THAT SIDE FOR RECEIPT INTO EVIDENCE WITHIN FIVE DAYS FROM THE COURT'S SIGNING OF THE JUDGMENT.

NOW, TODAY IS THE 23RD OF APRIL, 2010 -- 2012, I SHOULD SAY. I WANT TO HAVE A HEARING AT WHICH THE JUDGMENT IS PRESENTED TO ME FOR SIGNATURE AND I WANT TO DO THESE THINGS AT THAT HEARING. I WANT TO SETTLE THE FORM AND SUBSTANCE OF THE DECISION -- OF THE JUDGMENT. IF THERE'S ANY OTHER WORK THAT NEEDS TO BE DONE, I WANT TO DO THAT AT THIS HEARING. I WANT TO DETERMINE WHAT, IF ANYTHING, REMAINS TO BE DONE REGARDING FUTURE PROCEEDINGS IN THIS CASE, AND I WANT TO DETERMINE WHAT THE STATUS OF THIS CASE IS AND I WANT TO HAVE THE LAWYERS FOR THE PARTIES PERSONALLY PRESENT.

MY IDEA WOULD BE THE JUDGMENT SHOULD BE SUBMITTED BEFORE THE HEARING BUT THAT PLAINTIFFS'S COUNSEL SHOULD BRING WITH HIM A DUPLICATE ORIGINAL OF THE JUDGMENT IN CASE THE PAPERWORK HANDLING PRODUCES A SITUATION WHERE I CAN'T LAY MY HANDS ON THE JUDGMENT THAT I AM SUPPOSED TO SIGN IMMEDIATELY. I LOOK TO THE ATTORNEYS NOW FOR SOME

SUGGESTIONS AS TO THE DATE WHEN THAT HEARING SHOULD BE SCHEDULED.

MR. SABZEVAR, DO YOU HAVE ANY IDEAS ABOUT WHEN I SHOULD SCHEDULE IT?

MR. SABZEVAR: FORTY-FIVE DAYS, YOUR HONOR?

THE COURT: FORTY-FIVE DAYS.

MR. SPIVAK: THAT'S FINE FOR PLAINTIFFS.

THE COURT: SO TODAY IS THE 23RD. LET'S SET IT FOR HEARING ON THE -- LET'S GO OUT MORE THAN 45 DAYS.

AS YOU CAN SEE, FROM THE 4TH TO THE 8TH, I WON'T BE ABLE TO WORK WITH YOU -- OF JUNE. I WON'T BE ABLE TO WORK WITH YOU. SO WOULD IT ALL RIGHT WITH YOU LAWYERS IF I PICK THE 21ST OF JUNE, 2012, 8:30, THIS DEPARTMENT?

MR. SABZEVAR: THAT'S FINE, YOUR HONOR.

THE COURT: ARE YOU GOING TO BE AVAILABLE ON THOSE DATES?

MR. SPIVAK: YES, YOUR HONOR.

THE COURT: ARE YOU GOING TO BE ABLE TO DO THE THINGS I TALKED ABOUT, SETTLING THE FORM AND SUBSTANCE OF THE JUDGMENT?

MR. SPIVAK: YES, YOUR HONOR.

MR. SABZEVAR: THAT'S FINE.

THE COURT: THANK YOU VERY MUCH. I APPRECIATE YOUR PARTICIPATION AND -- AND YOUR ADVOCACY, AND I WILL SEE YOU WHEN WE NEXT HAVE TO WORK ON THE CASE.

NOW, I WILL TELL YOU SOMETHING ELSE. PLEASE STAY ALERT AND PLEASE LOOK IN ADVISES TO ATTORNEYS, OR NOTICES, OR WHATEVER WE ARE GOING TO DO IN THE NEXT THREE OR

FOUR WEEKS. HERE'S OUR SITUATION.

AS OF 15TH OF MAY, WE WON'T HAVE REPORTERS IN THESE DEPARTMENTS ANYMORE FOR TRIAL MATTERS -- THEY WILL HAVE TO BE SUPPLIED BY THE PARTIES -- AND WE WON'T HAVE THE REPORTERS EXCEPT TWO LAW AND MOTION SESSIONS A WEEK. THE IDEA IS IT WILL BE ONE MORNING AND ONE AFTERNOON. THAT WILL BE ALL THE REPORTERS WE ARE GOING TO HAVE SUPPLIED BY THE COURT.

MOREOVER, THEY ARE GOING TO, AS I MENTIONED TO YOU PREVIOUSLY, THEY ARE GOING TO REDUCE THE STAFF.

SO I HAD GIVEN YOU DATE, BUT I AM NOT ONE HUNDRED PERCENT CERTAIN ABOUT HOW THAT DATE IS GOING TO WORK. PLEASE KEEP YOUR EYES AND EARS OPEN. IF THERE'S SOME FOUL UP OR SOMETHING, DO WHATEVER YOU NEED TO DO TO MAKE IT RIGHT. I MEAN, WE ARE -- I WISH I COULD SAY SOMETHING THAT SOUNDED MORE EMPHATIC AND MORE DEFINITIVE, BUT I CAN'T. I JUST DON'T KNOW WHAT'S GOING TO HAPPEN.

WHAT I WANT TO DO IS TO FINISH UP YOUR CASE AND GET YOU ALONG FOR THE NEXT STEP FOR OBVIOUS REASONS. AND I DON'T WANT THE COLLAPSE OF THE SYSTEM'S ABILITY TO HANDLE MATTERS TIMELY TO REDOUND TO YOUR DISADVANTAGE OR TO ADDITIONAL EXPENSE ON THE PART OF EITHER SIDE THAT MIGHT OTHERWISE BE AVOIDED IF YOU LAWYERS KEPT YOUR EYES PEELED FOR WHAT'S HAPPENING IN THE COURTS AND IF I WERE ABLE TO PREDICT A LITTLE BIT, I JUST CAN'T PREDICT THAT. I DON'T EVEN KNOW. BUT KEEP YOUR EYES OPEN. TRY TO DO WHAT'S RIGHT, AND I WILL TRY TO DO WHAT'S RIGHT. IT'S ABOUT THE BEST I CAN DO FOR YOU.

ALL RIGHT. THANK YOU ALL VERY MUCH.

MR. SPIVAK: THANK YOU, YOUR HONOR.

MR. SABZEVAR: THANK YOU, YOUR HONOR.

THE COURT: SEE YOU WHEN WE NEXT HAVE TO WORK ON THE CASE.

(PROCEEDINGS CONCLUDED.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE

ALINA GHRDILYAN, ET AL., PLAINTIFF, VS. RJ FINANCIAL, ET AL., DEFENDANTS,	CASE NO. BC430633 REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

I, ANGELA Z. PARADELA, CSR NO. 9659, OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES 1 THROUGH 29 COMPRISE A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE TESTIMONY AND PROCEEDINGS HELD ON APRIL 23, 2012, IN THE ABOVE-ENTITLED MATTER.

APRIL 27, 2012

_____, CSR NO. 9659

ANGELA Z. PARADELA, OFFICIAL REPORTER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE

ALINA GHRDILYAN, ET AL., PLAINTIFFS, VS. RJ FINANCIAL, ET AL., DEFENDANTS,	CASE NO. BC430633 **CERTIFIED COPY**

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MONDAY, APRIL 23, 2012

APPEARANCES:

FOR THE PLAINTIFFS: DAVID SPIVAK, ATTORNEY AT LAW

LOUIS BENOWITZ, ATTORNEY AT LAW

FOR THE DEFENDANTS: MICHAEL SABZEVAR, ATTORNEY AT LAW

REPORTED BY:
ANGELA ZARATAN PARADELA
OFFICIAL COURT REPORTER
CSR NO. 9659

EXHIBIT 12

THE SPIVAK LAW FIRM
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CONSULTA DE ABOGADOS Y CONTRATO DE HONORARIOS PARA CASOS DE CONTINGENCIA

ESTE CONTRATO DE HONORARIOS PARA CASOS DE CONTINGENCIA ("Contrato") se celebra el Mayo 25, 2022, en Sherman Oaks, California entre Genaro Reyes Villagra, en lo sucesivo denominado "Cliente", por un lado, y The Spivak Law Firm of Encino, CA y Benowitz Law Corporation de West Hollywood, CA, por otro lado, en lo sucesivo denominados colectivamente como "Abogados":

En consideración de las promesas mutuas aquí contenidas, las partes acuerdan lo siguiente:

I. PROPÓSITO DE LA REPRESENTACIÓN

1.01 Por la presente, el Cliente contrata y emplea Abogados para demandar y recuperar todos los recursos monetarios y equitativos a los que el Cliente pueda tener derecho, así como para comprometer y resolver todas las reclamaciones que se describen a continuación:

Demanda individual de arbitraje y demanda separada bajo la Ley de Abogados Generales Privados ("PAGA") en nombre de compañeros de trabajo comparables por falta de pago de salarios, y reclamos relacionados contra Innovative Produce, Inc. y entidades relacionadas.

1.02 Este acuerdo no será vinculante para ninguna de las partes, y los Abogados no comenzarán a brindar servicios legales hasta que el Cliente haya firmado este Acuerdo.

1.03 Los abogados brindarán los servicios legales razonablemente necesarios y tomarán las medidas necesarias para mantener informado al Cliente sobre el progreso del caso. Los abogados responderán dentro de un tiempo y forma razonables a las consultas del Cliente. Si se hace necesario un proceso judicial, los Abogados representarán al Cliente durante el juicio y mociones posteriores al fallo. Se deben hacer arreglos separados para cualquier procedimiento de apelación o ejecución que el cliente desee llevar a cabo después del fallo, o cualquier otro asunto para el cual el Cliente desee contratar Abogados que no sean los descritos anteriormente.

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II. HONORARIOS Y GASTOS DE ABOGADOS

2.01 En consideración de los servicios prestados y que serán prestados por los Abogados, el Cliente acuerda pagar a los Abogados las siguientes cantidades sobre cualquier acuerdo, dinero, juicio u otra consideración que se haya pagado o se pueda pagar en este asunto legal:

2.01.1 Antes de la presentación de una demanda o iniciar un proceso de arbitraje: 33 y 1/3 por ciento de cualquier recuperación.

2.01.2 Después de la presentación de una demanda o iniciar un proceso de arbitraje: 40 por ciento de cualquier recuperación. En caso de que el Cliente prevalezca en el juicio (o arbitraje) de este asunto, cualquier adjudicación de honorarios por el tribunal, de conformidad con la ley o el contrato, en relación con el tema de esta representación, se pagará a los Abogados y se aplicará a los honorarios del Cliente en virtud de este Acuerdo, pero no limitará ni exonerará la obligación de honorarios del Cliente. En el caso de que el tribunal adjudique honorarios al Cliente que prevalezca en el juicio, los Abogados recibirán la adjudicación de honorarios o 40% de la adjudicación total, lo que sea mayor.

2.02 Se acuerda y se entiende que si el monto de los honorarios de abogados en este reclamo o causa de la demanda está regulado o regido por la ley, y esa ley excluye cualquier otro acuerdo de honorarios que no sea el monto establecido por la ley o el reglamento, entonces el monto pagadero en virtud del presente contrato a dichos Abogados se limitará al máximo permitido por la ley. En el caso de un acuerdo o sentencia de demanda colectiva, un acuerdo o sentencia PAGA, u otro acuerdo o resolución representativa, es necesaria la aprobación de un tribunal para la adjudicación de honorarios de abogados. Normalmente, con dichos acuerdos y sentencias, una solicitud de honorarios de abogados será por no más de un tercio (33 y 1/3%) del valor total del monto del acuerdo o sentencia. Los abogados solicitarán una adjudicación de honorarios de abogados del tribunal que puede ser mayor o menor que los porcentajes indicados anteriormente. Bajo tales circunstancias. Los abogados también le pedirán al tribunal que les adjudique al Cliente's por separado los gastos que han adelantado por este asunto. Antes de tales solicitudes a un Tribunal de honorarios y costos de abogados, los Abogados buscarán el consentimiento por escrito del Cliente para los honorarios y costos de abogados solicitados.

2.02.1 Si los honorarios legales totales recibidos en este caso son $250,000.00 o más, se acuerda que Benowitz Law Corporation recibirá el 33 y 1/3%

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del total de los honorarios legales recibidos y The Spivak Law Firm recibirá el 66 y 2/3% restante del total de los honorarios legales recibidos. Si los honorarios legales totales recibidos en este caso son menos de $250,000.00, se acuerda que Benowitz Law Corporation recibirá el 25% del total de los honorarios legales recibidos y The Spivak Law Firm recibirá el 75% restante del total de los honorarios legales recibidos.

2.03 Esta sección se refiere a la posibilidad de liquidación de las reclamaciones individuales, honorarios de abogados y costos en caso de que las reclamaciones representativas ya no sean viables. Bajo este Acuerdo, los Abogados acuerdan representar al Cliente para proseguir con las reclamaciones descritas en la Sección 1.01 de este Acuerdo, indicados anteriormente. Estas reclamaciones son reclamaciones representativas porque el Cliente acepta que el Cliente's prosiga con las Reclamaciones del Cliente por sí mismo y todos los empleados e individuos comparables. En este sentido, los Abogados informan al Cliente de la siguiente información material:

2.03.1 Los abogados han elegido representar al Cliente principalmente porque el Cliente tiene reclamaciones que el Cliente puede presentar en nombre de muchos otros empleados comparables. Como resultado, las reclamaciones del Cliente tienen el potencial de respaldar una demanda colectiva y/o una demanda PAGA.

2.03.2 Las reclamaciones individuales del Cliente, y las de cada uno de los otros empleados comparables en nombre de los cuales los Abogados presentarán la demanda, generalmente tienen un valor muy pequeño en salarios no pagados, gastos de trabajo no reembolsados, intereses y/o sanciones monetarias legales. Los abogados no habrían aceptado representar al Cliente si no fuera por la gran probabilidad de que un Tribunal permita que la demanda del Cliente proceda a juicio en nombre de muchos otros empleados con reclamaciones comparables a las reclamaciones del Cliente.

2.03.3 Solo mediante la combinación de las reclamaciones de numerosas personas pueden los Abogados razonablemente esperar recuperar los honorarios y costos de los Abogados en los que incurren como parte de la representación de contingencia del Cliente por parte de los Abogados.

2.03.4 Por razones que se desconocen en el momento de este Acuerdo y por razones que están fuera del control de los Abogados y el Cliente, los Abogados pueden descubrir después de que el Cliente ejecute este Acuerdo que no existen numerosos empleados comparables con reclamaciones comparables a las reclamaciones del Cliente. En este caso, es posible que los Abogados y el Cliente ya no puedan continuar con la demanda colectiva o las reclamaciones de PAGA.

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2.03.5 Con base en la experiencia previa de los Abogados, los Demandados (la parte o partes que el Cliente demanda o tiene la intención de demandar) en demandas colectivas y acciones PAGA a menudo intentan llegar a una resolución con el Demandante (la parte que demanda o tiene la intención de demandar) por el valor máximo de las reclamaciones individuales del Demandante. Tales resoluciones impiden que el Demandante continúe representando a personas comparables (a veces conocidas como "miembros de la demanda colectiva", "miembros putativos de la demanda colectiva", "miembros propuestos de la demanda colectiva" y/o "empleados agraviados") en nombre de quienes el Cliente presentó la demanda.

2.03.6 Con base en la experiencia previa de los Abogados, el Demandado puede ofrecer resolver las reclamaciones individuales del Cliente por una cantidad de dinero que iguale o exceda el valor máximo de las reclamaciones del Cliente. En este caso, los honorarios y costos de los Abogados probablemente excederán el valor máximo de las reclamaciones individuales del Cliente. A menudo, según la experiencia de los Abogados, los honorarios y costos de los Abogados excederán con mucho el valor de las reclamaciones individuales del Cliente.

2.03.7 Los Abogados pueden aconsejar al Cliente que acepte un acuerdo de liquidación individual de las reclamaciones del Cliente si no existen numerosas personas con reclamaciones comparables a las del Cliente y un acuerdo de liquidación individual es lo mejor para el Cliente. Alternativamente, el Cliente puede optar por llegar a un acuerdo de liquidación por un monto que iguale o supere el valor máximo de las reclamaciones individuales del Cliente, incluso si hay numerosas personas con reclamaciones que son comparables a las reclamaciones del Cliente.

2.03.8 Con base en la evidencia que los Abogados pueden obtener después de llegar a este Acuerdo con el Cliente, la estimación de los Abogados del valor máximo de las reclamaciones del Cliente puede cambiar en el transcurso de la relación Abogado-Cliente en virtud de este Acuerdo.

2.03.9 En caso de que el Demandado ofrezca llegar a una resolución con el Cliente por una cantidad de dinero que iguale o supere el valor máximo de las reclamaciones individuales del Cliente, el Cliente acepta que, si los honorarios y costos de los Abogados exceden el valor máximo de las reclamaciones del Cliente, los Abogados pueden elegir, únicamente al elección del Cliente, que el Cliente reciba sólo el valor máximo de las reclamaciones individuales del Cliente de los fondos del acuerdo de liquidación y que los Abogados reciban los fondos del acuerdo de liquidación

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restantes para cubrir la totalidad o parte de los honorarios y costos de los Abogados y los riesgos que surgen de la representación de contingencia del Cliente por parte de los Abogados. En otras palabras, el Cliente se compromete a aceptar como el acuerdo de liquidación la cantidad igual al valor máximo estimado de las reclamaciones del Cliente. Los Abogados revelan que los honorarios de Abogados y los costos incurridos pueden exceder sustancialmente la recuperación neta del Cliente.

2.03.10 Dentro de los siete días de la solicitud por escrito del Cliente a los Abogados, ellos le proporcionarán al Cliente su estimación del valor máximo de las reclamaciones del Cliente. Esta estimación del valor máximo puede cambiar en el transcurso del litigio.

2.03.11 Los abogados recomiendan encarecidamente que el Cliente consulte con un abogado independiente sobre esta disposición, incluyendo si esta disposición es lo mejor para el Cliente. Al escribir sus iniciales a continuación, el Cliente acepta que los Abogados le han brindado al Cliente una oportunidad razonable para consultar con un abogado independiente sobre esta disposición y el Cliente da su consentimiento a esta disposición.

ERV
____ (Iniciales del Cliente)

2.04 Las tarifas establecidas anteriormente no están establecidas por ley, pero son negociables entre un abogado y un cliente.

2.05 El Cliente acepta otorgar a los Abogados un derecho de retención sobre todas y cada una de las reclamaciones o causas de la demanda que sean objeto de este Acuerdo. El derecho de retención, para asegurar el pago de cualquier suma adeudada a los Abogados al finalizar los servicios prestados, se adjuntará a cualquier recuperación que el Cliente pueda obtener. Los Abogados pueden exigir el pago de honorarios y costos de tales fondos recuperados en nombre del Cliente, incluso si los Abogados han sido despedidos antes de que finalice el caso. El Cliente puede buscar la opinión de un abogado independiente de la elección del Cliente's antes de aceptar este derecho de retención. Al escribir sus iniciales a continuación, el Cliente acepta que el Cliente ha tenido la oportunidad razonable para consultar a un bufete de abogados independiente, independientemente de si el Cliente ha consultado realmente a dicho bufete de abogados, y el Cliente acepta que los abogados tendrán un derecho de retención como se especifica anteriormente.

ERV
_____ (Iniciales del Cliente aquí) DS _____ (Iniciales de David Spivak aquí)

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III. APROBACIÓN NECESARIA PARA EL ACUERDO DE LIQUIDACIÓN

3.01 Por la presente, los Abogados están autorizados a participar en todas y cada una de las negociaciones del acuerdo de liquidación en nombre de aquellos a quienes los Abogados representan, según lo consideren apropiado. Esto incluye, pero no se limita a, la prerrogativa de los Abogados de emprender negociaciones del acuerdo de liquidación de pagos en efectivo o estructurados.

3.02 Por la presente, el Cliente otorga a los Abogados un poder notarial para manejar las negociaciones y discusiones del acuerdo de liquidación con respecto a la obtención de la posesión de todos y cada uno de los dineros u otras cosas de valor objeto del asunto adeudado al Cliente en virtud de esta reclamación en la mayor medida en que el Cliente podría hacerlo en persona.

3.02.1 Esto incluye expresamente el derecho a firmar el nombre del Cliente en cualquier cheque de la compañía de seguros, giros postales, cheques de caja, cheques u otros instrumentos negociables pagaderos a Abogados y Clientes, Abogados o al Cliente sin la unión de Abogados, presentados a Abogados en nombre del Cliente en el acuerdo de liquidación total o parcial de este caso.

3.02.2 Este poder notarial limitado autoriza además a los Abogados a colocar estos dineros, mencionados anteriormente, en la cuenta fiduciaria de The Spivak Law Firm y desde esa cuenta de fideicomiso, realizar distribuciones y pagos a los Abogados por la tarifa acordada indicada anteriormente, reembolso a los Abogados por todos y cada uno de los gastos incurridos por los Abogados en el manejo de este caso, pagos al Cliente de los intereses del Cliente en el dinero recuperado como se indicó anteriormente, y pagos a terceros que no sean el Cliente y los Abogados por los servicios prestados, los honorarios cobrados o las facturas entregadas en relación con la representación del Cliente, incluyendo, entre otros, las facturas médicas, los honorarios de los taquígrafos judiciales, los honorarios de las deposiciones, los servicios de investigación, los costos de las pruebas u otros gastos especiales incurridos por los Abogados en nombre del Cliente.

3.03 No se realizará ningún acuerdo de liquidación de ningún tipo por ninguna de las reclamaciones o ganancias antes mencionados del Cliente sin la aprobación completa del Cliente, ni el Cliente obtendrá ningún acuerdo de liquidación sobre las reclamaciones mencionadas anteriormente sin la aprobación completa del abogado.

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3.04 A los abogados se les otorga un poder notarial limitado para que puedan tener plena autoridad para preparar, firmar y presentar todos los instrumentos legales, alegatos, borradores, autorizaciones y documentos que sean razonablemente necesarios para concluir esta representación, incluyendo el acuerdo de liquidación y/o reducir a posesión de cualquier y todo dinero u otras cosas de valor adeudadas al Cliente en virtud de esta reclamación en la medida en que el Cliente pueda hacerlo en persona.

IV. REPRESENTACIONES

4.01 Se acuerda y se entiende expresamente que el Abogado no ha hecho promesas ni garantías en cuanto al resultado del caso al Cliente. Los abogados no han manifestado al Cliente que el Cliente recuperará todos o parte de los fondos deseados. El Cliente también reconoce que obtener un fallo no garantiza que la parte contraria pueda cumplir con la resolución del tribunal. Además, se entiende y se acepta expresamente que no se han hecho otras representaciones al Cliente, excepto las establecidas en este Contrato.

V. DEDUCCIÓN DE GASTOS

5.01 Todos los gastos razonables incurridos por los Abogados en el manejo de este asunto legal se deducirán de los ingresos netos del acuerdo de liquidación en el momento en que se liquide o resuelva el caso, y antes de que el honorario contingente sea calculado.

5.02 Los gastos contemplados anteriormente incluyen, entre otros, todos y cada uno de los gastos de bolsillo incurridos en relación con este caso, incluyendo, entre otros, los siguientes gastos: honorarios de presentación, costos judiciales, copias certificadas de documentos, alegatos, órdenes etc., transcripciones, declaraciones, costos de duplicación, franqueo, suministros de oficina, fotografías, pruebas de juicio, llamadas telefónicas y de fax de larga distancia, honorarios de tasación, consultores, testigos expertos y otros honorarios asociados con la preparación y el testimonio del juicio, honorarios de investigación, cargos de entrega, servicios de paquetería/correo al día siguiente, gastos de estacionamiento, carretera de peaje y kilometraje, gastos fuera de la ciudad, incluyendo gastos de viaje, pasajes aéreos, hoteles, comidas y cualquier otro gasto incurrido en relación con el asunto.

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5.03 Excepto por lo siguiente, todos los gastos y costos serán cargados al Cliente a costo de los Abogados: millaje a $0.50/milla y fotocopias a $0.25/página.

VI. COOPERACIÓN DEL CLIENTE

6.01 El Cliente mantendrá informados a los Abogados sobre el paradero del Cliente en todo momento, y les proporcionará a los Abogados cualquier cambio de dirección, número de teléfono o afiliación empresarial durante el período de tiempo en el que se requieran los servicios de los Abogados, y cumplirá con todas las solicitudes razonables de los Abogados en relación con la preparación y presentación de dicha representación.

6.02 Los Abogados pueden, a elección de los Abogados, retirarse del caso y dejar de representar al Cliente por cualquier motivo, incluyendo, entre otros, el hecho de que el Cliente no pague oportunamente los honorarios y gastos o depósitos correspondientes de conformidad con este Contrato, sujeto a los requisitos de responsabilidad profesional a los que están sujetos los abogados.

6.03 Además, se entiende y se acuerda entre las partes que, al finalizar cualquier servicio de Abogado, cualquiera de los depósitos del Cliente que queden en la Cuenta de Fideicomiso de The Spivak Law Firm se aplicará a cualquier saldo restante adeudado a los Abogados por honorarios y/o gastos y cualquier excedente restante se reembolsará al Cliente.

6.04 Deberes como representante de los grupos demandantes en una demanda colectiva o demanda PAGA. El Cliente ha contratado Abogados para procesar una demanda colectiva y/o demanda PAGA en nombre del Cliente y empleados comparables y otras personas. Esta sección se aplica únicamente a las responsabilidades del Cliente como representante de los grupos demandantes o como abogado general privado. El cliente tendrá ciertos deberes y responsabilidades con respecto a las personas comparables en nombre de las cuales se presenta la demanda. Algunos de estos deberes se explican con mayor detalle a continuación.

6.04.1 Los abogados pueden solicitar al Tribunal una adjudicación especial para compensar al Cliente como representante de los grupos demandantes o abogados generales privados por la contribución del Cliente a la demanda y/o la exoneración del Cliente de todas las reclamaciones individuales que el Cliente pueda tener. Sin embargo, el Cliente entiende que, a menos que el Tribunal apruebe dicha adjudicación, el Cliente

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sólo tendrá derecho a la parte prorrateada del Cliente de los fondos disponibles para su distribución a todos los miembros de la demanda colectiva, empleados agraviados e individuos comparables.

6.04.2 Un representante de la demanda colectiva representa los intereses de todos los miembros de su demanda colectiva en litigios para recuperar dinero de salarios no pagados, sanciones, reembolsos, restitución y/u obtener medidas cautelares para la demanda colectiva. Del mismo modo, un abogado general privado representa los intereses de todos los empleados agraviados comparables en litigios para recuperar dinero de sanciones civiles (sanciones monetarias que tradicionalmente sólo el Estado puede demandar) en nombre del Cliente, otros empleados agraviados y del Estado de California.

6.04.3 La demanda colectiva o grupo de empleados agraviados generalmente consiste en todas las personas que están en una situación similar con respecto a un curso de conducta o práctica común. En otras palabras, todas aquellas personas que se ven afectadas por el comportamiento cuestionado.

6.04.4 Un representante de la demanda colectiva o los abogados generales privados tienen reclamaciones que son típicas de las de la demanda colectiva o grupo de empleados agraviados y, por lo tanto, involucran cuestiones comunes de derecho o, de hecho. Por ejemplo, como representante de la demanda colectiva, las reclamaciones del Cliente contra el demandado son típicos de las reclamaciones de la demanda colectiva y del abogado general privado contra el demandado, simplemente porque el Cliente resultó lesionado por las mismas prácticas de empleo ilegales que los otros miembros de la demanda colectiva y los empleados agraviados.

6.04.5 Un representante de la demanda colectiva y un abogado general privado siempre considera los intereses de la demanda colectiva y/o los empleados agraviados de la misma manera que el Cliente consideraría los intereses propios del Cliente y, en algunos casos, debe anteponer los intereses de la clase y otros empleados agraviados a los intereses propios del Cliente. Esto significa que el Cliente es un defensor de las otras personas o un litigante fiduciario.

6.04.6 Un representante de la clase o un fiscal general privado siempre participa activamente en la demanda, según sea necesario, entre otras cosas, respondiendo a los interrogatorios, presentando documentos a los demandados y brindando declaración y testimonio en el juicio si así se solicita. Es posible que se requiera que el Cliente viaje para dar tal testimonio.

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6.04.7 Un representante de la demanda colectiva o un abogado general privado reconoce y acepta que cualquier resolución de la demanda por desestimación o acuerdo de liquidación está sujeta a la aprobación del tribunal y debe diseñarse en el mejor interés de la demanda colectiva en su conjunto.

6.04.8 No se requiere que un representante de la demanda colectiva o un abogado general privado sea particularmente sofisticado o tenga conocimientos sobre el tema de la demanda. Sin embargo, un abogado general privado representante de la demanda colectiva debe seguir el progreso de la demanda y debe proporcionar todos los hechos relevantes a los abogados de la demanda colectiva o los empleados agraviados.

6.04.9 Un representante de la demanda colectiva o un abogado general privado se ofrece como voluntario para representar o defender a muchas otras personas con reclamaciones y lesiones similares debido a la importancia del caso y la necesidad de que todos los miembros de la demanda colectiva o los empleados agraviados se beneficien de la demanda por igual; el ahorro de tiempo, dinero y esfuerzo debería beneficiar a todas las partes y al tribunal. Las demandas colectivas y las demandas PAGA son una herramienta importante para garantizar el cumplimiento de la ley, incluyendo cuando las pérdidas de una persona pueden ser relativamente pequeñas.

Al escribir sus iniciales a continuación, el Cliente ha revisado y reconoce los deberes del Cliente como representante de la demanda colectiva y/o del abogado general privado.

ERV (Iniciales del Cliente aquí)

VIII. SE APLICA LA LEY DE CALIFORNIA

7.01 Este Acuerdo se interpretará de conformidad con las leyes de California, y todas las obligaciones de las partes creadas en virtud del presente son ejecutables en el Condado de Los Ángeles, CA.

VIII. PARTES VINCULANTES

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8.01 Este Acuerdo será vinculante y redundará en beneficio de las partes del este y de sus respectivos herederos, albaceas, administradores, representantes legales, sucesores y cesionarios donde lo permita este Acuerdo.

IX. INTERPRETACIÓN JURÍDICA

9.01 En caso de que una o más de las disposiciones contenidas en este Acuerdo, por cualquier motivo, se consideran inválidas, ilegales o inaplicables en cualquier aspecto, dicha invalidez, ilegalidad o inaplicabilidad no afectará ninguna otra disposición del mismo y este Acuerdo. se interpretará como si dicha disposición inválida, ilegal o inaplicable nunca hubiera estado contenida en este documento.

X. ACUERDOS ANTERIORES REEMPLAZADOS

10.01 Este Acuerdo constituye el único y único acuerdo por y entre las partes. Hace nulo y reemplaza cualquier acuerdo previo o acuerdo escrito u oral entre las partes con respecto al tema tratado en este documento.

XI. RESOLUCIÓN DE CONTROVERSIAS MEDIANTE ARBITRAJE

11.01 El Cliente tiene derecho a elegir el arbitraje de conformidad con los procedimientos de arbitraje de honorarios del Colegio de Abogados del Estado de California, en cualquier disputa sujeta a la jurisdicción del Estado de California sobre los honorarios, cargos, costos o gastos de abogados, según lo establecido en la Sección 6200, et seq. del Código de Negocios y Profesiones de California. Si, después de recibir una notificación de este derecho a arbitraje, el Cliente no elige proceder conforme a los procedimientos de arbitraje de honorarios de la Asociación de Abogados del Estado y no presenta una solicitud de arbitraje de honorarios dentro de los 30 días, cualquier disputa sobre honorarios, cargos, costos o gastos, se resolverá mediante arbitraje vinculante como se describe a continuación.

11.02 Cualquier controversia entre las partes con respecto a la interpretación, aplicación o ejecución de cualquier servicio en virtud de este Acuerdo, y cualquier reclamación que surja o esté relacionada con este Acuerdo o su incumplimiento, se someterá a arbitraje vinculante a solicitud por escrito de una de las partes después de la

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notificación de esa solicitud a la otra parte. El único y exclusivo lugar para el arbitraje y/o cualquier disputa legal será el Condado de Los Ángeles, California.

11.03 Al escribir sus iniciales a continuación, el Cliente y los Abogados confirman que han leído y entendido los párrafos anteriores y aceptan voluntariamente el arbitraje vinculante. Al hacerlo, el Cliente y los Abogados renuncian voluntariamente a importantes derechos constitucionales de un juicio ante un juez o ante un jurado, así como a los derechos de apelación. Se informa al cliente que cliente tiene derecho a tener un bufete de abogados independiente de la elección del Cliente para que revise estas disposiciones de arbitraje, y todo este acuerdo, antes de escribir sus iniciales en esta disposición o firmar este Acuerdo.

GRV (Iniciales del Cliente aquí) DS (Iniciales de David Spivak aquí)

DIVULGACIÓN Y RECONOCIMIENTO DE IMPUESTOS:

SE RECOMIENDA AL CLIENTE QUE OBTENGA ASESORAMIENTO DE IMPUESTOS INDEPENDIENTE Y COMPETENTE CON RESPECTO A ESTOS ASUNTOS LEGALES YA QUE LAS TRANSACCIONES LEGALES PUEDEN DAR LUGAR A CONSECUENCIAS DE IMPUESTOS.

LOS BUFETES DE ABOGADOS Y LOS ABOGADOS QUE ABAJO FIRMAN NO HAN ACORDADO EN PRESTAR NINGÚN ASESORAMIENTO DE IMPUESTOS Y NO SON RESPONSABLES DE NINGÚN ASESORAMIENTO RELACIONADO CON ASUNTOS DE IMPUESTOS O LA PREPARACIÓN DE DECLARACIONES DE IMPUESTOS U OTROS DECLARACIONES, INCLUYENDO, ENTRE OTROS, DECLARACIONES DE IMPUESTOS ESTATALES Y FEDERALES SOBRE INGRESOS Y HERENCIAS.

ADEMÁS, EL CLIENTE DEBE OBTENER AYUDA PROFESIONAL CON RESPECTO A LA VALORACIÓN Y UBICACIÓN DE TODOS LOS ACTIVOS QUE PUEDAN SER OBJETO DE UN ASUNTO LEGAL, INCLUYENDO, ENTRE OTROS, PENSIONES, BENEFICIOS LABORALES Y LOS DERECHOS DE PARTICIPACIÓN EN LAS GANANCIAS QUE PUEDAN SER CONTROLADOS POR CUALQUIER OTRA PARTE DEL ASUNTO LEGAL.

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XII. EXCLUSIÓN DE GARANTÍAS

12.01 Nada en este Acuerdo y nada en las declaraciones de los Abogados al Cliente se interpretará como una promesa o garantía sobre el resultado del asunto. Los abogados no hacen tales promesas o garantías. No puede haber ninguna garantía de que el Cliente recuperará cualquier suma o sumas de dinero en este asunto. Los comentarios de los abogados sobre el resultado de este asunto son únicamente expresiones de opinión. El Cliente reconoce que los Abogados no han hecho promesas ni garantías sobre el resultado.

XIII. DESPIDO Y RENUNCIA

13.01 El Cliente puede despedir a los Abogados en cualquier momento, con notificación por escrito. Los Abogados pueden renunciar con el consentimiento del Cliente, o por una buena causa, que incluye el incumplimiento de este Acuerdo por parte del Cliente, la negativa a cooperar o comunicarse con los Abogados sobre este asunto, o cualquier hecho o circunstancia que haga que la representación de los Abogados sea ilegal o poco ética. Los Abogados, a solicitud del Cliente, entregarán el archivo y la propiedad del Cliente en su posesión, a menos que estén sujetos a un gravamen según lo dispuesto anteriormente, ya sea que el Cliente haya completado o no el pago de todos los servicios prestados.

XIV. FECHA DE ENTRADA EN VIGOR

14.01 Este Acuerdo regirá todos los servicios legales a partir de la fecha en que los Abogados comenzaron a realizar trabajos para el Cliente. La fecha de este documento debe utilizarse únicamente como referencia. El Cliente deberá pagar a los Abogados el valor razonable de los servicios prestados por los Abogados, incluso si este acuerdo nunca entra en vigor.

Además, certifico y reconozco que he leído este Contrato y que voluntariamente he celebrado este Contrato con pleno conocimiento de sus términos y condiciones a partir de la fecha en que los Abogados prestaron sus servicios por primera vez. Todos los clientes que firman a continuación aceptan ser responsables, conjunta y solidariamente, de todas las obligaciones en virtud de este acuerdo.

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Firmado el: 05 / 25 / 2022

Genaro Reyes Villagra

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Firmado el: 06 / 07 / 2022

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DECLARACIÓN DE LOS DERECHOS DEL CLIENTE POR CONCEPTO DE HONORARIOS DE CONTINGENCIA

Antes de que usted, el posible cliente, establezca un acuerdo de honorarios contingentes con un abogado, debe entender y comprender esta declaración de sus derechos como cliente. Esta declaración no es parte del contrato real entre usted y su abogado, pero, como posible cliente, debe conocer estos derechos.

1. No existe ningún requisito legal de que un abogado le cobre a un cliente un honorario fijo o un porcentaje del dinero recuperado en un caso. Usted, el Cliente, tiene derecho a hablar con su abogado sobre los honorarios propuestos y negociar el honorario o el porcentaje como en cualquier otro contrato. Si no llega a un acuerdo con un (1) abogado, puede hablar con otros abogados.

2. Cualquier contrato de honorarios contingentes debe ser por escrito y usted tiene tres (3) días hábiles para reconsiderar el contrato. Usted puede cancelar el contrato sin ningún motivo si notifica a su abogado por escrito dentro de los 3 días hábiles siguientes de haber firmado el contrato. Si se retracta del contrato dentro de los primeros tres (3) días hábiles, usted no le debe honorarios al abogado, aunque puede ser responsable de los costos reales del abogado durante ese tiempo. Si su abogado comienza a representarlo, su abogado no puede retractarse del caso sin darle aviso, sin entregarle los documentos necesarios y darle tiempo para contratar a otro abogado. A menudo, su abogado debe obtener la aprobación del tribunal antes de retractarse de un caso. Si despide a su abogado sin una buena causa después del período de 3 días, usted debe pagar honorarios por el trabajo que el abogado haya realizado.

3. Antes de contratar a un abogado, usted, el Cliente, tiene derecho a conocer la educación, formación y experiencia del abogado. Si le pregunta, el abogado debe informarle específicamente sobre la experiencia real del abogado en el manejo de casos similares al suyo. Si usted lo solicita, el abogado debe brindarle información sobre formación o conocimientos especiales y darle esta información por escrito si usted así lo solicita.

4. Antes de firmar un contrato de honorarios contingentes con usted, un abogado debe informarle si el abogado tiene la intención de manejar su caso solo o si otros abogados lo ayudarán con el caso. Si su abogado tiene la intención de remitir el caso a otros abogados, el abogado debe decirle qué tipo de arreglo de reparto de honorarios se hará con los otros abogados. Si lo representarán abogados de diferentes

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bufetes de abogados, al menos un (1) abogado de cada bufete de abogados deberá firmar el contrato de honorarios contingentes.

5. Si su abogado tiene la intención de remitir su caso a otro abogado o asesorarse con otros abogados, su abogado debe informarle sobre eso desde el principio. Si su abogado toma el caso y luego decide remitirlo a otro abogado o asociarse con otros abogados, debe firmar un nuevo contrato que incluya a los nuevos abogados. Usted, el Cliente, también tiene derecho a consultar con cada abogado que trabaje en su caso y cada abogado es legalmente responsable de representar sus intereses y es legalmente responsable de los actos de los otros abogados involucrados en el caso.

6. Usted, el Cliente, tiene derecho a saber de antemano cómo deberá pagar los gastos y los honorarios legales al final del caso. Si paga un depósito por adelantado para los costos, puede hacer preguntas razonables sobre cómo se ha gastado o se gastará el dinero y cuánto queda sin gastar. Su abogado debe darle una estimación razonable sobre los costos futuros necesarios. Si su abogado acepta prestarle o adelantarle dinero para preparar o investigar el caso, tiene derecho a saber periódicamente cuánto dinero ha gastado su abogado en su nombre. También tiene derecho a decidir, después de consultar con su abogado, cuánto dinero se gastará para preparar un caso. Si usted paga los gastos, usted tiene derecho a decidir cuánto gastar. Su abogado también debe informarle si el honorario se basará en el monto neto recuperado o en el monto recuperado menos los costos.

7. Usted, el Cliente, tiene derecho a que su abogado le informe sobre las posibles consecuencias adversas si pierde el caso. Esas consecuencias adversas pueden incluir el dinero que podría tener que pagar a su abogado por los costos y la responsabilidad que podría tener por los honorarios, costos y gastos de los abogados de la otra parte.

8. Usted, el Cliente, tiene derecho a recibir y aprobar una declaración final al finalizar el caso antes de pagar cualquier dinero. La declaración debe indicar todos los detalles financieros de todo el caso, incluyendo la cantidad recuperada, todos los gastos y una declaración precisa de los honorarios de su abogado. Hasta que apruebe la declaración final, su abogado no puede pagar dinero a nadie, ni siquiera a usted, sin una orden apropiada del tribunal. Usted también tiene derecho a que todos los abogados o bufetes de abogados de su caso firmen esta declaración final.

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9. Usted, el Cliente, tiene derecho a preguntarle a su abogado a intervalos razonables cómo está progresando el caso y a que el abogado le responda estas preguntas en lo mejor de su capacidad.

10. Usted, el Cliente, tiene derecho a tomar la decisión final con respecto al acuerdo de liquidación de un caso. Su abogado debe notificarle todos los ofrecimientos del acuerdo de liquidación antes y después del juicio. Los ofrecimientos durante el juicio deben comunicarse de inmediato y debe consultar con su abogado si acepta un acuerdo de liquidación. Sin embargo, usted debe tomar la decisión final de aceptar o rechazar un acuerdo de liquidación.

11. Si en algún momento usted, el Cliente, cree que su abogado ha cobrado un honorario excesivo o ilegal, usted tiene el derecho a informar el asunto a la Asociación de Abogados de California, la agencia que supervisa la práctica y el comportamiento de todos los abogados en California. Para obtener información sobre cómo comunicarse con la Asociación de Abogados de California, comuníquese con la asociación de abogados local. Cualquier desacuerdo entre usted y su abogado sobre los honorarios puede llevarse a los tribunales y es posible que desee contratar a otro abogado para que lo ayude a resolver este desacuerdo. Por lo general, las disputas de honorarios deben manejarse en una demanda por separado, a menos que su contrato de honorarios prevea el arbitraje.

Firmado el: 05 / 25 / 2022

GRV

Genaro Reyes Villagra

THE SPIVAK LAW FIRM

Firmado el: 06 / 07 / 2022

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Court of Appeal,
Second District, Division 2, California.

Pearline ZALEWA et al., Plaintiffs and Respondents,
v.
TEMPO RESEARCH CORPORATION et al., Defendants and Appellants.

B238142 | Filed March 1, 2013

APPEAL from a judgment of the Superior Court of Los Angeles County. Charles F. Palmer, Judge. Reversed and remanded. (Los Angeles County Super. Ct. No. BC319156)

Attorneys and Law Firms

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Opinion

BOREN, P.J.

***1** We remanded this employment case to the trial court to determine (1) if attorney fees are authorized by statute following our reversal of the judgment in favor of plaintiffs, and (2) if fees are authorized, are they warranted by the facts of the case. On remand, both sides submitted demands for attorney fees to the trial court. The court awarded fees to plaintiff former employees as the "**prevailing** party" under Labor Code section **218**.**5**.[1]

We reverse. Plaintiffs were not the **prevailing** party: they lost the case because their demands for bonuses were unfounded. Given that plaintiffs had no right to bonuses after they were laid off, defendants' payment of money to some former employees during the litigation was a gift that cannot be viewed—as a matter of law—as a "catalyst" warranting an award of attorney fees to plaintiffs.

FACTS[2]

Plaintiffs are former employees of defendant Rifocs, a fiber optics company. In 1999, Rifocs merged with codefendant Textron. The merged entity was subsequently acquired by codefendant Tempo Research Corporation. The 1999 merger agreement contained a bonus clause. The bonus was intended to reward key employees for past performance and give them an incentive to remain with the company after the merger. Plaintiff employees were not third party beneficiaries of the merger agreement, which expressly forbids them from suing to enforce its terms.

To qualify for a bonus, plaintiffs had to be employed by the corporation at the end of the calendar year from 2000 through 2003. Plaintiffs received bonuses pursuant to the merger agreement beginning in December 2000. Plaintiff Laws received a bonus of $10,000 for 2000–2001 and Zalewa received a bonus of $75,000 for 2000–2002.

In 2001, defendants began employee layoffs because the market for fiber optics cooled. Defendants' employment roster declined from 125 employees in April 2001 to seven employees in 2003. After being laid off, plaintiffs received no further

bonuses; however, they were entitled to—and received—severance pay. They signed releases agreeing not to sue on any claim arising from their employment with defendants.

In 2004, plaintiffs filed suit alleging Labor Code violations, unfair business practices, breach of contract, conversion, promissory estoppel, bad faith, and private attorney general (PAGA) penalties. In July 2005, defendants offered payments to laid-off employees, though not to the plaintiffs. After defendants made the payments, plaintiffs amended their complaint to allege a class action and assert a new claim for a "residual bonus." A class was certified in 2007.

A bench trial was conducted in 2008. The court found that plaintiffs are entitled to recover a direct bonus, but no residual bonus Because the bonus was unpaid wages, plaintiffs were awarded prejudgment interest and attorney fees under § 218.5. The court denied penalties to plaintiffs, finding that it would be unjust because defendants voluntarily tendered almost all of the outstanding direct bonus amounts to class members. The court awarded 11 employees $0 because they were paid *more* money by defendants than they were owed. The remaining eight former employees were awarded sums ranging from $455 to $35,719. The court awarded plaintiffs' counsel attorney fees of $881,715. The court rejected plaintiffs' claim under PAGA for lack of standing, because plaintiffs left defendants' employ before PAGA took effect in 2004.

***2** Plaintiffs appealed the judgment because they felt entitled to residual bonuses and waiting time penalties, among other things. Defendants cross-appealed, challenging the trial court's award of a direct bonus, its invalidation of the releases signed by plaintiffs, and the court's award of attorney fees.

This Court reversed the judgment in favor of plaintiffs.

First, the trial court improperly invalidated the releases signed by plaintiffs after finding that defendants reasonably and in good faith believed that they did not owe plaintiffs a bonus. In a bona fide dispute over wages, defendants can legitimately offer plaintiffs money in return for their release of all claims. There was no evidence that the releases were coerced or improperly obtained. We wrote that plaintiffs "could, and did, accept payments that exceeded their earned severance, in return for releasing all claims, when there was a bona fide dispute over the wages owing. This is proper, even if the payment made by defendants was less than the bonus amounts claimed by the employees."

Second, the trial court erred by finding that plaintiffs are entitled to a direct bonus. Although plaintiffs benefit from the bonus clause, the merger agreement prohibits them from suing to enforce its terms. Further, plaintiffs did not rely on any written or oral promises from defendants that they would receive a bonus even if they were laid off from their jobs due to depressed economic conditions. Because plaintiffs are not entitled to a bonus after they were laid off, they are not entitled to waiting time penalties, other Labor Code penalties, or prejudgment interest.

Finally, we reversed the trial court's award of $881,715 in attorney fees. We remanded the case to the trial court to determine whether an award of attorney fees is authorized by statute and warranted by the facts. Notably, we did *not* specify that either plaintiffs or defendants might be entitled to fees.[3]

On remand, the parties filed cross-motions for attorney fees. Plaintiffs requested an award of $307,146 as the **prevailing** party pursuant to § 218.5, reasoning that this litigation was the catalyst for defendants' July 2005 payments. Plaintiffs did not request attorney fees for litigation occurring after the 2005 payments, because the claims that went to trial were found by this Court to lack merit.

Defendants countered with a request for $2,210,360 in costs and attorney fees incurred at trial and on appeal. Defendants argued that they are the **prevailing** parties: the appeal showed that they had no obligation to pay anything to plaintiffs. Like plaintiffs, defendants relied upon § 218.5 as authority for their right to recover attorney fees. In opposition to plaintiffs' request for fees, defendants observed that their 2005 payments were made to nonparties, not to plaintiffs, and plaintiffs are not the **prevailing** parties because they did not recover any relief against defendants at trial. In defendants' view, the "catalyst" theory is inapposite because no public interest was vindicated by plaintiffs' lawsuit.

THE TRIAL COURT'S RULING

***3** The trial court denied defendants' motion for attorney fees. Citing § 218.5, the court granted plaintiffs' motion for fees, finding that plaintiffs are the **prevailing** parties, even if they did not obtain a favorable judgment in the litigation. The court reasoned that plaintiffs' lawsuit was a catalyst, provoking defendants to make the 2005 payments to some former employees. Plaintiffs initially won their lawsuit in the trial court and other employees recovered their bonuses from defendants in administrative proceedings: these factors demonstrated that the lawsuit was not frivolous, groundless or unreasonable. Finally, plaintiffs made demands for their bonus before the action was filed but were rebuffed, demonstrating that the litigation was necessary. Plaintiffs' attorneys were awarded a total of $346,947.

DISCUSSION

1. ***Appeal and Review***

The appeal arises from a postjudgment order awarding attorney fees and costs. (Code Civ. Proc., § 904.1, subd. (a)(2); *Raff v. Raff* (1964) 61 Cal.2d 514, 519; *Breckler v. Thaler* (1978) 87 Cal.App.3d 189, 193.) An attorney fee award generally is reviewed for an abuse of discretion; however, when the parties dispute whether the trial court was legally authorized to make an award because "the criteria for making an award" were unmet, this calls for statutory construction and presents a question of law. (*Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1213–1214; *Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169. 1175.) Specifically, we are asked whether § 218.5 permits, under a catalyst theory, an award of attorney fees to plaintiffs who did not **prevail** on any of the claims made in their lawsuit. Review is de novo, because the issue is whether there is a legal basis for awarding attorney fees. (*Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 1426; *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 149.)

2. ***Overview of § 218.5***

Section 218.5 reads, in relevant part, "In any action brought for the nonpayment of wages ... the court shall award reasonable attorney's fees and costs to the **prevailing** party if any party to the action requests attorney's fees and costs upon the initiation of the action." The statute is a reciprocal fee recovery provision that works in favor of either employees or **employers**, whichever is the **prevailing** party in a lawsuit claiming unpaid wages. (*Earley v. Superior Court, supra,* 79 Cal.App.4th at p. 1427.) In employee class action suits, class representatives assume a fiduciary responsibility on behalf of absent parties and are potentially responsible for defense fees if their case fails. (*Id.* at pp. 1434–1436.) An unpaid bonus is treated as a claim for unpaid wages. (*Hunter v. Ryan* (1930) 109 Cal.App. 736, 738.)

3. ***The Catalyst Theory***

The catalyst theory arises from the private attorney general doctrine codified in Code of Civil Procedure section 1021.5.[4] It allows courts to award attorney fees to a "successful party" in an action that results in "the enforcement of an important right affecting the public interest" if there is (a) a significant benefit conferred on the general public or a large class of persons, (b) the financial burden of private enforcement makes the award appropriate, and (c) the fees should not be paid out of any recovery. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565 (*Graham*).)

***4** The doctrine " ' "rests upon the recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible." ' " (*Graham, supra,* 34 Cal.4th at p. 565.) It does not apply when a lawsuit's "primary effect was the vindication of [plaintiff's] personal right and economic interest." (*Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 637.)

"Under the catalyst theory, attorney fees may be awarded even when litigation does not result in a judicial resolution if the defendant changes its behavior substantially because of, and in the manner sought by, the litigation.... In order to be eligible for attorney fees[,] a plaintiff must not only be a catalyst to defendant's changed behavior, but the lawsuit must have some merit [ ] and the plaintiff must have engaged in a reasonable attempt to settle its dispute with the defendant prior to

litigation." (*Graham, supra,* 34 Cal.4th at pp. 560–561.)

" 'A plaintiff will be considered a "successful party" where an important right is vindicated "by activating defendants to modify their behavior." ' " (*Graham, supra,* 34 Cal.4th at p. 567.) Plaintiff need not secure a favorable final judgment to succeed: the case may be won on a preliminary issue; or by convincing a public agency to implement state law; or by reaching a settlement with a corporation in a shareholder derivative suit. (*Id.* at pp. 565–567, citing cases.) In *Graham,* the plaintiffs sued Chrysler for making false statements about the towing capacity of its trucks, inspiring the company to offer to repurchase or replace the trucks. The lawsuit caused Chrysler to change its behavior, "implicated an issue of public safety, and [ ] benefited thousands of consumers and potentially thousands more by acting as a deterrent to discourage lax responses to known safety hazards." (*Id.* at pp. 577–578.)

4. *Plaintiffs' Right to Recover Attorney Fees*

Plaintiffs originally brought suit in 2004 "on behalf of themselves and the general public." They requested attorney fees pursuant to § **218**.**5**. While the case was pending, but before plaintiffs amended their complaint to include class allegations, defendants paid money to some of the laid-off employees, but not to plaintiffs. Plaintiffs proceeded to trial, where they won their unpaid bonus money. The victory was short-lived, as defendants had a successful appeal.

To determine the **prevailing** party under § **218**.**5**, we import the definition used in the Code of Civil Procedure (*On–Line Power, Inc. v. Mazur* (2007) 149 Cal.App.4th 1079, 1085–1087), which defines a **prevailing** party as "the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant." (Code Civ. Proc., § 1032, subd. (a)(4).) Plaintiffs did not have a net monetary recovery against defendants. In fact, they recovered nothing. Under the plain language of § **218**.**5**, plaintiffs were not the **prevailing** party because all of their claims against defendant were denied.

While no court has yet applied the catalyst theory to a case arising from § **218**.**5**, plaintiffs argue that the theory should apply, based on defendants' July 2005 payments to some former employees. It is unclear whether the permissive fee shifting described in the catalyst theory applies to a statute like § **218**.**5**, which *mandates* an award of attorney fees to the "**prevailing** party." Assuming the catalyst theory applies to Labor Code cases, its application does not assist plaintiffs in their quest for attorney fees.

***5** The opinion in the prior appeal shows that plaintiffs had no right to collect a bonus after they were laid off from their jobs with defendants. By extension, the laid-off, nonparty employees who received payments from defendants in July 2005 also had no right to collect a bonus. Had the employees not accepted the 2005 payments, they would have received nothing in the litigation. In the eyes of the law, defendants' 2005 payments were a gift, not a contractual or statutory obligation to remit unpaid wages.

When deciding whether to award attorney fees, the court reviews the facts "not only to determine the lawsuit's catalytic effect but also its merits. Attorney fees should not be awarded for a lawsuit that lacks merit." (*Graham, supra,* 34 Cal.4th at p. 576.) Plaintiffs cannot be a "successful party" if a reviewing court flatly rejects their case on the merits. (*Marine Forests Society v. California Coastal Com.* (2008) 160 Cal.App.4th 867, 877.) Although plaintiffs' lawsuit provoked the 2005 payments, the lawsuit itself lacked merit, because plaintiffs demanded bonuses and penalties that they were not entitled to collect.

A lawsuit that provokes a defendant to make a gift is not a ground for awarding attorney fees: no significant benefit is conferred on the public or a large class of persons by such a lawsuit (*Graham, supra,* 34 Cal.4th at p. 578), and defendants engaged in no detrimental behavior that needed to be changed. As discussed in our prior opinion, defendants had the right to behave the way they did, laying off employees they could not afford to keep and denying bonuses to employees who were not on the payroll at year's end. (Compare *Tipton–Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 607–610 [city instituted remedial practices in its police department after plaintiff sued for race and sex discrimination, justifying application of the "catalyst" theory of fee recovery]; *Harbor v. Deukmejian* (1987) 43 Cal.3d 1078, 1103 [catalyst theory applied when plaintiffs successfully challenged the governor's constitutional veto authority, which conferred a significant benefit on the general public]; *Hogar Dulce Hogar v. Community Development Com. of City of Escondido* (2007) 157 Cal.App.4th 1358,

1368 [plaintiffs successfully obtained an amendment to a tax sharing agreement and a $1.35 million reimbursement to a city housing fund, giving rise to catalyst fees].)

In sum, this lawsuit was instigated by a handful of employees who felt entitled to collect a bonus for years after they stopped working. By no stretch of imagination did this lawsuit aim to vindicate an important right affecting the public interest; nor did it confer a significant benefit on the general public or a large class of persons; nor did it cure detrimental behavior by defendants, who did not engage in improper conduct. This was not a lawsuit " 'that genuinely provide[d] a public benefit.' " (*Vasquez v. State of California* (2008) 45 Cal.4th 243, 255.) The catalyst theory does not apply here.

5. ***Defendants' Right to Recover Attorney Fees***

Section **218**.**5** is a reciprocal attorney fees statute that requires an award of fees to the "**prevailing** party" so long as one of the parties demands those fees upon the initiation of the action. Here, plaintiffs demanded fees pursuant to § **218**.**5** when they filed suit. Defendants were the **prevailing** parties on appeal, which resolved the entire lawsuit in their favor. (Code Civ. Proc., § 1032, subd. (a)(4) [**prevailing** party is the defendant if neither plaintiff nor defendant obtains any relief, and the defendant when the plaintiff recovers no relief against that defendant].) Plaintiffs did not **prevail** on any claims.

***6** Plaintiffs contend that their claims for fees under § **218**.**5** were inextricably intertwined with their PAGA claim, making it impossible to award attorney fees to defendants as the **prevailing** party under § **218**.**5**. As the trial court found, plaintiffs had no standing to bring a PAGA claim because PAGA did not exist when plaintiffs were terminated from their employment with defendants. In any event, § **218**.**5** lists only one remotely pertinent exception: "This section does not apply to any action for which attorney's fees are recoverable under Section 1194."[5] Plaintiffs did not proceed under section 1194, a one-way fee shifting statute authorizing attorney fees to employees who **prevail** on their minimum wage or overtime compensation claims.

Section **218**.**5** contains no equitable exemption allowing the courts to give a pass to employees who invoke its provisions then lose their case, causing the **employer** to become the **prevailing** party in the litigation. Defendants are the **prevailing** party under § **218**.**5**, and are entitled to recover reasonable attorney fees they incurred in this litigation, including the two appeals.[6]

DISPOSITION

The postjudgment order awarding attorney fees and costs to plaintiffs is reversed. The case is remanded to the trial court to determine a reasonable award of attorney fees and costs for defendants. Defendants are entitled to recover their costs on appeal, as the **prevailing** party.

We concur:

ASHMANN–GERST, J.

FERNS, J.[*]

Footnotes

[1] Labor Code section **218**.**5** will be referred to in this opinion as § **218**.**5**.

[2] The facts are largely derived from our opinion in *Zalewa v. Tempo Research Corporation* (Sept. 27, 2010) B210429 (nonpub. opn., as modified Oct. 27, 2010).

[3] Plaintiffs misinformed the trial court that the case was remanded to resolve "whether and in what amount *plaintiffs are entitled to*

reasonable fees for having achieved [a] substantial result for so many of the affected employees." (Italics added.) The opinion does not give a nod to plaintiffs' claim for fees.

[4] The statute reads, in relevant part, "Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement ... are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any."

[5] Section 218.5 contains several express exceptions: it does not apply to an action brought by the Labor Commissioner; it does not apply to a surety issuing a bond pursuant to the Business and Professions Code; and it does not apply to an action to enforce a mechanics lien under the Civil Code. The statute does not mention PAGA.

[6] The issue of attorney fees following reversal of the judgment first arose in plaintiffs' petition for rehearing, when it was procedurally inopportune to resolve a new issue, hence the remand. We never intended to confuse the trial court by remanding for further proceedings on the issue of attorney fees.

[*] Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

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EXHIBIT 14

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California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.

Court of Appeal, First District, Division 5, California.

Maria Tun CUN, Plaintiff and Appellant,
v.
CAFE TIRAMISU LLC, Defendant and Respondent.

No. A131241. | (San Francisco County Super. Ct. No. CGC–09–484879). | Nov. 30, 2011.

Attorneys and Law Firms

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Opinion

NEEDHAM, J.

***1** Maria Tun Cun appeals from an order awarding attorney fees to respondent Café Tiramisu LLC, pursuant to Labor Code section 218.5, after the court granted respondent's motion for summary judgment. Appellant contends: (1) Labor Code section 218.5 did not apply, because the action she brought for unpaid wages was really for unpaid overtime, for which an award of attorney fees is available only to successful plaintiffs under Labor Code section 1194; (2) the court should have apportioned the attorney fees between appellant's unpaid wages claim and her constructive termination claim, for which no attorney's fee award is available; and (3) the court improperly awarded amounts for attorney services rendered in defense of claims other than those asserted by appellant. We will affirm the order.

I. FACTS AND PROCEDURAL HISTORY

In February 2009, appellant Maria Tun Cun, along with Vicente Tapia Gonzalez and Evangelina Tun Cun, filed a complaint against respondent Café Tiramisu LLC.[1]

Maria asserted three causes of action. In a cause of action for recovery of unpaid wages, she alleged that she was employed by Café Tiramisu between February 9, 2005 until her termination on March 21, 2007, she was "owed wages" and was "owed for accrued paid time off," and she was entitled to a statutory penalty for unpaid wages under Labor Code section 203 and reasonable attorney fees and costs pursuant to Labor Code section 218.5. In a cause of action for constructive termination in violation of public policy, Maria alleged that Café Tiramisu's "conduct in refusing to pay plaintiffs wages owed created an intolerable working condition, necessitating plaintiffs to leave employment." In her cause of action for unfair business practices, she alleged that Café Tiramisu violated Business and Professions Code section 17200 by committing these same acts.

In her prayer for relief, Maria sought, among other things, damages and "reasonable attorney's fees, pursuant to Labor Code Section 218.5." Nowhere in the complaint did Maria allege that Café Tiramisu owed her for unpaid overtime.

A first amended complaint, filed in April 2010, retained Maria's allegations and causes of action. Like the original complaint, it did not allege entitlement to unpaid overtime.

Café Tiramisu filed a motion for summary judgment or, in the alternative, summary adjudication. In September 2010, the court granted the motion, finding that Maria could not **prevail** on any of her causes of action as a matter of law because, before the lawsuit, the parties had entered into settlement agreements by which Maria released all of her employment-related claims.

Judgment was entered against Maria on September 21, 2010. The judgment noted that Café Tiramisu, as the **prevailing** party, was eligible to recover its reasonable attorney fees and costs.[2]

Café Tiramisu filed a motion for attorney fees on November 18, 2010, contending it was the **prevailing** party and entitled to recover its fees and costs under Labor Code section **218**.**5**. Café Tiramisu requested $36,612.50 in fees, supporting its request with a declaration from one of its attorneys and invoices for the fees incurred.

***2** Maria opposed the motion. She contended that Café Tiramisu was not entitled to recover attorney fees under Labor Code section **218**.**5**, which authorizes recovery by the **prevailing** party, because her action was for overtime wages governed by Labor Code section 1194, which authorizes recovery only by successful plaintiffs. She further contended that Café Tiramisu could not recover for the portion of attorney fees incurred in connection with her claim for wrongful termination. Café Tiramisu's reply brief addressed these arguments.

By written order filed on or about January 5, 2011, the court granted the motion and awarded Café Tiramisu attorney fees in the full amount of $36,612.50. This appeal followed.

II. DISCUSSION

As mentioned, Maria contends the court erred because: (1) Labor Code section **218**.**5** was inapplicable because her claim for unpaid wages was really a claim for unpaid overtime; (2) the court failed to apportion the attorney fees spent on the claim for unpaid wages as opposed to her claim for wrongful termination; and (3) Café Tiramisu should not recover for fees incurred in defending against claims by others. We address each contention in turn.

A. *Recovery of Attorney Fees Under Labor Code Section 218.5*

Café Tiramisu sought recovery for its attorney fees, and the trial court awarded them, pursuant to Labor Code section **218**.**5**.[3] Section **218**.**5** provides in pertinent part: "In any action brought for the *nonpayment of wages,* fringe benefits, or health and welfare or pension fund contributions, the court *shall* award reasonable attorney's fees and costs to the ***prevailing*** *party if* any party to the action requests attorney's fees and costs upon the initiation of the action." (Italics added.)

Each requirement of section **218**.**5** was met. First, Maria brought an action for the nonpayment of wages. In her original and amended complaints, Maria claimed that she was "owed wages" and, in addition, had accrued and was owed "paid time off pursuant to Labor Code [sections] 226.7 and 227.3." Section 226.7 refers to pay for time worked during mandated meal periods, and section 227.3 refers to vested vacation pay; both are considered "wages." (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1114 [time worked during mandatory meal periods]; *Suastez v. Plastic Dress–Up Co.* (1982) 31 Cal.3d 774, 784 [vested vacation pay].)

Second, Café Tiramisu was the **prevailing** party. Its summary judgment was granted, and judgment was entered in its favor, with Maria taking nothing by her amended complaint. (Code Civ. Proc. § 1032, subd. (a)(4).)

Third, Maria expressly requested attorney fees and costs pursuant to section **218**.**5** upon the initiation of her action, in both the original and amended complaints. Accordingly, Café Tiramisu was entitled to recover its reasonable attorney fees under

section 218.5.

Maria's sole argument to the contrary is that her cause of action for unpaid wages was really a claim for unpaid *overtime,* such that section 1194, rather than section 218.5, should govern. Section 1194, subdivision (a) provides for one-way fee shifting to a successful plaintiff only: "Notwithstanding any agreement to work for a lesser wage, any *employee* receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee *is entitled to recover* in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, *reasonable attorney's fees,* and costs of suit." (Italics added.)

***3** Because section 1194 authorizes an award of attorney fees only to a successful plaintiff, and not to the **prevailing** party, Maria contends that the trial court erred and Café Tiramisu was not entitled to an award of attorney fees. Indeed, section 218.5 provides: "This section does not apply to any action for which attorney's fees are recoverable under Section 1194." The question Maria presents, therefore, is whether her claim for unpaid wages was really a claim for overtime compensation.

Maria's effort to recast her complaint as one seeking recovery for unpaid overtime is unpersuasive. Neither her original complaint nor the amended complaint mentions "overtime," "overtime wages," or section 1194. It refers instead to "wages," paid time off (also wages), and section 218.5.

Ignoring this, Maria argues that the claim she eventually tried to *prove* was that she was not paid wages at the overtime rate. In particular, in opposition to respondent's summary judgment motion, she contended that she repeatedly worked overtime hours, presented payroll records evincing overtime hours, and purportedly asserted that it was her exhaustion from overtime hours that led to her constructive termination.[4]

Maria's argument is unconvincing. The fact that she was eventually unable to support her broadly-alleged claim for unpaid wages except with evidence of unpaid overtime does not mean that her "action" was really for overtime compensation. (See §§ 218.5, 1194.) Nor does it convert the action she brought into a different action she had never specifically alleged. To hold otherwise would reward a plaintiff for not having any evidence to support her claims as pled, and penalize a defendant who incurs attorney fees in defending against the claims *as they were pled.* Thus, while Maria may have tried to prove her cause of action for unpaid wages with evidence of unpaid overtime, the court did not err in concluding that the "action" Maria actually "brought" was for nonpayment of wages within the meaning of section 218.5, not for nonpayment of overtime within the meaning of section 1194.

Maria further argues that this court, by its August 2011 decision in appeal number A129899 from the grant of summary judgment, characterized her claim as one for overtime wages. Her argument has no merit. In the first place, our August 2011 opinion in appeal number A129899 was not before the trial court when it granted the attorney fees motion in January 2011, and Maria does not explain how the trial court could have erred in January based on our characterization of her claim in August. Furthermore, any characterization of Maria's cause of action in appeal number A129899 would not be germane to this case, because it did not involve the issue we address now. At issue in appeal number A129899 was whether the settlement release was enforceable; we were not called upon in that case, as we are in this case, to decide whether her cause of action for unpaid wages was really a cause of action for unpaid overtime. Lastly, contrary to Maria's representations, we did *not* characterize Maria's claim as one for overtime wages. Rather, we stated: "On April 2, 2010, a First Amended Complaint (Complaint) was filed; appellant alleged causes of action for recovery of *unpaid wages,* constructive termination and unfair business practices." (Italics added.) While we acknowledged that Maria ended up claiming damages for unpaid overtime in her summary judgment motion, we also noted that her underlying complaint to the Department of Labor contended that she was "entitled to additional unpaid wages, *including* for unpaid overtime," but not exclusively for unpaid overtime. (Italics added.) In short, for all of these reasons, our opinion in appeal number A129899 does not establish that the trial court erred in deciding respondent's motion for attorney fees.

***4** Maria also refers us to *Earley v. Superior Court* (2000) 79 Cal.App.4th 1420 (*Earley*). There, petitioners had brought a class action to recover unpaid overtime compensation. (*Id.* at p. 1423.) They objected to an order requiring petitioners to notify absent class members that they might be liable for attorney fees and costs if their claim was unsuccessful. (*Id.* at pp. 1423–1424.) To decide the appeal, the appellate court had to determine, among other things, if section 1194 alone governed whether attorney fees could be awarded in the defendant's favor, or if section 218.5 also applied, such that the two statutes could be read together to allow the **prevailing** party to recover attorney fees. (*Earley,* at p. 1426.) The court ruled that only

section 1194 applied to the petitioner's cause of action for unpaid overtime, in light of legislative history, the distinct legislative source of the right to overtime compensation, and the fact that the Legislature specifically provided that only plaintiffs should recover attorney fees in overtime cases. (*Earley,* at pp. 1429–1431.) The court concluded: "The only reasonable interpretation which would avoid nullification of section 1194 would be one which bars **employers** from relying on section **218**.**5** to recover fees in any action for *minimum* wages or *overtime* compensation. Section **218**.**5** would still be available for an action brought to recover nonpayment of contractually agreed-upon or bargained-for 'wages, fringe benefits, or health and welfare or pension fund contributions.' [Footnote omitted.]" (*Earley,* at p. 1430.)

Maria's reliance on *Earley* is unavailing. There, the plaintiffs expressly *alleged* a claim for unpaid overtime. (*Earley, supra,* 79 Cal.App.4th at p. 1424.) Here, Maria did not bring a claim specifically for unpaid overtime, but a broader claim for unpaid wages, which did not refer to overtime but instead to other types of wages. In other words, while *Earley* decided that only section 1194 applies to an action alleged explicitly and solely to recover unpaid overtime, Maria did not *allege* such an action to recover unpaid overtime.[5]

B. ***Apportionment Among Causes of Action***

Maria argues that the trial court erred in failing to apportion the attorney fees between the first cause of action for unpaid wages and her cause of action for wrongful termination. We disagree.

In general, where attorney fees are recoverable for one cause of action but not another, a court need not apportion attorney fees between the causes of action if there is an issue common to the causes of action or the issues are so interrelated that it would be impossible to separate them. (See, e.g., *Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 129–130; *Erickson v. R.E.M. Concepts, Inc.* (2005) 126 Cal.App.4th 1073, 1083–1086; *Akins v. Enterprise Rent–A–Car Co.* (2000) 79 Cal.App.4th 1127, 1133.)

Here, Maria expressly based her wrongful termination claim on her allegation that her resignation from Café Tiramisu was due to its "refusal to pay [her] wages owed." As such, the issue of whether Café Tiramisu owed Maria wages was common to both the unpaid wages claim and the constructive termination claim. Furthermore, Maria's unfair business practice claim was based on the acts underlying her other claims. Thus, from the outset, all of Maria's causes of action required resolution of one common issue: whether Café Tiramisu owed Maria "wages."

***5** Moreover, the successful defense to *all* of Maria's causes of action was the same: Maria was not entitled to pursue any of the claims, or obtain any recovery by her lawsuit, because of the settlement agreement in which she released all of her employment-related claims. For this reason as well, the court did not err in deciding not to apportion fees among the causes of action.

C. ***Apportionment as to Other Plaintiffs***

Maria further argues that the trial court awarded fees for work Café Tiramisu's attorneys performed in defending against the claims of the other plaintiffs. She asserts the trial court awarded attorney fees for the "deposition of Spinoso and Scopetta which necessarily involved all three plaintiff's cases." She also states: "respondent's attorneys time records does not distinguish between deposition time for Mr. Scopetta and Spinosso [sic] spent on the claim of Tapia–Gonzalez which was settled and Evangelina Tun Cun [record citation] which respondent sought attorney fees by a separate Motion and which appeal is pending before this court."

As Café Tiramisu points out, however, Maria did not raise this argument in the trial court. Although she argued that the court should apportion the time spent on the wrongful termination claim, she did not raise any issue concerning time purportedly spent on other cases or with respect to other plaintiffs. The issue is therefore waived. (See *North Coast Business Park v. Nielsen Construction Co.* (1993) 17 Cal.App.4th 22, 28–29.)

Maria fails to establish error.

III. DISPOSITION

The order is affirmed.

We concur: SIMONS, Acting P.J., and BRUINIERS, J.

Footnotes

[1] The appeal of Evangelina Tun Cun is pending in appeal number A131240. Because Evangelina Tun Cun and Maria Tun Cun have the same last names, we will refer to them by their first names for purposes of clarity, without disrespect.

[2] Maria appealed from the summary judgment (appeal number A129899), contending that the settlement agreements were void under Labor Code section 206.5. In August 2011, we affirmed the judgment.

[3] Except where otherwise indicated, all statutory references hereafter are to the Labor Code.

[4] Maria's opposition to the motion for attorney fees quoted an excerpt from her opposition to the summary judgment motion as follows: " 'Maria Tun Cun's pay stubs for several periods immediately before she was constructively terminated show she worked as many as 140 hours in a bimonthly pay period.... It is mathematically impossible to work more than 96 hours in a bimonthly pay period without working overtime hours (i.e. more than 40 hours in any week).' "

[5] It might be argued that Maria's first "cause of action" covered both a claim for unpaid overtime *and* a claim for other unpaid wages, and an attorney fees award cannot include amounts incurred in defense of the unpaid overtime claim. Maria does not make an apportionment argument on this ground, so we need not and do not decide this issue.

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EXHIBIT 15

2003 WL 352422
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
Only the Westlaw citation is currently available.

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.

Court of Appeal, Fourth District, Division 1, California.

Cecilia CSASZI, Plaintiff and Appellant,
v.
SHARP HEALTHCARE, Defendant and Respondent.

No. D038558. | (Super.Ct.No. 740594). | Feb. 18, 2003.

Former employee brought action against former employer, claiming employer was liable for unlawful discrimination and unpaid wages pertaining to on-call time. The Superior Court, San Diego County, No. 740594, S. Charles Wickersham, J., granted employer's motion for summary adjudication with respect to discrimination claims, and, following a bench trial, entered judgment for employer on wage claim. Employee appealed. The Court of Appeal, Haller, J., held that: (1) employee's motion to reconsider summary adjudication order based on new or different facts was untimely; (2) employee failed to set forth any new or different facts, and thus motion to reconsider summary adjudication order was properly denied; (3) employee did not qualify for mandatory relief from summary adjudication order allegedly entered as a result of attorney's neglect or mistake; (4) attorney who failed to file an opposition to employer's summary adjudication motion engaged in positive misconduct, justifying relief from summary adjudication order; (5) employer was not required to compensate employee for time spent on-call but not actually answering calls at same rate established for time she spent on-call and actually answering calls; and (6) statute authorizing award of attorney fees only to successful plaintiff in actions seeking to recover unpaid overtime did not prohibit award of attorney fees to employer.

Affirmed in part and reversed in part.

APPEAL from a judgment of the Superior Court of San Diego County, S. Charles Wickersham, Judge. Affirmed in part and reversed in part.

Opinion

HALLER, J.

***1** Cecilia Csaszi sued her former employer, Sharp Healthcare[1] (Sharp), claiming Sharp was liable for unlawful discrimination and unpaid wages pertaining to on-call time. The court granted summary adjudication on all claims except for the unpaid wages cause of action. After a court trial on this claim, the court found Csaszi did not prove she was owed any wages, and entered final judgment in Sharp's favor on all of Csaszi's causes of action. The court denied Csaszi's motions seeking relief from the summary adjudication ruling. (Code Civ. Proc., §§ 473, 1008.) Csaszi appeals.

We affirm the portions of the judgment finding in Sharp's favor on Csaszi's claim for unpaid wages and awarding Sharp attorney fees for prevailing on this claim. (Lab.Code, § 218.5.) We reverse the portion of the judgment entered on the summary adjudication of Csaszi's employment discrimination causes of action. The trial court shall vacate its order granting summary adjudication on these causes of action, permit the parties to file opposition and reply briefs, and then consider Sharp's summary adjudication motion on its merits.

FACTUAL AND PROCEDURAL SUMMARY

In March 1996, Sharp hired Csaszi as a utilization review/quality assurance nurse responsible for evaluating patients for discharge at Tri-City Medical Center. Two and one-half years later, Csaszi's supervisors readjusted the workloads of Csaszi and a co-worker. Csaszi was unhappy about the change in her assignment, and complained about what she believed was unfair treatment. In March 1999, Csaszi was given several written notices regarding perceived problems with her performance and the need to improve to avoid being terminated. Two months later, in May 1999, Sharp terminated Csaszi, stating she had failed to properly perform her job assignments and acted in an improper manner toward other health care employees.

In December 1999, Csaszi filed a complaint against Sharp, alleging (1) employment discrimination claims (wrongful termination in violation of public policy, unlawful discrimination and retaliation in violation of the Fair Employment and Housing Act (FEHA), and wrongful demotion in retaliation for complaining about racial discrimination); and (2) a claim for the failure to properly pay "on-call" wages in violation of Labor Code section 201.

Sharp moved for summary adjudication on Csaszi's discrimination claims on the grounds that Csaszi could not establish she was performing her job in a satisfactory manner, Sharp had legitimate, nondiscriminatory reasons for terminating Csaszi, and Csaszi had no evidence that Sharp's stated reasons were a pretext for unlawful discrimination. Csaszi's attorney, Michael W. Loker, did not file an opposition to that motion, even though (as detailed below) Loker told Csaszi that he *had* filed an opposition.

On November 22, 2000, the court granted Sharp's summary adjudication motion, ruling that Sharp met its burden to establish a legitimate reason for Csaszi's termination and Csaszi failed to present any evidence that the proffered reason for the termination was untrue or pretextual.

***2** On the date scheduled for trial on her remaining claim, Csaszi appeared with attorney Loker, and informed the trial court that she wished to terminate Loker. The trial court granted the request and, over Sharp's objections, granted Csaszi's request for a 90-day trial continuance.

On December 14, 2000, Csaszi, represented by new counsel William Evans, filed a Code of Civil Procedure section 1008 motion (section 1008), requesting the court to reconsider its summary adjudication ruling. The court denied the motion, finding the motion was not timely (it was filed more than 10 days after the summary adjudication order was entered) and Csaszi "fail[ed] to set forth any 'new or different facts, circumstances, or law' that would affect the outcome of" the summary adjudication motion.

On March 9, 2001, a court trial began on Csaszi's remaining claim for unpaid wages relating to her on-call time. After considering all the evidence (which will be detailed below), the court found Csaszi failed to meet her burden to show she was entitled to unpaid wages for her on-call time.

The next month, on April 6, 2001, Csaszi moved for relief from the summary adjudication order under Code of Civil Procedure section 473 (section 473). In support, Csaszi submitted her declaration, the declaration of her former attorney (Loker), and proposed responsive papers to Sharp's summary adjudication motion. The court denied the section 473 motion, stating Csaszi "made no showing that a judgment, dismissal, order, or other proceeding has been taken against her as a result of her or her attorney's mistake, inadvertence, surprise, or excusable neglect, as is required by the section."

Sharp then moved for its attorney fees as the prevailing party on the FEHA and unpaid wage claims. The court initially granted the motion on both grounds, but after oral argument, concluded that Csaszi's "discrimination case was not totally groundless" and therefore awarded only those fees pertaining to the unpaid wage claim ($20,269) based on Labor Code section 218.5.

On appeal, Csaszi challenges the denial of her motions to vacate the summary adjudication and the court's rulings pertaining to the unpaid wage claim.

DISCUSSION

I. *Motion for Reconsideration*

Csaszi first contends the court abused its discretion in denying her motion to reconsider the summary adjudication order under section 1008, which permits a court to revoke a previous order based on new or different facts and an adequate justification for the failure to previously produce those facts. The contention is unavailing.

[1] First, the motion was untimely. Section 1008 requires that a reconsideration motion be brought "within 10 days after service upon the party of written notice of entry of the order...." (See *Advanced Building Maintenance v. State Comp. Ins. Fund* (1996) 49 Cal.App.4th 1388, 1392, 57 Cal.Rptr.2d 310.) Sharp served written notice of entry of the order on November 22, 2000, and Csaszi filed her reconsideration motion 22 days later, on December 14, 2000.

***3** [2] Additionally, the trial court properly denied the motion on the basis that Csaszi "fail[ed] to set forth any 'new or different facts, circumstances, or law' that would affect the outcome of" the summary adjudication motion. Csaszi did not proffer any new facts or law relevant to the summary adjudication ruling. Instead, she focused exclusively on explaining the circumstances of her prior attorney's failure to adequately represent her. These circumstances do not constitute the type of "new or different facts" that permit a reconsideration of the trial court's order under section 1008.

II. *Section 473 Ruling*

Csaszi alternatively contends the trial court erred in denying her section 473 motion seeking to vacate the summary adjudication order because of her attorney's neglect.

A. *Relevant Facts*

In moving for relief under section 473, Csaszi requested the trial court to vacate the summary adjudication order because the motion was granted without the benefit of her opposition papers and the failure to file an opposition was caused by her attorney's misconduct. In support, she submitted her own declaration and copies of facsimiles (faxes) received from attorney Loker, which set forth the following facts:

Csaszi retained Loker in September 1999. Loker thereafter filed the complaint and, in April 2000, "began discovery requests." In May 2000, Loker notified Csaszi he had attended a case management conference, and the trial date was scheduled for October 20, 2000. During the next two months, Csaszi made numerous attempts to contact Loker, but Loker did not return any of Csaszi's telephone calls or respond to her written correspondence. In August 2000, Csaszi's husband went to the superior court and discovered that Sharp had obtained a continuance of the trial to December 1, 2000.

On September 7, 2000, Loker called Csaszi and told her Sharp wanted to take her deposition. Csaszi expressed her concern about being unable to contact Loker, but Loker did not explain why he failed to respond to her calls and letters, and said only that he now intended to "move" on Csaszi's case. Csaszi thereafter met with Loker on two separate days to prepare for her deposition. Sharp deposed Csaszi on three different dates, and each time Loker was present to represent her.

On October 12, Sharp filed its summary adjudication motion, but Loker did not tell Csaszi of this filing. Loker thereafter scheduled depositions of three Sharp employees, but these depositions were postponed for unspecified reasons and later rescheduled to October 30. On October 26, Csaszi met with Loker to review her deposition transcript, and she also gave Loker $1,000 to pay for the three upcoming Sharp employee depositions. On that date, Loker also informed Csaszi about Sharp's summary adjudication motion for the first time. Loker told her he would be filing an opposition to the summary judgment motion, but did not tell her the opposition was due on October 26.

***4** On October 30, Csaszi met with Loker to determine why the Sharp employees' depositions were cancelled that morning. During that meeting Loker did not tell Csaszi that he had filed an ex parte application to continue the hearing on the summary judgment motion.

Ten days later, on November 9, Loker faxed Csaszi a note stating that he was in the library and that he would:

> "[*F*] *ile our response in opposition to the summary judgment today* and argument is on [November] 17th, for which you will be present. Contrary to my message yesterday, I do not need your signature at this time, but I do need to see you Saturday, and I need you to drop off today the filing fee for the opposition to the Summary Judgment, payable to the Clerk of the Superior Court, in the amount of $116. Also, the copies of your deposition are payable at this time, because I am using them in our opposition, in the amount of $615.46, which should be by separate check, made payable to this office.... Therefore, though I need not, and cannot meet today (*because of the fact that I am in the law library today all day working on the opposition*), please drop off two drafts for the filing fee and deposition copy fee, in the amounts noted respectively. Also please leave a time in which we may meet Saturday, if you are not otherwise occupied. *I am optimistic.*" (Italics added.)

Csaszi thereafter wrote the requested checks, but Loker was not in his office when she delivered them. Csaszi telephoned Loker on a daily basis for the next eight days, but was unable to reach him and Loker did not respond to these calls. In the early morning of November 17 (the date scheduled for oral argument on the summary adjudication motion), Csaszi received a fax from Loker stating:

> "The court announced yesterday that it will review the briefs submitted and rule telephonically on 22 Dec. (on the summary judgment). *I will fax you our opposition if you haven't received.* Therefore there are no hearings today. P.S. *There was no charge for filing the opposition, a rule change.* You may 'void' that check, which I will destroy. Tx." (Italics added.)

In fact, Loker never filed an opposition. Further, the applicable rules have never required a party opposing a summary judgment to pay a fee. (See Super. Ct. San Diego County, Fee Schedule & Forms List .)

In response to this fax, Csaszi repeatedly attempted to contact Loker, but was unable to reach him. Csaszi then directly contacted the superior court, and learned from the court that a trial call on her remaining claim was scheduled for December 1, 2000. The morning of December 1, Loker faxed Csaszi a note stating there was no hearing and that he intended to meet with her during the weekend to discuss the overtime pay claim. Csaszi nonetheless attended the trial call, and at the hearing, the court said that Loker was scheduled to call the court at 9:30 a.m. Csaszi confirmed that Loker was still her attorney.

***5** That weekend, Csaszi met with Loker and discussed the unpaid wage claim, but Loker refused to discuss the court's summary adjudication ruling. The next day, Csaszi appeared at court with a written statement stating that she wanted to obtain new counsel, and the court granted the motion.

In support of her section 473 motion, Csaszi also submitted Loker's declaration which stated in relevant part: "I did not prepare an opposition to Defendant Sharp's motion for summary adjudication on the discrimination claims. I did not feel that Csaszi would prevail on the discrimination claims and I felt that to oppose Sharp's motion might impair her credibility on the remaining issues dealing with the overtime claim and that she would incur additional costs in opposing the discrimination part of the case. However, I was apparently unable to adequately convey my feelings regarding her chances of prevailing on these issues to her. I thought I had convinced her of my recommendations prior to the scheduled opposition to Sharp's summary adjudication motion. She did inform me that she wanted to proceed with her discrimination claims at the December 4, 2000, hearing. [¶] There was no fault attributable to Plaintiff in any failure to make a timely filing of the opposition to Defendant's Motion For Summary Adjudication."

B. *Legal Analysis*

Under section 473, a party may potentially seek two types of relief for orders entered as a result of an attorney's neglect or mistake: one that is mandatory and one that is discretionary. (*Metropolitan Service Corp. v. Casa de Palms, Ltd.* (1995) 31 Cal.App.4th 1481, 1486, 37 Cal.Rptr.2d 575 (*Metropolitan Service*).)

First, under the mandatory provision, a court "shall" grant relief whenever an application for relief meets the six-month statutory time period *and* the motion is "accompanied by an attorney's sworn affidavit attesting to his or her mistake,

inadvertence, surprise, or neglect ....“ (§ 473; see *In re Marriage of Hock & Gordon-Hock* (2000) 80 Cal.App.4th 1438, 1442, 96 Cal.Rptr.2d 546.) “The purpose of this law is to relieve the innocent client of the burden of the attorney’s fault, to impose the burden on the erring attorney, and to avoid precipitating more litigation in the form of malpractice suits.” (*Metropolitan Service, supra,* 31 Cal.App.4th at p. 1487, 37 Cal.Rptr.2d 575.)

[3] This mandatory relief provision is inapplicable here because Loker, Csaszi’s former attorney, did not “attest[ ] to [a] mistake, inadvertence, surprise, or neglect....” Instead, in his affidavit, attorney Loker said he did not file an opposition because he made the tactical decision not to oppose the motion. This assertion does not satisfy the statute’s requirement that the attorney admit a “mistake, inadvertence, surprise, or neglect.” (§ 473, see *Metropolitan Service, supra,* 31 Cal.App.4th at p. 1487, 37 Cal.Rptr.2d 575 [mandatory relief provisions apply “*if* the attorney *admits* neglect .... “], italics added.)[2]

[4] But even if a party cannot satisfy section 473’s mandatory relief requirements, the party may obtain relief under the statute’s discretionary provisions. Specifically, a court “may” grant relief if the moving party shows an order was taken against him or her because of the attorney’s *excusable neglect.* (§ 473; see *Metropolitan Service, supra,* 31 Cal.App.4th at pp. 1486-1487, 37 Cal.Rptr.2d 575.) Generally, conduct falling below the professional standard of care is considered inexcusable and therefore discretionary relief cannot be granted based on such conduct. (See *Carroll v. Abbott Laboratories, Inc.* (1982) 32 Cal.3d 892, 895, 187 Cal.Rptr. 592, 654 P.2d 775 (*Carroll*); *Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 682, 68 Cal.Rptr.2d 228.) Csaszi asserts Loker’s conduct in failing to oppose the summary judgment was the result of professional incompetence. Therefore Loker’s conduct was not “excusable” under section 473.

***6** However, an exception to the rule requiring a showing of excusable neglect applies if the party establishes the attorney’s neglect was of an extreme degree amounting to “ ‘positive misconduct.’ “ (*Carroll, supra,* 32 Cal.3d at pp. 898-899, 187 Cal.Rptr. 592, 654 P.2d 775; see *Fleming v. Gallegos* (1994) 23 Cal.App.4th 68, 72-73, 28 Cal.Rptr.2d 350.) “ ‘Positive misconduct is found where there is a total failure on the part of counsel to represent his client.’ “ (*People v. One Parcel of Land* (1991) 235 Cal.App.3d 579, 584, 286 Cal.Rptr. 739; *Aldrich v. San Fernando Valley Lumber Co.* (1985) 170 Cal.App.3d 725, 738-739, 216 Cal.Rptr. 300.) The attorney’s conduct is said to obliterate the existence of the attorney-client relationship and therefore cannot be imputed to the client. (*Carroll, supra,* 32 Cal.3d at p. 898, 187 Cal.Rptr. 592, 654 P.2d 775 [“ ‘[a]n attorney’s authority to bind his client does not permit him to impair or destroy the client’s cause of action or defense,’ “ quoting *Orange Empire Nat. Bank v. Kirk* (1968) 259 Cal.App.2d 347, 353].)

Carroll held an attorney who “grossly mishandled” a document production did not engage in “ ‘positive misconduct’ “ because he otherwise acted on behalf of his client in the litigation including attending his client’s deposition, propounding and timely responding to interrogatories, propounding requests for admissions, settling with one of the defendants, and timely filing a section 473 motion. (*Carroll, supra,* 32 Cal.3d at pp. 899-900, 187 Cal.Rptr. 592, 654 P.2d 775.) *Carroll* contrasted these circumstances with the situations in *Daley v. County of Butte* (1964) 227 Cal.App.2d 380, 38 Cal.Rptr. 693 and *Orange Empire Nat. Bank v. Kirk, supra,* 259 Cal.App.2d 347, 66 Cal.Rptr. 240, where the courts found attorney misconduct had effectively deprived a party of representation. (*Carroll, supra,* 32 Cal.3d at pp. 899-900, 187 Cal.Rptr. 592, 654 P.2d 775.) In *Daley,* the plaintiff’s attorney abandoned his client by failing to communicate with the plaintiff, serve necessary parties, and appear at critical hearings. (*Daley v. County of Butte, supra,* 227 Cal.App.2d at pp. 391-392, 38 Cal.Rptr. 693.) In *Orange Empire,* the defendant’s attorney failed to assert a defense, appear at the trial, or file relief from a default judgment within the statutory period. (*Orange Empire Nat. Bank v. Kirk, supra,* 259 Cal.App.2d at p. 354, 66 Cal.Rptr. 240.)

We conclude the circumstances here fall within the *Daley-Orange Empire* line of cases. Although Loker filed the complaint and was initially involved in some limited discovery, Loker completely abandoned Csaszi at a critical time by failing to file an opposition to the summary adjudication motion. Further, by falsely telling Csaszi that he was filing, *and had filed,* an opposition to the summary adjudication motion, Loker did more than abandon his client-he affirmatively precluded Csaszi from protecting herself and seeking other counsel to file an opposition or seeking timely section 1008 relief. Loker additionally continued to affirmatively harm Csaszi’s interests when he asserted in his declaration in support of her section 473 motion that his decision not to file the summary judgment motion was a tactical decision, an assertion that is flatly contradicted by his own words reflected on the faxes sent to his client. This false assertion prevented Csaszi from obtaining mandatory relief under the statute.

***7** In light of Loker’s misrepresentations to Csaszi and his submission of a declaration that contradicts his written correspondence to his client, Loker’s activities amounted to positive misconduct justifying relief under section 473. In so

concluding, we are unpersuaded by Sharp's reliance on a list of the various contacts between Loker and Csaszi during the relevant times. If anything, Loker's sporadic contacts with Csaszi made the situation worse by misleading Csaszi into believing he was taking care of her interests. (See *Fleming v. Gallegos, supra,* 23 Cal.App.4th at p. 73, 28 Cal.Rptr.2d 350 [trial court erred by failing to find attorney abandonment where plaintiff's "attorneys displayed an unwillingness to either prosecute her lawsuit or to cease representing her"].) Further, these contacts do not show a lack of abandonment, instead they reveal merely that Loker remained Csaszi's attorney of record. *Carroll* does not require that an attorney-client relationship be formally severed before positive misconduct may be proven.

Although a section 473 motion lies within the sound discretion of the trial court, " 'the trial court's discretion is not unlimited and must be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice.' [Citation.] The law strongly favors trial and disposition on the merits. Therefore any doubts in applying section 473 must be resolved in favor of the party seeking relief. When the moving party promptly seeks relief and there is no prejudice to the opposing party, very slight evidence is required to justify relief. We will more carefully scrutinize an order denying relief than one which permits a trial on the merits." (*Mink v. Superior Court* (1992) 2 Cal.App.4th 1338, 1343, 4 Cal.Rptr.2d 195; see *Stafford v. Mach* (1998) 64 Cal.App.4th 1174, 1180-1181, 75 Cal.Rptr.2d 809.) Applying these principles here, we conclude the trial court abused its discretion in failing to vacate the summary adjudication based on Csaszi's showing that her counsel engaged in "positive misconduct."

[5] We note that Sharp does not argue, nor does the law permit, this court to sustain the trial court's denial of the section 473 motion on the alternate ground that Csaszi's proposed opposition to the summary adjudication motion does not raise a triable issue of fact. In considering the propriety of a court's ruling on a section 473 motion, an appellate court is limited to the question whether the court abused its discretion in granting or denying the motion, and may not reach the substantive issue as to whether the position proffered by the party seeking relief has merit. (*Uriarte v. United States Pipe & Foundry Co.* (1996) 51 Cal.App.4th 780, 786-787, 59 Cal.Rptr.2d 332; see 8 Witkin, Cal. Procedure (4th ed. 1997) Attack on Judgment in Trial Court, § 184 at p. 692, 59 Cal.Rptr.2d 332.)[3]

Finally, we reject Sharp's argument that the trial court properly denied the section 473 motion because the motion constituted an "end-run" around section 1008 governing reconsideration motions. Because Csaszi satisfied the requirements of a section 473 motion, the fact that the motion was not timely under section 1008 does not defeat the grounds for granting the motion under section 473.

III. *Unpaid Wage Claim*

***8** Csaszi next contends the court erred in failing to find in her favor on the unpaid wage claim, which was tried before the court sitting without a jury.

The evidence at trial showed that Csaszi was assigned to on-call shifts during which she was given a pager and was responsible for answering telephone calls pertaining to patients discharged outside of regular business hours. Sharp paid its on-call employees $2.50 per hour for time spent on-call but not actually working, i.e., being available for a call. For time spent actually answering a call (known as "call-back time"), Sharp paid its employees one and one-half times the employee's regular hourly rate of pay, regardless whether this time reflected overtime work. Csaszi was paid $2.50 for each hour that she reported she was on-call, and would have been paid her overtime rate if she had reported any time answering calls.

The essential basis of Csaszi's unpaid wages claim at trial was that Sharp was required to pay her time and one-half for her on-call time (when she was not actually answering calls) instead of $2.50 because this time was devoted primarily to her employer's interests. In support, Csaszi relied on federal law providing that an employee should be fully compensated for on-call time if the time is spent " 'primarily for the benefit of the employer and his business.' " (*Armour & Co. v. Wantock* (1944) 323 U.S. 126, 132, 65 S.Ct. 165, 89 L.Ed. 118.)

To show that her on-call time was spent primarily for Sharp's benefit, Csaszi testified that when she was on-call she was unable to attend to her personal activities and she was paged "very frequently." She said that during her entire on-call period, she would sit in a room with a telephone, facsimile machine and documents needed to perform her job duties. Csaszi claimed she could not shop, cook, sleep, travel, interact with her family or otherwise engage in any personal activities. Csaszi sought $40,380, calculated as the total number of on-call hours multiplied by the time and one-half rate subtracted by the amount she

was paid per hour ($2.50). Csaszi had no record of the time she actually responded to calls, explaining that she never identified this time on her timesheets because she did not understand how to do so.[4]

In contrast to this evidence, Sharp presented the testimony of its human resource director who said that employees were instructed on the manner in which they should report call-back time and that the employees did not need to limit their activities while waiting for a call. Sharp employees corroborated this testimony. These employees testified that while on-call, they wore pagers and attended to various personal activities, including cooking, shopping, attending church services, and entertaining. The pagers given to the employees had a range of at least 250 miles, and therefore the employees were free to travel throughout Southern California. Csaszi's co-workers testified they received varying numbers of calls while on-call, which averaged two to four per week, and that they knew how to claim this call-back time on their timesheets. The employees were required to respond to a pager within a 15- or 20-minute period. The employees were always paid time and one-half for the time they were actually answering a call.

***9** After considering the evidence, the court stated: "The issue to be decided is whether the requirements of being on-call as a discharge planner precluded [Csaszi] from using the time effectively for her own purposes, thus entitling her to back wages. [Citations.] [¶] The Court finds that although [Csaszi] may have subjectively believed that she needed to avoid engaging in personal activities while on-call, the evidence shows that the job duties of being on-call did not require her to do so. The fact that Ms. Csaszi elected not to engage in personal activities while on-call may be laudable, but it does not transform the on-call time to working time compensable under statute. Both the written policies of the employer as well as the actions of the employees indicate that the express and implied agreement was that employees would be paid $2.50 for time spent on-call but not actually working and one and one-half times their regular hours rate for time spent actually working while on-call. [¶] Based on the above-stated findings and the fact that [Csaszi] did not offer any evidence specifying the dates or hours she actually worked while on-call, the Court finds that [Csaszi] has failed to meet her burden to show that she is entitled to back wages...."

[6] We find no error. Although there is no California law directly on point, federal law sets forth appropriate standards for determining Csaszi's claim to additional wages for on-call time. Under this law, an employee must be fully compensated for on-call time spent primarily for the employer's benefit, and the question whether the time is spent primarily for the employer depends on numerous factors and a consideration of these factors in the context of the particular circumstances of the case. (See *Armour & Co. v. Wantock, supra,* 323 U.S. at p. 133; *Berry v. County of Sonoma* (9th Cir.1994) 30 F.3d 1174, 1183.) Although no single factor is dispositive, the predominant considerations are the agreement of the parties and the degree to which the employee is free to engage in personal activities. (*Owens v. Local No. 169, Assn. of Western Pulp & Paper Workers* (9th Cir.1992) 971 F.2d 347, 350-354.) The court must balance the factors permitting personal pursuits against the factors restricting personal pursuits to determine whether the employee is "so restricted that he is effectively engaged to wait." (*Berry v. County of Sonoma, supra,* 30 F.3d at p. 1183.)

Applying these principles, the trial court found Sharp's evidence credible, and concluded that the time Csaszi spent on-call was not time that was required to be spent predominately for the employer's benefit. Substantial evidence supports the court's factual conclusion. The court, as the finder of fact, was entitled to reject Csaszi's contrary evidence.

In nonetheless challenging the court's factual conclusions, Csaszi contends that Sharp's agreement to pay $2.50 during on-call hours "amounted to an admission that [Sharp] maintained control over the employees" and therefore the trial court was required to find as a matter of law that Sharp was under a mandatory obligation to pay the same pay rate that it applied for call-back work.

***10** This argument is unsupported factually and legally.

First, the fact that Sharp paid employees $2.50 per hour to be available to respond to phone calls was not an admission that the time spent was primarily for Sharp's benefit. Instead, Sharp's human resources director specifically testified that employees were paid for being on-call as "an incentive for carrying the pager and being available on call." She explained the pay was "additional compensation that was paid to carry the pager, to be available during a specific time should additional work be needed by that individual." She emphasized that during this waiting time, the "time is not controlled [by Sharp]" and that employee "is free to move around, engage in personal activities."

Csaszi's position is also legally unsupported. Csaszi relies solely on *Paniagua v. City of Galveston, Texas* (5th Cir.1993) 995 F.2d 1310 and *Berry v. County of Sonoma, supra,* 30 F.3d at p. 1178. In *Paniagua,* the court specifically rejected the identical argument asserted here-that an employer's agreement to compensate employees for the inconvenience of being on call "automatically render[s] the time spent on standby 'working time'...." (995 F.2d at p. 1317.) In *Berry,* the court noted that an employer's agreement to provide "at least some type of compensation for on-call waiting time may suggest the parties characterize waiting time as work ...," but the court made clear that this was merely one of many factors in the overall analysis. (*Berry v. County of Sonoma, supra,* 30 F.3d at p. 1181 .)

The trial court here expressly noted the evidence showing that Sharp paid $2.50 for on-call waiting time, but stated that based on the totality of the circumstances, this payment was merely compensation for the inconvenience of carrying a pager and did not reflect that the time spent by on-call employees was for the employer's benefit. Substantial evidence supported the trial court's conclusion.

Csaszi failed to establish that the trial court erred in reaching its factual conclusions with respect to the unpaid wage claim or that the court erred in applying these factual findings to the applicable legal principles.

IV. *Attorney Fees*

[7] The trial court awarded $20,269 in attorney fees to Sharp under Labor Code section 218.5, which provides in relevant part: "In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action."[5]

Csaszi contends the court erred in awarding fees under this section because the applicable statute is section 1194, which contains a "one-way" fee provision, permitting attorney fees only for a prevailing employee and not for a prevailing employer. Section 1194, subdivision (a) states: "[n]otwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance ..., including interest thereon, reasonable attorney's fees, and costs of suit."

***11** Both sections 218.5 and 1194 potentially apply to an action seeking overtime wages, but establish different attorney fees rules. In *Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 95 Cal.Rptr.2d 57, the court noted the potential conflict between the code sections, and concluded the Legislature intended that section 1194 alone applies to recovery of attorney fees for overtime compensation claims, even though such claims could be construed as seeking payment of wages under section 218.5. In a well-reasoned decision, the court explained that the only reasonable interpretation of the Legislature's one-way fee shifting rule in section 1194 "would be one which bars employers from relying on section 218.5 to recover fees in any action for *minimum* wages or *overtime* compensation. Section 218.5 would still be available for an action brought to recover nonpayment of contractually agreed-upon or bargained for 'wages....' [¶] Such a harmonization of these two sections is fully justified. An employee's right to wages and overtime compensation clearly have different sources. Straight-time wages ... are a matter of private contract between the employer and employee. Entitlement to overtime compensation, on the other hand, is mandated by statute and is based on an important public policy.... 'California courts have long recognized [that] wage and hour laws "concern not only health and welfare of the workers themselves, but also the public health and general welfare." ... [¶] There can be no doubt that the one-way fee-shifting rule in section 1194 was meant to 'encourage injured parties to seek redress-and thus simultaneously enforce [the minimum wage and overtime laws]-in situations where they otherwise would not find it economical to sue.' [Citation.] To allow employers to invoke section 218.5 in an overtime case would defeat that legislative intent and create a chilling effect on workers who have had their *statutory* rights violated. Such a result would undermine statutorily-established public policy. That policy can only be properly enforced by a recognition that section 1194 alone applies to overtime compensation claims." (*Earley v. Superior Court, supra,* 79 Cal.App.4th at p. 1430, 95 Cal.Rptr.2d 57.)

We agree with the *Earley* court that when an employee seeks overtime wages, the attorney fees rules are exclusively set forth in section 1194. However, that principle is inapplicable here because Csaszi never alleged, or sought to prove at trial, that Sharp failed to pay her for overtime work. Instead, Csaszi brought her claim to enforce Sharp's alleged agreement that it would pay time and one-half for time spent working outside of the hospital's physical environment and that on-call time constituted "working" under established legal principles. The claim at issue concerned solely a matter of private contract

between the employer and employee, i.e., that Sharp had agreed to pay a certain wage for time answering calls, and that because her time spent waiting for those calls primarily benefited Sharp, Sharp was required to compensate her at this same established wage rate. Because Csaszi never claimed or presented evidence that she was working overtime without overtime pay, the case does not come within the ambit of section 1194. Thus, the court properly concluded that attorney fees were mandatory to the prevailing employer under section 218.5.

***12** Csaszi alternatively argues that even if section 218.5 is the correct statute to apply, the code section does not permit a defendant to recover attorney fees because the fees must be requested at "the initiation of the action." (§ 218.5.) Csaszi, however, ignores the beginning part of this sentence which provides for reasonable attorney fees "if *any* party to the action requests attorney's fees and costs upon the initiation of the action ." (§ 218.5, italics added.) Read in context, this statutory language does not limit an attorney fees award to a plaintiff, and instead merely requires that the prevailing party show it had sought attorney fees at the beginning of the litigation. Here, Sharp stated in its answer that it was seeking to be "awarded its costs of suit and attorney fees incurred therein...." That statement is sufficient to satisfy section 218.5 's requirement that attorney fees be requested at the "initiation of the action."

DISPOSITION

We affirm the portions of the judgment finding in Sharp's favor on Csaszi's claim for unpaid wages and awarding attorney fees to Sharp for prevailing on this claim. We reverse the portion of the judgment dismissing Csaszi's first, second, third and fifth causes of action based on the summary adjudication. The court is ordered to vacate its order granting summary adjudication on these causes of action, permit Csaszi to file an opposition, and consider Sharp's motion on the merits.

The parties to bear their own costs on appeal.

WE CONCUR: KREMER, P.J., and BENKE, J.

Footnotes

[1] Although it appears that the correct name of Csaszi's former employer is Sharp Mission Park, the defendant is named in the caption of Csaszi's complaint as Sharp Healthcare. Our review of the record on appeal does not reveal an amendment to the complaint correcting the defendant's name.

[2] Because Csaszi did not submit an attorney fault declaration satisfying the mandatory relief provision requirements, we do not reach the issue raised by the parties in their supplemental briefs whether section 473's mandatory provision applies to provide relief for summary adjudication orders, an issue that has been the subject of different conclusions by the appellate courts. (Compare *English v. Ikon Business Solutions, Inc.* (2001) 94 Cal.App.4th 130, 114 Cal.Rptr.2d 93 with *Avila v. Chua* (1997) 57 Cal.App.4th 860, 67 Cal.Rptr.2d 373.)

[3] We recognize that this rule may lead to an empty victory for Csaszi if she is unable to come forward with any real evidence that she was discriminated against based on her race. However, the standard of review on a section 473 motion does not permit this court to reach the merits of the underlying claim. Moreover, the policy of providing a party with a hearing on the merits of his or her claim in the trial court outweighs any possible judicial economy objectives that would be served if we were to consider the merits of the discrimination claim based solely on Csaszi's proposed opposition filings contained in the appellate record.

[4] Although it appears that Csaszi was not paid the time and one-half for all of her call-back time, at trial she never claimed any unpaid wages for such time, presumably because she never recorded this *call-back* time on her timesheets except for one occasion. Thus, this appeal concerns only the question whether Csaszi was owed any wages for her *on-call* time.

[5] All further statutory references are to the Labor Code.

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EXHIBIT 16

2009 WL 4718721
Only the Westlaw citation is currently available.
United States District Court,
E.D. California.

Boanerges VILLALOBOS, et al., Plaintiffs,
v.
James GUERTIN, et al., Defendants.

No. CIV. S–07–2778 LKK/GGH. | Dec. 3, 2009.

Attorneys and Law Firms

Adam Wang, Law Office of Adam Wang, San Jose, CA, for Plaintiffs.

Kimberley Ann Worley, Stephen R. Holden, Holden Law Group, Auburn, CA, for Defendant.

Opinion

ORDER

LAWRENCE K. KARLTON, Senior District Judge.

***1** On August 19, 2009, the court granted defendants' motion for judgment on the pleadings, dismissing four of plaintiffs' causes of action for failure to state a claim, and dismissing the fifth and sole remaining cause of action for lack of subject matter jurisdictions. Defendants have submitted a bill of costs and separately moved for attorneys' fees, both of which have been opposed by plaintiffs. The court resolves the matter on the papers and after oral argument. For the reasons stated below, defendants' motion for fees and costs is granted in part.

I. BACKGROUND

Defendants Heidi and James Guertin allegedly operate a business under the name Norcal Plastering. Plaintiffs, four individuals formerly employed by Norcal, filed suit purporting to represent themselves and others similarly situated. The complaint stated five causes of action, for violations of (1) California Labor Code section 1194, (2) the Fair Labor Standards Act, (3) California Labor Code section 226.7, (4) California Labor Code section 203, and (5) California Business and Professions Code section 17203.

On August 19, 2009, the court held that plaintiffs' allegations were insufficient to support the second through fifth claims. The Fair Labor Standards Act claim failed because plaintiffs had not alleged facts sufficient to support the inference that Norcal Plastering or plaintiffs themselves engaged in interstate commerce, a predicate for liability under the act. Order at 8–11. The Third, Fourth, and Fifth claims failed because the allegations therein pertained to entities not party to this suit. *Id.* at 11–12. The court denied plaintiff's request for leave to amend to correct these deficiencies, explaining that plaintiffs had notice of these deficiencies before the scheduling order was entered, but that plaintiffs had taken no action to correct them until discovery in the case had closed. The court dismissed these claims, and declined to retain supplemental jurisdiction over plaintiffs' sole remaining claim. Judgment on the pleadings under Fed.R.Civ.P. 12(c) was entered for defendants on August 19, 2009.

Defendants filed a bill of costs and motion for attorneys fees. Plaintiffs oppose both, arguing that defendants were not

"prevailing parties" because, as plaintiffs understood this court's August 19, 2009 order, the state law claims had been dismissed without prejudice, and plaintiffs were free to refile the federal claim in federal court. Plaintiffs alternatively argue that even if defendants prevailed, they are not entitled to a fee award under the court's inherent power or under any statute.

II. DISCUSSION

A. Defendants Are A Prevailing Party

Under all of the fee shifting authorizations at issue in this case, fees and costs are only available to prevailing parties. Under California law, "a defendant in whose favor a dismissal is entered" is a prevailing party. Cal.Code Civ. P. § 1032(a)(4). Under federal law, a party has not prevailed unless it "experienced an alteration in the legal relationship" with the other parties. *Avery v. First Resolution Management Corp.*, 568 F.3d 1018, 1024 (9th Cir.2009). Plaintiffs argue that the court's order permits plaintiffs to refile each of their claims, and that as a result, no such change has occurred. *Id.*, *Oscar v. Alaska Dep't of Educ. & Early Dev.*, 541 F.3d 978, 982 (9th Cir.2008).

***2** Plaintiffs misunderstand the nature of the prior order and its effect under California and federal law. Fed.R.Civ.P. 41(b) provides that "[u]nless the dismissal order states otherwise ... any dismissal not under [Rule 41]—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits." Thus, although the dismissal order did not specifically state that it was "on the merits" or "with prejudice," dismissal of the second through fifth claims was precisely such an adjudication. *Stewart v. United States Bancorp*, 297 F.3d 953, 956 (9th Cir.2002). Plaintiffs' contention that a dismissal for failure to allege the elements of a cause of action is not a substantive dismissal is without merit. *Id.*

Plaintiffs' first claim, which was dismissed for lack of subject matter jurisdiction, was not adjudicated on the merits. *Avery*, 568 F.3d at 1024. The fact that plaintiff may refile this one claim does not defeat defendants' claim to prevailing party status as to the others.

B. Particular Fee Shifting Provisions

Defendants argue that they are entitled to fees under 28 U.S.C. section 1927, under Cal. Lab.Code section 218.5, and under the court's inherent authority. The court discusses each in turn.

1. 28 U.S.C. § 1927

"Any attorney ... who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." 28 U.S.C. § 1927. Here, defendants have not identified any act by which plaintiffs multiplied the proceedings. Filing of the initial complaint cannot itself violate this section. "Because the section authorizes sanctions only for the 'multipli[cation of] proceedings,' it applies only to unnecessary filings and tactics once a lawsuit has begun." *Moore v. Keegan Mgmt. Co. (In re Keegan Mgmt. Co., Sec. Litig.)*, 78 F.3d 431, 435 (9th Cir.1996). Nor did plaintiffs' counsel's response to depositions noticed by defendants "multipl[y] the proceedings."

Rather than identify affirmative acts, defendants argue that plaintiffs' counsel multiplied proceedings by failing to withdraw and dismiss the case after the close of discovery. The only authority provided for this interpretation of section 1927 is a case from the Southern District of Florida. *See Murray v. Playmaker Servs., LLC*, 548 F.Supp.2d 1378, 1383 (S.D.Fla.2008). The court respectfully disagrees, and thereby declines to conclude that an attorney multiplies proceedings simply by failing to voluntarily dismiss an existing lawsuit.

2. The Court's Inherent Powers

The court has an inherent authority to order payment of fees as a sanction "when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons, delaying or disrupting litigation, or has taken actions in the litigation for an improper purpose." *Fink v. Gomez,* 239 F.3d 989, 992 (9th Cir.2001) (citing *Chambers v. NASCO, Inc.,* 501 U.S. 32, 45–46 and n. 10, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991)); *see also Roadway Express, Inc. v. Piper,* 447 U.S. 752, 767, 100 S.Ct. 2455, 65 L.Ed.2d 488 (1980). In this case, defendants argue that plaintiffs have done a poor job of litigating this case, and that this demonstrates that they filed their a purported class action for the allegedly improper purpose of pressuring defendants to settle, rather than for any belief as to the action's merits. This argument is unsupported. Although, as noted in the order granting defendants' motion for judgment on the pleadings, plaintiffs did little in the litigation of this case, this does not demonstrate bad faith or other grounds for sanction under the court's inherent authority.

***3** Defendants also argue that plaintiffs have demonstrated bad faith by filing a complaint in state court that re-alleges the four the state-law claims previously filed in this court. Whether that filing is in bad faith is an issue for the state court.

3. Cal. Lab.Code § 218.5

Lastly, defendants argue that the court should award fees under California Labor Code section 218.5. This statute provides that "in any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party." Cal. Lab.Code § 218.5. The Ninth Circuit has held that this provision may be applied in suits filed in federal court. *Winterrowd v. Am. Gen. Annuity Ins. Co.,* 556 F.3d 815 (9th Cir.2009) (affirming award of fees to a prevailing plaintiff); *see also Diamond v. John Martin Co.,* 753 F.2d 1465, 1467 (9th Cir.1985) ("federal courts in diversity actions apply state law with regard to the allowance (or disallowance) of attorneys' fees."). The court concludes that this section applies to one of plaintiffs' claims, that an award of fees is mandatory and not limited to cases in which plaintiffs acted wrongfully, and that defendants prevailed for purposes of this statute.

First, section 218.5 does not apply to all wage claims. The statute contains an exemption, specifying that "[t]his section does not apply to any action for which attorney's fees are recoverable under [California Labor Code] Section 1194."[1] Section 1194 governs actions alleging failure to pay minimum wages or overtime. Of the claims brought in this suit, plaintiffs concede that their claim for failure to pay for missed meal periods is a claim "for nonpayment of wages" under section 218.5.[2] *See Murphy v. Kenneth Cole Production, Inc.,* 40 Cal.4th 1094, 1115, 56 Cal.Rptr.3d 880, 155 P.3d 284 (2007) (characterizing money owed for missed meal periods as wages rather than a penalty). Plaintiffs argue that their claims for waiting time penalties and for restitution of unpaid overtime do not fall within section 218.5, and defendants do not dispute this argument.

Second, plaintiffs request that the court apply federal cases interpreting fee shifting under Title VII of the Civil Rights Act to the California Labor Code. Under Title VII, a court awards fees to a prevailing defendant only when the plaintiff's claim was frivolous, unreasonable, groundless, or brought in bad faith. *Christiansburg Garment Co. v. EEOC,* 434 U.S. 412, 422, 98 S.Ct. 694, 54 L.Ed.2d 648 (1978). *Christiansburg'* s holding was predicated on the fact that Title VII grants courts discretion to award fees. *Christiansburg,* 434 U.S. at 416; *see also* 42 U.S.C. § 2000e–5(k) ("the court, in its discretion, may allow the prevailing party, ... a reasonable attorney's fee.").[3] The Court's holding directed the lower courts in their exercise of this discretion. Section 218.5, in contrast, provides that the court "shall" award fees. "As used in the Labor Code, 'shall' is mandatory." *Smith v. Rae–Venter Law Group,* 29 Cal.4th 345, 357, 127 Cal.Rptr.2d 516, 58 P.3d 367 (2002), *superceded on other grounds as stated in Eicher v. Advanced Business Integrators, Inc.,* 151 Cal.App.4th 1363, 1384, 61 Cal.Rptr.3d 114 (2007) (citing Cal. Stats.2003, ch. 93, § 1). Under California law, when a statute provides for a mandatory fee award, a court has only discretion to deny the award when it is unclear whether the party prevailed, a circumstance not present here. Cal.Code. Civ. P. § 1032(a)(4), *On–Line Power, Inc. v. Mazur,* 149 Cal.App.4th 1079, 1087, 57 Cal.Rptr.3d 698 (2007). It appears that no published California case, nor any federal case, has held that when a claim is of a type encompassed by section 218.5, a party must show anything more than that it prevailed to be entitled to a mandatory award of fees.[4]

***4** Finally, plaintiffs argue that defendants did not prevail on this claim because it was not brought as to them. As noted above, the court dismissed plaintiffs' meal period claim in part because the allegations supporting the claim referred to persons other than defendants. Plaintiffs now argue that in so doing, the court concluded that this claim was not brought as to defendants in this suit, such that defendants were not party to, and therefore did not prevail on, this claim. This argument fails. Although plaintiffs' allegations of particular conduct referred to other persons, plaintiffs' prayer for relief sought from defendants an award of meal time premium payments. Defendants therefore prevailed on this claim.

C. Reasonableness and Scope of The Fees

Although defendants are entitled to an award of fees only in connection with one of plaintiffs' claims, defendants may recover all fees incurred on issues pertinent to this claim regardless of whether those issues were also pertinent to other claims. *Diamond,* 753 F.2d at 1467 (quoting *Reynolds Metals Co. v. Alperson,* 25 Cal.3d 124, 129, 158 Cal.Rptr. 1, 599 P.2d 83 (1979)).

Defendants request $29,964.00 in fees, for 85.6 hours of work in the case not including the time spent on the motion for a fee award, billed at $315 per hour.[5] The court has previously held that $300 per hour is a reasonable local rate for attorneys with defense counsel's experience, and reduces the hourly rate accordingly.

Defendants have not specified how this time was spent. At least some of this time must have been spent on issues not pertinent to plaintiffs' meal period claim. Notably, a significant fraction of the memorandum submitted in support of defendants' motion for judgment on the pleadings was specific to plaintiffs' Fair Labor Standards Act claim. (Doc. No. 23–1 pages 4–6; Doc. No. 26 pages 4–5). Defendants are not entitled to recover fees expended in connection with this issue. *Diamond,* 753 F.2d at 1467. Defendants' contention that disclosure of the amount of time spent on this issue would breach attorney-client or work-product privileges is meritless. "Where the documentation of hours is inadequate, the district court may reduce the award accordingly." *Hensley v. Eckerhart,* 461 U.S. 424, 433, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) (concerning fee awards under 42 U.S.C. § 1988). Here, the court reduces the number of hours by the maximum amount that the court estimates were likely to have been spent on issues not pertinent to the meal period claim (which in this case means on issues solely pertinent to the FLSA claim). The record indicates that defendant's stated 85.6 hours were spent on preparation and filing of an answer, status report, motion for judgment on the pleadings, and on preparation for and attendance of a status conference, at least two depositions, and the hearing on the motion for judgment on the pleadings. *See* Declaration of Kimberly A. Worley Setting Forth Memorandum of Costs (Doc. No. 32–2). The court concludes that at most 15 hours of this time were spent on the FLSA issue, and reduces the fee award accordingly.

***5** Thus, defendants are entitled to a fees for 70.6 hours of work at $300 per hour, or $21,180. Plaintiff has not objected to defendants' statement of costs (other than to argue that defendants are not a prevailing party). Defendants are therefore further entitled to an award of $1,525.80 in costs.

D. Who Pays The Fees

Cal. Labor Code section 218.5 provides that fees shall be awarded to the prevailing party, but does not specify where the award shall come from. Nothing in the parties' briefing indicates whether fees awarded under section 218.5 should be paid by plaintiffs' counsel or by plaintiffs themselves. Moreover, had plaintiffs' counsel offered argument on this issue, it would have been against his clients' interests. None of the cases citing section 218.5 have addressed this issue, and the court is not aware of any California law regarding fee awards generally.

It may be that as a general rule, fee awards, rather than sanctions, are to be paid by the party rather than counsel. In this particular case, however, where there is no controlling authority, equity demands that the award be paid by plaintiffs' counsel. As explained more fully in the prior order, dismissal resulted from counsel's failure to properly plead, and counsel's subsequent failure to identify his mistakes or to prosecute this litigation. It may be that defendants would have prevailed absent these failings, but the court has no way to evaluate that possibility. Although plaintiff's counsel's conduct is not sanctionable under federal law, when California law compels an award of fees, the exceptional circumstances of this case compel the court to conclude that this award should lie against plaintiff's counsel.

IV. CONCLUSION

For the reasons stated above, defendants' motion for attorney fees, Doc. No. 35 is GRANTED IN PART.

1. Plaintiff's counsel is ordered to pay $21,180 in fees and $1,525.80 in costs to defense counsel.

2. Counsel shall file an affidavit accompanying the payment which states that it is paid personally by counsel, out of personal funds, and is not and will not be billed, directly or indirectly, to the client or in any way made the responsibility of the client as attorneys' fees or costs.

IT IS SO ORDERED.

Footnotes

1 The statute contains several other exceptions not pertinent here. In addition, for section 218.5 to apply, at least one party must have requested fees at the initiation of the action. In this case, both the complaint and the answer request fees.

2 Plaintiffs refer to this claim as their fourth. However, plaintiffs' meal break claim was enumerated as their third claim. Complaint ¶¶ 28–32.

3 *Christiansburg* explicitly juxtaposed Title VII's fee shifting provision, which provided discretion to award fees to any prevailing party, against statues providing a mandatory award of fees to prevailing plaintiffs, e.g. the Fair Labor Standards Act, 29 U.S.C. § 216(b), and against statutes providing discretion to award fees but only as to certain parties, e.g., the Privacy Act, 5 U.S.C. § 552a(g)(2)(B). *Christiansburg*, 434 U.S. 415–16, n. 5, n. 6.

4 Although not citable as precedent by California courts, an unpublished decision of the California Court of Appeal held that section 218.5 provided for mandatory fee awards to plaintiffs and defendants, despite possible policy concerns akin to those identified in *Christiansburg*. *Torres v. Auto Chlor Sys. of N. Cal .*, 2007 Cal.App. Unpub. LEXIS 7706, 2007 WL 2774706 (Cal.App. 6th Dist. Sept. 25, 2007).

5 Defense counsel declares that this is her standard rate, as an attorney with fifteen years of experience.

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EXHIBIT 17

05-30-2013 | 05:13 PM | Author: Robin Shea

Employees: Better Think Twice Before Suing Your Employer (Four Reasons Why)

Earlier, I busted on "my own side" by giving four reasons why employers shouldn't be so quick to fire their employees . To be fair, this week I'll talk about the other side -- four reasons why employees shouldn't be too quick to sue their employers.

DISCLAIMER: I am a defense lawyer. That means that, in any kind of workplace legal dispute, I am on the employer's side, not the employee's side. Always. Even though many of my best friends are employees and plaintiffs' lawyers. The following is not legal advice.

So, you don't have to believe what I'm about to say. But I make this post in good faith, based on my experience and observations in many years of employment litigation.

Are you still here? Cool! Here we go.

1. Even if you got the shaft at work, it is unlikely that you were treated illegally. The law does not require employers to treat their employees like "family," or to be nice, or even to be particularly fair. In fact, employers can usually be downright jerks as long as they are equally jerky to everybody. They can be arbitrary and play favorites as long as they're not making distinctions based on "protected" categories, like race or sex.

If you read this blog very often, you know that I am a strong advocate of treating employees respectfully, fairly, and with dignity. So is everybody in Human Resources who's worth a darn. But we feel that way because it's the right thing to do, not because it's the law.

The American legal system would collapse in a heap if people could sue every time their feelings were hurt. Our system is designed to prevent only the worst kinds of behavior -- you know, like murder, armed robbery, and driving 70 in a 55. It's supposed to keep us from being at each others' throats. That's it. Anything more is left to our respective senses of common decency. (Scary, I know!)

If you sue your employer, it won't be enough for you to prove that your employer made the wrong decision, or even that your employer was a no-goodnik. If you don't have a valid legal claim against your employer, then you will ultimately lose your case. One big reason to think twice before you sue.

2. Litigation is long, drawn-out, stressful, and painful. The only people who really enjoy litigation are lawyers. No one else could possibly be that sick. And, here's a secret: not even lawyers are that crazy about litigation. Judges (who are usually lawyers) are always after the parties to try to settle, which would end the case before the judge has to hear it. Lawyers are usually the same way -- they are rarely averse to settlement, although they'll fight to the death if that's what the client wants. Why do you think most courts nowadays have mandatory mediation? If even lawyers don't necessarily like litigation, just think about how much you will hate it.

"Well," you retort, "if lawsuits are that bad, then my employer will pay any amount to get rid of it, right? So it's still worth it to sue."

Well, no. Or, at least, not necessarily. You see, your employer gets sued a lot. This is what they call a "cost of doing business" in the United States. It is true that your lawsuit will be stressful and disruptive for your company. But it will be a lot more stressful and disruptive for you, who are not used to the court system or dealing with lawyers, and you don't even know whether it's a trap when the employer's lawyer says hello to you and offers to shake hands.

The distraction and stress of a lawsuit may also make it more difficult for you to do well in your new job. And having to continually dwell on an unpleasant experience (as you'll have to do while your lawsuit lasts) is difficult and stressful.

3. You may find out that your co-workers are not on your side. You feel very strongly that your employer did you wrong. You find a lawyer willing to take your case. You sue, and start taking depositions of all of your co-workers, who were your BFFs when you worked there. Well. It turns out that your BFFs weren't such BFFs after all. They say, "I liked Maudie, but I felt that she was out of line, and in my opinion she was treated fairly." And then you have the co-worker who saw you when you were not at your best, and she testifies about all the things you said to her in confidence when you were having a rotten day. Which are embarrassing. And which do not help your case. On the record. In a verbatim transcript, for cryin' out loud.

What happened to these people?

Most plaintiffs' lawyers will tell you that the co-workers are afraid of retaliation by the company if they don't side with the company and diss you. I am sure that happens sometimes, but I don't think it explains the majority of these situations. What I see most of the time are two phenomena:

*Most people consider a lawsuit an "act of war." They probably were on your side when you all worked together and went out for mai tais and kvetched about what was going on at the office. But that was just gossip, harmless venting. Nobody thought you were really going to sue! And now, thanks to you, they're being dragged in front of lawyers and court reporters and judges and juries, and they're ticked off. And maybe what they said to you in confidence about the boss is coming out -- while the boss is sitting across the table with a stern-looking lawyer in a pinstripe suit. AWKWARD! No wonder they've turned on you.

*Some employees really, sincerely do believe the company was in the right. Is the boss perfect? Of course not. But he's an overall decent guy who tries to be fair and treat employees right. And maybe you shouldn't have been so stubborn/absent from work/insubordinate/lazy yourself.

Recall No. 2, above. Finding out that your co-workers don't support you is one of the "painful" parts.

4. You may be opening up your own life to scrutiny. This is another "painful" part. In order to get more money, and because you really were very upset when you were fired, your lawyer includes a claim for emotional distress in your lawsuit. Next thing you know, the company has asked for your medical and psychiatric records dating back 10 years. And maybe you saw a shrink a few times and have been diagnosed as bipolar. Along with a few physical conditions that are not appropriate to mention in a family blog. Surely you don't have to share that information with the company's lawyers! Do you?

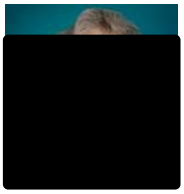
YOU ALMOST CERTAINLY DO. If you claim emotional distress (you don't have to, but you may not get as much money if you don't), most courts say you have put your own emotional condition at issue and the employer is entitled to find out how much of your (just as an example) bipolar disorder was caused by your termination and how much you had all along (in which case the company isn't responsible for it).

Your employer may also be able to dig into your past employment record, including that time you got fired from a previous job after you tested positive for angel dust, your criminal background, your five previous marriages, and your history of filing lawsuits. Perhaps you have nothing to hide. But a lot of people (most?) have a few skeletons that they'd just as soon not have the rest of the world know about.

What you probably don't have to worry about

Now, note what I have not mentioned: (1) That your employer will fire you for filing the lawsuit (assuming you did it while still employed); or (2) that your employer will blacklist you, and you'll never work again if you sue. The reason that I did not mention these is that they very rarely happen. Retaliation -- either during employment or afterward -- for filing a lawsuit in good faith against an employer is usually illegal, and almost all employers know that. If it happens and you can prove it, you might have a pretty good case. But don't bet on being able to do that.

Of course, I'm not saying you should never file a lawsuit against an employer, but it should almost always be a last resort. It's better to try resolving your dispute through the company's grievance procedure or open-door policy, or by going to Human Resources. If you're terminated, you may be better off negotiating a nice separation package and shaking the dust from your feet. If all of those fail, and if you've taken a good, critical look at your own performance and behavior, and still feel strongly that you were mistreated, then by all means consult with a lawyer who represents employees in workplace disputes. But keep in mind these hidden costs of litigation that you'll face, no matter how strong your case may be.



Visit the Employment and Labor Law Insider for additional insights from Robin Shea , a partner with the national labor and employment law firm Constangy, Brooks & Smith, LLP.

For more information about LexisNexis products and solutions connect with us through our corporate site .

Tags: employee lawsuits

EXHIBIT 18

AdChoices

April 29, 2014
HUFF POST BUSINESS

What to Expect If You Sue Your Employer

Posted: 01/10/12 02:03 PM ET

In the last half century or so, workers in the U.S. have seen improved working conditions through policies and laws addressing discrimination, harassment, whistleblower protection and safety violations. But when these protective measures are disregarded, enforcing them falls on individual workers who must pursue their claims through arbitration, investigations by external agencies (such as the EEOC) or litigation. Whatever the reason a worker might consider taking such actions, before filing any internal or external complaint or lawsuit -- or even threatening to do so -- there are some things to keep in mind. And the first thing to keep in mind is that there are a lot of myths about what it means to sue an employer.

The first myth is that the employer is afraid of a lawsuit. Employers do not like lawsuits, but they do not fear them. If they did, the worker never would have had a legal claim in the first place. Why? Because if the employer sincerely feared a lawsuit, they would have respected the law in the first place. And not only are managers who violate workplace laws unlikely to be held accountable for their actions, there are many ways they can benefit from a lawsuit, even one their own conduct brought on.

They can benefit by finding a lawful reason to fire the complaining worker, or by providing witnesses against the complainant who are either "similarly situated" (such as members of the same protected group), or who work closely with them and are persuaded to testify against the worker. By courting these people, sympathizing with their conflicting emotions regarding the worker and providing opportunities and benefits previously withheld, the manager conditions the workforce to consider ways in which distancing from the worker, and aligning with the interests of management, are in their own interests.

Once this step is taken, greater acts of distancing -- through gossip, rumors, and shunning - make it easier for former allies and others to turn against the worker. When this happens, the manager who may have instigated the lawsuit in the first place is able to score points with higher management by demonstrating that it is "the difficult employee" -- not the manager, who is the problem, and the manager who has provided a solution -- witnesses to discredit the worker's claims.

The second myth is that once a lawsuit is filed, further adverse action will not be taken against the worker because that would be viewed as retaliation. Your employer can and will retaliate against you in a multitude of ways, many of them legal.

Federal laws protect against retaliation for certain protected acts, such as reporting sexual harassment, discrimination, and some types of "whistle blowing." But federal law also permits employers to fire such employees for legitimate reasons -- such as theft, making threats, or acts of violence.

No matter how law-abiding a worker might be, once involved in litigation against an employer, accusations of wrongdoing are likely to commence, and escalate. For that reason, by encouraging the workforce to view the litigating worker as a threat to their own livelihoods, chronically unhappy and complaining, and mentally unstable, it takes little time before gossip escalates to accusation, and the worker is accused of an escalating series of "inappropriate" behaviors and often, crimes.

Should the worker express any anger or outrage at the mistreatment they receive, that anger will be viewed as a threat. Increasingly, employers are using the slightest pretext of "threats" or accusations of theft to bring in the police and have employees publicly escorted off the premises -- a humiliating tactic that is sure to instill fear in the workforce and further erode the worker's support and reputation, regardless of whether or not there was any basis to the accusation. (And while it remains unlawful to terminate an employee for false pretext, proving pretext is difficult and the damage will have already been done.)

The third myth is that once an employer realizes they could be sued for their actions, they will obey the law. If a worker threatens to sue, or an employer receives a letter from a worker's attorney, they may well clean up their act. But chances are, every level of higher management will be alerted and go on the defense, which to their legal team will mean an offense.

They will immediately notify all coworkers that a lawsuit is pending and not to destroy any emails or other correspondence about, to or from the worker, and not to discuss the case with the worker. And when they get those memos informing them that their (potentially embarrassing) emails will end up in the hands of their bosses, those coworkers are not going to resent their bosses, they are going to resent the worker whose legal action brought it on.

At this stage, the workforce, not management, will fuel the aggression aimed at the worker. Management will encourage the workforce to keep a close eye on the worker, and document any detail, no matter how seemingly benign, that shows the worker is unstable, unproductive, or ineffective. As the workforce takes note of the severe toll on the worker who filed the complaint, they will

not only alter their perceptions of the worker to justify avoiding and testifying against them, but they will also be far less likely to ever voice a similar complaint of their own in the future -- in other words, the more severe the punishment, the less likely management will have to fear future workers coming forward with similar complaints.

The fourth myth is that if a worker does sue, they can win big money, and be vindicated. If a worker does sue, and does win, they will be very, very happy. Why? Because by the time an employment case gets to the point of "winning," the worker will have spent years fighting. They will be emotionally and financially exhausted. They will have gone into great debt to pay legal costs; even if their case was litigated on a contingency fee basis, they will have had to pay a costly retainer, costs of mediations, investigations, depositions and travel expenses. And the worker will have had one heck of a time finding work, because not only will s/he be exhausted by legal battles, they will have had little time or strength to be productive in the process.

They will also be stained by no references, a record of suing an employer -- which no potential employer wants to see -- and a reputation that has been severely damaged through rumors.

And as for that big money verdict? There are caps on what a worker can get and juries are often very conservative -- many a career has been valued at less than a whiplash, because jurors like to think they would never find themselves in such a mess, and that no one should receive big money for not being able to work, when the juror may well work a lifetime for less. And anything over $150,000 is currently taxed at one-third; a whiplash settlement, however, is currently not taxed.

The fifth myth is that the case will never get to trial and will settle out of court. Most cases do settle out of court, and when they do, they either settle fairly early in the game, or right before trial. In the meantime, the employer's legal team will bank on delays to wear the worker out. Until that time, efforts to resolve the matter will be in vein -- the only early resolution once a suit is filed will likely be at terms favorable to the employer. In the meantime, the worker's work and even home computers will be subpoenaed, along with their medical records. Investigators may have monitored the worker, and contacted past employers -- who will have been told all kinds of unsavory things about their former employee -- even family members, friends and neighbors may be questioned, scrutinized and had their own reputations slandered.

Suing an employer is the last thing a worker should ever do if the aim is a successful career. But sometimes an employer goes so far, breaches so many laws and causes so much damage that a worker cannot possibly recover without a legal remedy. And if that happens, the worker must be prepared. They must safeguard against the assured betrayals from close friends and colleagues, the adversarial scrutiny of their lives and communications, and an avalanche of accusations and smears upon their professional and personal lives.

And for the employer facing potential litigation, it is far easier to resolve a conflict with a worker than it is to close ranks and destroy them. Rare is the lawsuit that an effective manager can't prevent by acting with integrity in the first place, and rare is the lawsuit that an effective employee can't prevent, by knowing when the management is just no good and it's best to walk away.

Follow Janice Harper on Twitter: www.twitter.com/Janice_Harper

6 people are discussing this article with **11 comments**

Comments are closed on this entry.

Highlighted Most Recent Oldest Most Faved My Conversations

Pippen 2
287 Fans

My question to myself lately has been :

Are we teaching our college age young adults - Profits over People ? Money Talks and BS walks ? Your nothing unless you financially rape your environment and destroy your economic enemies ?

Is this what we're teaching them? Because they are snuggly fitting in nicely to the Money Rules All mode of capitalism.

Why can't we start a business without any intent to reflect a profit beyond paying employees a living wage building a community and moving the business into the next year with strength. Profits would not be a priority and people would be valued. The prosperity alone would jolt this countries GNP.

What shocks me are the massive amount of business leaders and upper level managers I know personally who go to church and pretend to be a respected member of the faithful community followers of faith after having offshored 20,000 employees so they can garner a bonus and a shot at CEO even though they have a salary of upper

6 figures for years.

At church they hug people, neighbors, other leaders talk about their childrens future. How they found God.

I almost want to vomit typing this.

11 JAN 2012 5:02 AM

FAVE SHARE MORE

DHC 1
SUPER USER · **56 Fans**

Another precise and informative article. Well done.

10 JAN 2012 7:11 PM

FAVE SHARE MORE

kjk326
2 Fans

Excellent article, right on topic. I went through this nightmare & found just how chilling & hostile a formerly friendly environment can become overnight. People who were your close friends hesitate to talk to you and avoid being seen with you. Your every move is put under the microscope and twisted into some type of bad behavior while the person who committed the illegal act is lauded and promoted and you are made to feel like a social outcast at best and I say this even though in the end I prevailed. You are left so emotionally drained, sadly it seems to be the American way; forget ethics, it's the dollar that prevails. Most of all I don't know how HR people sleep at night when they defend someone they know clearly committed an illegal act,

10 JAN 2012 8:34 PM

FAVE SHARE MORE

ARTICLE AUTHOR

Janice Harper
HUFFPOST BLOGGER · **218 Fans**

Thank you for sharing your experience. I think it's significant that you say in the end you prevailed -- sadly, that is the sixth myth -- that it will all be worth it. It rarely is. The toll on the worker who pursues an employment claim is enormous, and few attorneys, no matter how skilled, adequately prepare plaintiffs for what's up ahead. I'm so sorry you had to go through it.

Yet we have made great advances in working conditions in the U.S. in part due to lawsuits, and there are cases where workers are left with no recourse but to turn to the courts. In those cases, the more a person knows what to expect and how to be prepared, the better the emotional outcome. Thank you again for sharing your story.

10 JAN 2012 8:55 PM

FAVE SHARE MORE

3 PEOPLE IN THE CONVERSATION Read Conversation →

noahmarder
512 Fans · Exposing the regressive lies, one by one

There is no justice in this country. What else is new? Risk/reward probably favors stealing from your employer rather than suing them. At least with theft, your career is ruined only if you get caught. You also have a better chance of stealing significant money than of winning anything but an airtight case. I don't see a moral problem either, so long as what is stolen doesn't exceed the damage done by the employer, plus the effort required for the theft, plus the chance of being caught multiplied by the penalty

for being caught. It is the employer, after all, who has taken away any legal remedies through the retaliation mechanisms described in the article.

10 JAN 2012 9:09 PM

FAVE SHARE MORE

Pippen
287 Fans

If you think all of that is bad apply it to Texas where employment is an "at will" state. Another way of putting this would be outright slavery and the slave master can fabricate reality on how they feel that morning and your life is forever changed.

America sets itself apart from 3rd world countries with the arguement that we have a

1 Superior Justice System
2 Freedom of religion
3 Separation of Church and State
4 Opportunity to pursue your capitalist dreams of career and family
5 That taxes pay for your well being (roads, FDA, national safety etc..)
6 National security (threat of invasion and subjugation by an enemy rule...)
7 Democratically elected officials (fair voting)

I want you to look hard at those 7 American beliefs. See any of them that are actually working as intended ? Or are they working as intended ?

Did we just wake up or is this something that has emerged from the closet when GW Bush took office?

11 JAN 2012 4:52 AM

FAVE SHARE MORE

EXHIBIT 19

ILYM | GROUP, Inc.
SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Villagra v. Innovative Produce, Inc.

Tuesday, August 8, 2023

Requesting Law Firm:	The Spivak Law Firm
Contact:	Lizzett Cortez
E-Mail:	lizzett@spivaklaw.com
ILYM Contact:	ILYM Group
E-Mail:	Lisa@ilymgroup.com
Contact Number:	714.878.8836

ESTIMATE FOR ADMINISTRATION SOLUTIONS

Opt-Out

ASSUMPTIONS	
Total Number of Class Members	**126**
Estimated Percentage of Undeliverable Mail	**20%**
NCOA	**Yes**
Certified Spanish Translations	**Yes**

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	$150.00	1	$150.00
Programming of Class Database	Hourly	$175.00	1	$175.00

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

Subtotal **$325.00**

PROJECT MANAGEMENT				
Project Manager (Case notification and maintenance)	Hourly	$120.00	3	$360.00
Staff Hours for Processing Opt-Outs, Disputes & Objections	Hourly	$70.00	1	$70.00
Staff Hours for Processing Returned Mailed	Hourly	$70.00	1	$70.00
Report Processing	Hourly	$70.00	2	$140.00
NCOA	Per Piece	$50.00	1	$50.00
Toll-Free Call Center	Flat Fee	$50.00	1	$50.00
ILYM Group Static Website, Includes Hosting	Flat Fee	$750.00	1	$750.00
Certified Spanish Translations	Flat Fee	$1,250.00	1	$1,250.00
Weekly Reports	Flat Fee	$500.00	1	Waived

Subtotal **$2,740.00**

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity	Rate Type	Unit Cost	Volume	Amount
NOTIFICATION/MAIILING				
Fulfillment Notice, English and Spanish	Per Piece	$2.00	126	$252.00
USPS First Class Postage	Per Piece	$0.87	126	$109.62
Remails (Forward/Skip Trace Undeliverables)	Per Piece	$2.50	25	$63.00
Storage, Photocopies, Deliveries	Flat Fee	$274.20	1	$274.20
			Subtotal	**$698.82**
DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	$150.00	2	$300.00
Account Reconciliation & Distribution Reporting	Hourly	$125.00	2	$250.00
Check, Print & Mail (Including W2/1099 Stub & Release)**	Per Check	$1.00	126	$126.00
USPS First Class 1oz Postage	Per Piece	$0.63	126	$79.38
Remails (Forward/Skip Trace Undeliverables)	Per Piece	$1.50	13	$18.90
Check Cashing Reminder Postcard	Per Piece	$1.00	82	$81.90
Preparation of Taxes	Hourly	$120.00	2	$240.00
Annual Filing of Tax Return	Per Year	$750.00	1	$750.00
			Subtotal	**$1,846.18**
CASE CONCLUSION				
Data Manager Final Reporting	Hourly	$100.00	2	$200.00
Project Manager Final Reporting	Hourly	$120.00	2	$240.00
Process Uncashed Funds to the State	Flat Fee	$350.00	1	$350.00
Declaration	Hourly	$125.00	2	$250.00
			Subtotal	**$1,040.00**

***Additional Bank fees may apply*

Total Case Estimate: **$6,650.00**

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 Clients instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT 20

PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

August 8, 2023

CASE ASSUMPTIONS	
Class Members	126
Opt Out Rate	1%
Opt Outs Received	1
Total Class Claimants	125
Subtotal Admin Only	**$8,011.88**

Flat Fee Total $8,000.00

For 126 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Language Translation, Printing & Mailing Included

Case: Villagra v. Innovative Produce, Inc, Opt-Out Administration

Phoenix Contact: Michael E. Moore
Contact Number: 949.331.0131
Email: mike@phoenixclassaction.com

Requesting Attorney: Lizzett Cortez
Firm: The Spivak Law Firm
Contact Number: (818) 582-3197
Email: lizzett@spivaklaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly. Estimate is based on **126** Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of $150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)			
Administrative Tasks:	**Rate**	**Hours/Units**	**Line Item Estimate**
Programming Manager	$100.00	2	$200.00
Programming Database & Setup	$100.00	2	$200.00
Toll Free Setup*	$150.00	1	$150.00
Call Center & Long Distance	$2.00	26	$52.00
NCOA (USPS)	$50.00	1	$50.00
		Total	**$652.00**

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Language Translation / Website			
Project Action	**Rate**	**Hours/Units**	**Line Item Estimate**
Notice Packet Formatting	$100.00	2	$200.00
Language Translation	$1,000.00	1	$1,000.00
Data Merge & Duplication Scrub	$0.10	126	$12.60
Notice Packet & Opt-Out Form	$1.35	126	$170.10
Estimated Postage (up to 2 oz.)*	$0.87	126	$109.62
Static Website	$200.00	1	$200.00
Check Cashing Reminder Postcard Postage Included	$0.60	26	$15.75
		Total	**$1,708.07**

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

PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables			
Project Action:	**Rate**	**Hours/Units**	**Line Item Estimate**
Case Associate	$55.00	4	$220.00
Skip Tracing Undeliverables	$1.00	25	$25.20
Remail Notice Packets	$0.75	22	$16.65
Estimated Postage	$0.87	22	$19.31
Programming Undeliverables	$50.00	1	$50.00
		Total	**$331.16**

Database Programming / Processing Opt-Outs, Deficiencies or Disputes			
Project Action:	**Rate**	**Hours/Units**	**Line Item Estimate**
Programming Database	$150.00	2	$300.00
Non Opt-Out Processing	$200.00	1	$200.00
Case Associate	$55.00	3	$165.00
Opt-Outs/Deficiency/Dispute Letters	$10.00	4	$40.00
Case Manager	$85.00	2	$170.00
		Total	**$875.00**

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks			
Project Action:	**Rate**	**Hours/Units**	**Line Item Estimate**
Programming Calculations	$135.00	1	$135.00
Disbursement Review	$135.00	1	$135.00
Programming Manager	$95.00	2	$190.00
QSF Bank Account & EIN	$135.00	1	$135.00
Check Run Setup & Printing	$135.00	5	$680.40
Mail Class Checks *	$0.85	125	$106.25
Estimated Postage	$0.64	125	$80.00
		Total	**$1,461.65**

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing & Instructions for dowloading tax forms from PHX secure portal

PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	**Rate**	**Hours/Units**	**Line Item Estimate**
Case Supervisor	$115.00	2	$230.00
Remail Checks (Postage Included)	$1.70	25	$34.00
Case Associate	$55.00	3	$165.00
Reconcile Uncashed Checks	$85.00	5	$425.00
Conclusion Reports	$115.00	2	$230.00
Case Manager Conclusion	$85.00	3	$255.00
Final Reporting & Declarations	$115.00	3	$345.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting Included)	$1,000.00	1	$1,000.00
Check to Cy-Pres	$150.00	1	Included
Uncahsed Checks to the State of California Controllers Office Estimated 19 Total Class Members	$300.00	1	$300.00
		Total	**$2,984.00**

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibilty.

Estimate Total: $8,011.88

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 21

www.cptgroup.com

Contact Name: Timothy Phillips
Vice President, Business Development
Corporate Headquarters
50 Corporate Park, Irvine CA 92606
TIM@CPTGroup.com
Direct Number: (818) 415-2703
Main Number: (800) 542-0900

CASE NAME: VILLAGRA V. INNOVATIVE PRODUCE, INC.

Date: August 24, 2023
Requesting Attorney: Lizzett Cortez
Plaintiff or Defense: Plaintiff
Firm Name: Spivak Law
Telephone: (818) 582-3197
Email: lizzett@spivaklaw.com

All-In Settlement
Class Size: 126
Opt-Out Rate: 1.5%
No. of Checks Issued: 124
Postage Total: $292.02
Grand Total: $13,033.76
DISCOUNTED FLAT FEE: $9,000.00

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

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

CASE SETUP

Upon Intake of the Data, CPT will Scrub all Records to a Useable Format to Reduce Duplicates, Anomalies and Increase the Success Rate of Deliverability of the Class Notice. Class Members will be Assigned a Unique Mailing ID which will be Used Throughout Administration. All Pertinent Documents will be Posted on a Case Specific Website. The Notice Packet will be Translated into Spanish.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Case Intake & Review	$95.00	1	$95.00
Programming: Data Base Setup	$150.00	1	$150.00
Spanish Translation	$1,200.00	1	$1,200.00
Static Website	$500.00	1	$500.00
		TOTAL	**$1,945.00**

DIRECT MAIL NOTICE

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

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Format Documents	$95.00	2	$190.00
National Change of Address Search (NCOA)	$135.00	1	$135.00
XML Lex ID Skip Trace	$0.85	13	$11.05
Print & Mail Notice Packets	$1.50	126	$189.00
First-Class Postage (up to 2 oz.)*	$0.87	126	$109.62
		TOTAL	**$634.67**

*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 Remailed.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Clerical Staff	$60.00	1	$60.00
Update Undeliverable Mail Database	$0.50	6	$3.00
Skip Trace for Best Address	$1.00	5	$5.00
Print & Remail Notice Packets	$1.50	4	$6.00
First-Class Postage (up to 2 oz.)	$0.87	4	$3.48
		TOTAL	**$77.48**

OPT-OUT PROCESSING

CPT will Process and Validate all Opt-Outs and Other Responses from Class Members. Deficient Opt-Outs will Receive a Deficiency Notice by Mail and Provide an Opportunity to Cure. CPT will Scrub the Filed Opt-Outs to Eliminate Duplicates, Fraudulent, and Otherwise Invalid.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: De-duplication/Scrubbing	$150.00	1	$150.00
Project Manager: Validate Opt-Out Requests	$95.00	1	$95.00
Clerical Staff	$60.00	1	$60.00
Opt-Out & Change of Address Processing	$2.00	2	$3.78
Print & Mail Deficiency/Dispute Notices	$1.50	1	$1.50
First-Class Postage (up to 1 oz.)	$0.66	1	$0.66
Review & Process Deficiency Responses	$10.00	1	$10.00
		TOTAL	**$320.94**

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	26	$78.00
		TOTAL	**$378.00**

SSN VERIFICATION

Verify SSN for Validity with IRS / IRS Backup Withholdings

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: SSN Selection	$150.00	1	$150.00
Department Manager: Analysis & Reporting	$95.00	3	$285.00
IRS SSN Verification	$0.10	124	$12.41
		TOTAL	**$447.41**

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	124	$310.28
First-Class Postage (up to 1 oz.)*	$0.66	124	$81.91
Check Reminder Postcard	$0.40	101	$40.32
Postage for Check Reminder Postcard	$0.66	101	$66.53
		TOTAL	**$2,489.04**

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

POST-DISTRIBUTION & TAX REPORTING

Any Check Returned Undeliverable is Skip Traced to Locate a Current Address and Remailed Accordingly. CPT will Process Requests for Check Reissues Continuously. CPT Prepares Annual Tax Reporting on Behalf of the QSF and Federal and State Taxes in Accordance with Current State and Federal Regulations. Upon the Conclusion of the Settlement, a Final Report and Declaration will be Provided to all Parties.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Supervisor: Account Reconciliation	$150.00	10	$1,500.00
Update Undeliverable Checks Database	$0.50	10	$5.00
Skip Trace for Best Address	$1.00	10	$10.00
Remail Undeliverable Checks	$2.50	9	$22.50
First-Class Postage (up to 1 oz.)	$0.66	9	$5.94
Re-Issue Checks as Required	$5.00	7	$35.00
First-Class Postage (up to 1 oz.)	$0.66	7	$4.62
Project Supervisor: Reconcile Uncashed Chk	$150.00	1	$150.00
Programming: Weekly & Final Reports	$150.00	2	$300.00
Project Supervisor: Final Declaration	$150.00	2	$300.00
Project Manager: Account Files Sent to Atty	$95.00	2	$190.00
CA Tax Preparation*	$600.00	1	$600.00
Annual Tax Reporting to IRS*	$1,000.00	1	$1,000.00
QSF Annual Tax Reporting	$500.00	1	$500.00
		TOTAL	**$4,623.06**

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

SCO ESCHEATMENT PROCESSING

Escheatment Processing to the State Controller Unclaimed Property Division / Uncashed Check Rate 21%

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
UPEnterprise Reporting Services	$0.15	26	$3.90
Project Manager: SCO Fall Reporting	$95.00	2	$190.00
Project Supervisor: Review of SCO Reports	$150.00	1	$150.00
Certified Mail Report to SCO	$8.64	1	$8.64
Check Reissues for Winter/Spring QTR	$5.00	3	$15.00
First-Class Postage (up to 1 oz.)	$0.66	3	$1.98
Project Supervisor: June Remittance	$150.00	1	$150.00
Project Manager: June Remittance	$95.00	2	$190.00
Certified Mail Report to SCO	$8.64	1	$8.64
Add'l Account Recons	$150.00	6	$900.00
Add'l QSF Annual Tax Reporting	$500.00	1	$500.00
		TOTAL	**$2,118.16**

GRAND TOTAL	**$13,033.76**

TERMS AND CONDITIONS

These Terms and Conditions are made a part of, and incorporated by reference into, any cost proposal or Bid presented by CPT Group, Inc. to Client

1. Definitions.
   a) "**Affiliate**" means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with another party.
   b) "**Approved Bank**" means a financial institution insured by the Federal Deposit Insurance Corporation.
   c) "**Case**" means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.
   d) **"Claims Administrator"** means CPT Group, Inc., a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
   e) "**Client**" means collectively Plaintiff Counsel and Defense Counsel.
   f) "**Client Content**" means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, and objections, which contain Client Data.
   g) "**Client Data**" means proprietary or personal data regarding Client or any of its Class Members under this Agreement, as provided by Client.
   h) "**Class Member**" means an individual who is eligible under the Settlement Agreement to receive a designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons so designated or addressed therein.
   i) "**Confidential Information**" means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
   j) "**Court Order**" means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more parties to the Case to carry out a legal obligation pursuant to the Case.
   k) "**Defendant**" means the named party and/or parties in the Case against whom action is brought.
   l) "**Defense Counsel**" means the attorney of record for the defendant(s) in the Case.
   m) "**Intellectual Property Right**" means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
   n) "**Order**" means a Product purchase in a schedule, statement of work, addendum, exhibit, or amendment signed by Client and CPT.
   o) **"Parties"** shall mean collectively Defendants, Defense and Plaintiff as defined in the Settlement Agreement or Court Order.
   p) "**Plaintiff**" means the named party and/or parties in the Case who are bringing the action.
   q) "**Plaintiff Counsel**" means the attorney of record for plaintiff Class Members in the Case.
   r) "**Products**" means any and all CPT Services, and work products resulting from Services.
   s) "**Qualified Settlement Fund**" means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.
   t) "**Service**" means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
   u) "**Software**" means any and all of CPT's proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
   v) "**Settlement**" means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.
   w) "**Settlement Agreement**" means the contract between parties to the Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Class Members.
   x) "**Term**" means the term of the Agreement, as set forth in the Order.
   y) "**Transmission Methods**" means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.
   z) "**Wire Information**" means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.
2. Client Obligations. Client will ensure that it has obtained all necessary consents and approvals for CPT to access Client Data for the purposes permitted under this Agreement and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disenabling 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 22

Ian B. Wieland, State Bar No. 285721
Charles P. Hamamjian, State Bar No. 298685
Michael J. Conway II, State Bar No. 322030
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Attorneys for Defendant, INNOVATIVE PRODUCE, INC.

STATE OF CALIFORNIA
SUPERIOR COURT FOR THE COUNTY OF SANTA BARBARA

GENARO REYES VILLAGRA, as an "aggrieved employee" on behalf of himself and other similarly situated "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004, Plaintiff(s), v. INNOVATIVE PRODUCE, INC., a California corporation; and DOES 1-50, inclusive, Defendant(s).	Case No.: 22CV02747 [Consolidated with 22CV02744] **ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT** Complaint Filed: July 18, 2022 Trial Date: None Set

Defendant Innovative Produce, Inc. ("Defendant") hereby answers Plaintiff Genaro Reyes Villagra's ("Plaintiff") First Amended Class and Representative Action Complaint ("Complaint") as follows:

GENERAL DENIAL

Defendant generally denies each and every allegation contained therein and the whole thereof, pursuant to section 431.30 of the California Code of Civil Procedure. In addition, Defendant denies Plaintiff has sustained, or will sustain, any loss or damage in the manner or amount alleged, or otherwise, by reason of any act or omission, or any other conduct or absence thereof on the part of Defendant.

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AFFIRMATIVE DEFENSES

Defendant asserts the following affirmative and other defenses, which it designates, collectively, as "affirmative defenses." Defendant's designation of its defenses as "affirmative" is not intended in any way to alter Plaintiff's burden of proof with regard to any element of his causes of action. Defendant also expressly denies the existence of any alleged putative group of persons or "class" that Plaintiff purports to represent in this lawsuit. Defendant incorporates (as if fully set forth therein) this express denial each and every time they reference "Plaintiff."

1. **Failure to State a Claim.** As a separate and distinctive affirmative defense, Defendant alleges that the Complaint, and each and every alleged cause of action therein, fails to state facts sufficient to constitute a cause of action upon which relief can be granted.

2. **Class Action - Certification Prerequisites.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff cannot satisfy the prerequisites for class certification and therefore cannot represent the interest of others.

3. **Class Action – Standing.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff lacks standing to assert the legal rights or interests of others.

4. **Class Action - Lack of Predominance.** As a separate and distinctive affirmative defense, Defendant alleges that the types of claims alleged by Plaintiff on behalf of herself and/or the alleged putative group he purports to represent are matters in which individual questions dominate and thus are not appropriate for class/representative action treatment.

5. **Class Action - Lack of Numerosity.** As a separate and distinctive affirmative defense, Defendant alleges that the alleged putative group that Plaintiff purports to represent is not so numerous that joinder is impossible or impractical.

6. **Class Action - Lack of Typicality.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff is not similarly situated to other potential members of the alleged putative group he purports to represent, and he is an inadequate representative of the alleged putative group.

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7. **Class Action - Lack of Typicality.** As a separate and distinctive affirmative defense, Defendant alleges that certain of the interests of the alleged putative group are in conflict with the interests of all or certain subgroups of the members of the putative group.

8. **Class Action - Lack of Superiority.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff has not shown and cannot show that class or representative treatment of the purported causes of action in Complaint are superior to other methods of adjudicating the controversy.

9. **Lack of Manageability.** As a separate and distinctive affirmative defense, Defendant alleges that the Complaint and each purported cause of action alleged therein, cannot proceed as a purported class or representative action because of difficulties likely to be encountered that render the action unmanageable.

10. **Violation of Due Process.** As a separate and distinctive affirmative defense, Defendant alleges that certification of a class or acknowledgement of a representative group, as applied to the facts and circumstances of this case, would constitute a denial of Defendant's due process rights, both substantive and procedural, in violation of the United States Constitution and the California Constitution.

11. **Labor Code §§ 226.7 and 512 No Private Right of Action.** As a separate and distinctive affirmative defense, Defendant alleges that there is no private right of action for an employee to recover damages under Sections 226.7 and 512 of the California Labor Code.

12. **Labor Code §§ 226.7 and 512 - Compliance with Obligations.** As a separate and distinctive affirmative defense, Defendant alleges that they acted under a reasonable and good faith belief that it complied with its obligations, if any, under the California Labor Code, specifically including Sections 226.7 and 512 thereof, as to Plaintiff and all alleged aggrieved employees.

13. **No Failure to Provide Rest Periods.** As a separate and distinctive affirmative defense, Defendant alleges that they were not required to and/or did not fail to provide rest periods pursuant to the California Labor Code, applicable wage orders issued by the Industrial Welfare Commission, or any other basis.

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14. **Good Faith.** As a separate and distinctive affirmative defense, Defendant is informed and believes that further investigation and discovery will reveal, and on that basis alleges, that if any violation of the Labor Code or an Order of the Industrial Welfare Commission occurred, it was an act or omission made in good faith and Defendant has reasonable grounds for believing that its meal and rest period practices complied with applicable laws and that any such act or omission was not a violation of the Labor Code or any Order of the Industrial Welfare Commission such that Plaintiff and/or the alleged aggrieved employees are not entitled to any damages.

15. **De Minimis.** As a separate and distinctive affirmative defense, Defendant alleges that the Complaint and each cause of action therein, or some of them, are barred to the extent the work allegedly performed was de minimis in nature.

16. **Penalties Barred.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff's prayer for restitution pursuant to Business and Professions Code Section 17200 et seq. is barred with respect to penalties of any nature.

17. **Labor Code §226 - Lack of Injury.** As separate and distinctive affirmative defense, Plaintiff sustained no injury from any alleged failure by Defendant to comply with Labor Code section 226.

18. **Labor Code § 226 - Good Faith.** As a separate and distinctive affirmative defense, Defendant alleges that it acted in good faith at all times concerning Plaintiff.

19. **Labor Code § 226 - No Intentional Failure.** As a separate and distinctive affirmative defense, Defendant alleges that, even assuming arguendo that Plaintiff was not provided with proper itemized statements of wages and deductions, or that electronic wage statements do not comply with Labor Code, Plaintiffs are not entitled to recover damages or penalties because Defendant's alleged failure to comply with California Labor Code section 226(a) was not a "knowing and intentional failure" under California Labor Code section 226(e).

20. **Labor Code § 226.3 - Lack of Standing.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff lacks standing to bring this action for, and the court lacks jurisdiction to award, certain of the monetary penalties sought in the Complaint, including, but not limited to those penalties claimed pursuant to California Labor Code section 226.3, as such penalties

may only be imposed in a proceeding brought by the California Labor Commissioner.

21. **No Willful or Intentional Violation.** As a separate and distinctive affirmative defense, Defendant alleges that the Complaint fails to state a claim for penalties because Defendant did not willfully or intentionally violate the Labor Code.

22. **Labor Code §§ 201 and 202 - No Obligation.** As a separate and distinctive affirmative defense, Defendant alleges that the Complaint fails to state a claim for penalties in which relief may be granted under the California Labor Code because there exists a bona fide dispute as to the existence and/or extent of Defendant's obligations to Plaintiff and/or the alleged aggrieved employees under any applicable Labor Code provisions, including without limitation, Labor Code section 203.

23. **Failure to State a Claim for Attorneys' Fees and Costs.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff failed to state facts sufficient to constitute a claim for which attorneys' fees and costs may be awarded.

24. **Lack of Specificity.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff failed to allege special damages with requisite specificity.

25. **Statute of Limitations.** As a separate and distinctive affirmative defense, Defendant alleges that each purported cause of action set forth in the Complaint is barred in whole or in part by the applicable statue(s) of limitation, including without limitation, California Code of Civil Procedure sections 338(a), 340(a), and 250(a) and (b); Business and Professions Code section 17208, and Labor Code sections 203 and 226(a); and the one-year statute of limitations applicable to claims under the Private Attorney General Act, Labor Code sections 2698 et seq.

26. **Liquidated Damages.** As a separate and distinctive affirmative defense, Defendant alleges that it had a good faith and reasonable belief that it was in compliance with applicable law and that, accordingly no liquidated damages should be awarded to Plaintiff for any violation thereof that may be found to exist.

27. **Prejudgment Interest.** As a separate and distinctive affirmative defense, Defendant alleges that the Complaint fails to properly state a claim upon which prejudgment interest may be awarded, as the damages claimed are not sufficiently certain or proper to allow an award of

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prejudgment interest.

28. **Mitigation of Damages.** As a separate and distinct affirmative defense, Defendant alleges that it is informed and believe that a reasonable opportunity for investigation and discovery will reveal, and on that basis allege, Plaintiff failed to exercise reasonable care to mitigate his damages, if any were suffered, and that their right to recover against Defendant should be reduced and/or eliminated by such a failure.

29. **Waiver.** As a separate and distinctive affirmative defense, Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal, and on that basis allege, the Complaint and each cause of action set forth therein is barred by the equitable doctrine of waiver. Defendant reserves the right to amend their answer upon further investigation and discovery of facts supporting this defense.

30. **Estoppel.** As a separate and distinctive affirmative defense, Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal, and on that basis, allege, the Complaint and each cause of action set forth therein is barred by the equitable doctrine of estoppel. Defendant reserves the right to amend its answer upon further investigation and discovery of facts supporting this defense.

31. **Laches.** As a separate and distinctive affirmative defense, Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal, and on that basis allege, the Complaint and each cause of action set forth therein is barred by the equitable doctrine of laches. Defendant reserves the right to amend its answer upon further investigation and discovery of facts supporting this defense.

32. **Unclean Hands.** As a separate and distinctive affirmative defense, Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal, and on that basis, allege, the Complaint and each cause of action set forth therein are barred by the equitable doctrine of unclean hands. Defendant reserves the right to amend its answer upon further investigation and discovery of fact supporting this defense.

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33. **Breach of Duty.** As a separate and distinct affirmative defense, Defendant is informed and believes that a reasonable opportunity for investigation and discovery will reveal, and on that basis allege, Plaintiff's claims are barred by his own breach of the duties owed to Defendant under California Labor Code sections 2854, 2856, 2857, 2858 and/or 2859.

34. **Preliminary and Postliminary Duties.** As a separate and distinctive affirmative defense, Defendant alleges that, assuming Plaintiff and alleged aggrieved employees are entitled to any overtime, the walking, riding, traveling and preliminary and postliminary activities of Plaintiff and the alleged aggrieved employees must be excluded from compensable hours of work.

35. **Adequate Remedy at Law.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff and alleged aggrieved employees are not entitled to equitable relief insofar as they have an adequate remedy at law.

36. **Portal-to-Portal Act Preemption.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff and the alleged aggrieved employees' state law claims are preempted by the exclusive remedy of the Fair Labor Standards Act and the Portal-to Portal Pay Act.

37. **Portal-to-Portal Act Preemption.** As a separate and distinctive affirmative defense, Defendant alleges that, assuming Plaintiff or members of the alleged aggrieved employees are entitled to any overtime, Defendant is entitled to a credit or set off. This credit or set off includes but is not limited to, amounts erroneously overpaid to Plaintiff and/or the alleged aggrieved employees, as well as work performed not to the benefit of the Defendant. The claims of Plaintiff and/or members of the alleged aggrieved employees are barred because they would be unjustly enriched if they prevailed on any of said claims.

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38. **Work Performed for Employee's Convenience.** As a separate and distinctive affirmative defense, Defendant alleges that the time Plaintiffs and the alleged aggrieved employees spent performing any task for was for their own convenience and is not compensable time.

39. **Accord and Satisfaction.** As a separate and distinctive affirmative defense, Defendant alleges Plaintiff's claims are barred by the doctrine of accord and satisfaction.

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Specifically, Plaintiff was properly and fully compensated for all work performed for Defendant, and Plaintiff's respective acceptances of these payments constitute an accord and satisfaction for all debts, if any, owed by Defendant to Plaintiff.

40. **No Damages.** As a separate and distinctive affirmative defense, Defendant alleges Plaintiff's claims are barred to the extent Plaintiff was not damaged by any alleged act, omission, or violation of statute or wage order allegedly committed by Defendant.

41. **Election of Remedies.** As a separate and distinctive affirmative defense, Defendant alleges Plaintiff's Complaint, and each claim and purported cause of action alleged therein, is barred in whole or in part to the extent that Plaintiff, and anyone he claims to represent, have previously obtained a final decision on any claims(s) within the scope of this lawsuit, whether before the California Department of Industrial Relations, California Division of Labor Standards Enforcement, other governmental agencies, or any court of competent jurisdiction. Such individuals are therefore precluded from recovering in this matter.\

42. **Ambiguity.** As a separate and distinctive affirmative defense, Defendant alleges Plaintiff's Complaint, and each alleged cause of action therein, does not describe the claims against Defendant with sufficient particularity and certainty to enable Defendant to determine what defenses exist. Defendant reserves the right to assert all defenses that may be pertinent to or arise from Plaintiff's claims.

43. **Failure to Exhaust Remedies Through the Labor Commissioner or Otherwise.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff's causes of action are barred to the extent that Plaintiff failed to exhaust available administrative remedies through the Labor Commissioner or other government agencies, including Plaintiffs' failures to exhaust administrative remedies as required pursuant to Labor Code section 2699.3 before filing a Labor Code Private Attorneys General Act of 2004 ("PAGA") action.

44. **ERISA Preemption.** As a separate and distinctive affirmative defense, Defendant alleges Plaintiff's Complaint, and each cause of action therein, is preempted by the Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.,* to the extent Plaintiff seeks damages for the alleged loss of any covered employee benefit.

45. **Bad Faith.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff has acted in bad faith, and therefore, barring Plaintiff from any and all recovery from the answering Defendant.

46. **Consent/Ratification.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff by reason of its knowledge, statements, and conduct, and by reason of the knowledge, statements, and conduct of its agents, has consented to and ratified the acts of Defendant barring Plaintiff from any and all recovery from Defendant.

47. **Offset.** As a separate and distinctive affirmative defense, Defendant alleges that money owed by Defendant to Plaintiff, if any, which Defendant denies, is offset either in whole or in part, by money owed and due to Defendant by Plaintiff barring Plaintiff from any and all recovery from the answering Defendant.

48. **Attorneys' Fees.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff's claims against Defendant are frivolous, unreasonable and groundless and, accordingly Defendant should recover all costs and attorneys' fees incurred herein.

49. **No Permission to Work.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff nor any alleged aggrieved employee were suffered or permitted to work during the time for which they were not paid the appropriate wage rate, including the overtime wage rate and provided lunch periods and rest periods in accordance with applicable law.

50. **No Knowledge.** As a separate and distinctive affirmative defense, Defendant alleges that if Plaintiff or any alleged aggrieved employee "worked" overtime hours for which overtime compensation was not paid, Defendant have no knowledge of such overtime "work" and such overtime "work" was undertaken without the consent, knowledge or permission of Defendant.

51. **Legitimate Business Reasons.** As a separate and distinctive affirmative defense, Defendant alleges that all actions taken with regard to Plaintiff and the alleged aggrieved employee, if any, were just, fair, honest, in good faith, privileged, and based upon legitimate business reasons.

52. **Scope.** As a separate and distinctive affirmative defense, Defendant alleges that any unlawful or other wrongful acts of any person(s) employed by Defendant were outside the scope of its authority and such act(s), if any, were not authorized, ratified, or condoned by Defendant, nor

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did Defendant know or have reason to be aware of such conduct.

53. **Conformity.** As a separate and distinctive affirmative defense, Defendant alleges that, at all times, its treatment of Plaintiff, and all alleged aggrieved employees, was in good faith, in conformity with and in reliance upon a written administrative regulation, order, ruling or interpretation of the federal Department of Labor Wage and Hour Division, the California Labor Commissioner, the California Industrial Welfare Commission, and/or on administrative practices and policies applicable to Defendant by federal and state agencies.

54. **Due Process.** As a separate and distinctive affirmative defense, Defendant alleges that, to the extent Plaintiff and the alleged aggrieved employee seek statutory or other penalties, such claims must comport with the due process requirements of *State Farm v. Campbell*, 538 U.S. 408 (2003).

55. **No Willful Failure to Pay.** As a separate and distinctive affirmative defense, Defendant alleges that the Complaint fails to state a claim for waiting time penalties, or otherwise, in that Defendant's alleged failure to pay wages at the time of discharge, if any, was not willful.

56. **No Knowledge or Intent.** As a separate and distinctive affirmative defense, Defendant alleges that the Complaint fails to state a claim for a violation of California Labor Code section 226, or otherwise, in that Defendant's alleged failure to maintain records, if any, was not knowing or intentional.

57. **Indemnification.** As a separate and distinctive affirmative defense, Defendant alleges that the Complaint fails to state a claim under Labor Code section 2802, or otherwise, in that any alleged expenses Plaintiff may have incurred while employed by Defendant, if any, were not the result of discharging his work duties for Defendant and were not necessary expenditures required to perform his work duties for Defendant.

58. **Notice and Exhaustion.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff's Complaint, and each claim and purported cause of action alleged therein, is barred to the extent Plaintiff, and any person on whose behalf relief is sought, failed to satisfy the notice and exhaustion requirements under California's Private Attorney General Act ("PAGA"), Labor Code section 2698 et seq.

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59. **Lack of Standing – PAGA.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff lacks standing to bring a claim as a private attorney general and/or representative of the State of California, and any of its agencies, departments, divisions, commissions, or boards, under PAGA.

60. **Lack of Standing-PAGA.** As a separate and distinctive affirmative defense, Defendant alleges that Plaintiff lacks standing to bring an action as a representative of current and/or former aggrieved employees under PAGA.

61. **Arbitration Agreements.** As a separate and distinctive affirmative defense, Defendant alleges that any and all claims brought by the named Plaintiff on behalf of herself or the proposed class/representative group of aggrieved employees, or the claims of the alleged aggrieved employees, are subject to arbitration under the Federal Arbitration Act pursuant to arbitration agreements entered into by such employees and Defendant, or between employees and a third party who intended to benefit Defendant by entering into the arbitration agreement. Defendant further alleges that the named Plaintiff, or the claims of the alleged aggrieved employees, are barred by the failure to exhaust administrative and internal remedies by failing to timely initiate arbitration within the statute(s) of limitation.

62. **California Code of Civil Procedure §430.10(c).** As a separate and distinctive affirmative defense, Defendant alleges that any and all claims brought by the named Plaintiff on behalf of herself or the proposed representative group of aggrieved employees is barred pursuant to California Code of Civil Procedure §430.10(c) given that there is another action pending between the same parties on the same cause of action.

63. **Cured Violations.** As a separate and distinctive affirmative defense, Defendant alleges that any and all claims brought by the named Plaintiff on behalf of herself or the proposed class/representative group of aggrieved employees, or the claims of the alleged aggrieved employees, have been cured pursuant to Labor Code section 2699 et seq. and are thus not actionable.

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64. **Labor Code §208.** As a separate and distinctive affirmative defense, Defendant alleges that it is not liable for the violations alleged under Labor Code §203 as Plaintiffs were not discharged and did not quit their employment with Defendant and, to the extent they quit their employment, they did not comply with Labor Code §208 and are therefore not eligible to receive penalties under §203.

65. **Reservation of Rights.** As a separate and distinctive affirmative defense, Defendant alleges that Defendant presently has insufficient knowledge upon which to form a belief as to whether any additional, as yet unstated, affirmative defenses to the Complaint are applicable. Defendant reserves the right to assert additional affirmative defenses if appropriate.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays for relief as follows:

1. That Plaintiff takes nothing and that the Complaint be dismissed in its entirety with prejudice;
2. That judgment be entered in Defendant's favor;
3. That Defendant be awarded their attorneys' fees and costs of suit herein accordance with Labor Code § 218.5; and
4. That Defendant be awarded such other and further relief as the Court deems just and proper.

Dated: March 28, 2024

SAGASER WATKINS & WIELAND PC

By: _____

Ian B. Wieland
Michael J. Conway, II
Attorneys for Defendant,
INNOVATIVE PRODUCE, INC.

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PROOF OF SERVICE
(CODE CIV. PROC. § 1013)

STATE OF CALIFORNIA, COUNTY OF FRESNO

I am employed in the County of Fresno, State of California. I am over the age of 18 years and am not a party to the within action; my business address is 5260 North Palm Avenue, Suite 400, Fresno, California 93704.

On March 28, 2024, I served the following document(s) described as **ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** I deposited such envelope in the mail at Fresno, California. The envelope(s) was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

☐ **BY OVERNIGHT COURIER:** I sent such document(s) on March 28, 2024, by with postage thereon fully prepaid at Fresno, California.

☐ **BY FAX**: I sent such document by use of facsimile machine telephone number (559) 473-1483. Facsimile cover sheet and confirmation is attached hereto indicating the recipients' facsimile number and time of transmission pursuant to California Rules of Court Rule 2.306. The facsimile machine I used complied with California Rules of Court Rule 2.301(3) and no error was reported by the machine.

☐ **BY PERSONAL SERVICE:** I placed the above document in a sealed envelope. I caused said envelope to be handed to our messenger service to be delivered by hand to the above address(es).

☑ **BY EMAIL:** I sent such document by use of email to the email address(es) above. (CCP § 1013(a)) Such document was scanned and emailed to such recipient and email confirmation is attached hereto indicating the recipients' email address and time of receipt pursuant to CCP § 1013(g).

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

Executed on March 28, 2024, at Fresno, California.

Stephanie A Garcia

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EXHIBIT 23