

EXHIBIT 1

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7 JOEL GUTIERREZ ALARCON, and all others similarly situated

(Additional attorneys for parties on following page)

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

9 **FOR THE COUNTY OF RIVERSIDE**

10 **(UNLIMITED JURISDICTION)**

11
12 JOEL GUTIERREZ ALARCON, on behalf of
13 himself and all others similarly situated, and as an
14 “Class Member” on behalf of other “Class
Members” under the Labor Code Private
Attorneys General Act of 2004,

15 *Plaintiff(s),*

16 vs.

17 FAIRWAY LANDSCAPE & IRRIGATION,
18 INC., a California corporation; and DOES 1–50,
19 inclusive,

20 *Defendant(s).*

Case No. CVRI2204068

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

Action filed: September 22, 2022

Dept: 1, The Honorable Harold W.
Hopp

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Attorneys for Defendant(s),
FAIRWAY LANDSCAPE & IRRIGATION, INC.

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and
2 between plaintiff Joel Gutierrez Alarcon (“Plaintiff”) and defendant Fairway Landscape &
3 Irrigation, Inc. (“Fairway Landscape & Irrigation, Inc.”). The Agreement refers to Plaintiff and
4 Defendant collectively as “Parties,” or individually as “Party.”

5 **1. DEFINITIONS.**

6 1.1. The term “Action” herein includes: (1) Plaintiff’s Class Action and Private
7 Attorney General Act (PAGA) lawsuit alleging wage and hour violations and civil penalties under
8 the PAGA against Fairway Landscape & Irrigation, Inc. captioned “Joel Gutierrez Alarcon, on
9 behalf of himself, and all others similarly situated, and as a ‘Class Member’ on behalf of other
10 ‘Class Members’, *Plaintiff(s)*, vs. Fairway Landscape & Irrigation, Inc., a California corporation;
11 and DOES 1 through 50, inclusive, *Defendant(s)*,” Case No. CVRI2204068 initiated on
12 September 22, 2022 , including any and all amended pleadings, pending in Superior Court of the
13 State of California, County of Riverside (“Civil Action”); (2) Plaintiff’s written notice to the
14 Labor and Workforce Development Agency (LWDA) dated September 19, 2022 pursuant to
15 California Labor Code Section 2699.3 of the specific provisions of the California Labor Code
16 alleged to have been violated by Defendant, LWDA-AP-3730013 (“PAGA Notice”) and (3) the
17 Arbitration Action initiated by Plaintiff on August 17, 2023, asserting individual PAGA claims
as well as the First Amended Statement of Claims in Arbitration adding individual (non-wage)
claims against Defendant, JAMS Case No. 5230000252 (Arbitration Action).

18 1.2. “Administrator” means Phoenix Class Action Administration Solutions, the
19 neutral entity the Parties have agreed to appoint to administer the Settlement.

20 1.3. “Administration Expenses Payment” means the amount the Administrator will be
21 paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
22 accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection
with Preliminary Approval of the Settlement.

23 1.4. “Class” means all current or former hourly paid or non-exempt employees of
24 Defendant employed by Defendant in California at any time during the Class Period. It shall be
25 an opt-out class.

26 1.5. “Class Counsel” means David Glenn Spivak of The Spivak Law Firm and Louis
27 M. Benowitz of Benowitz Law Corporation.

1 1.6. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment”
2 mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and
3 expenses, respectively, incurred to prosecute the Action.

4 1.7. “Class Data” means Class Member identifying information in Defendant’s
5 possession including the Class Member’s name, last-known mailing address, Social Security
6 number, and number of Class Period Workweeks.

7 1.8. “Class Member” or “Settlement Class Member” means a member of the Class, as
8 either a Participating Class Member or Non-Participating Class Member (including a Non-
9 Participating Class Member who qualifies as a Class Member).

10 1.9. “Class Member Address Search” means the Administrator’s investigation and
11 search for current Class Member mailing addresses using all reasonably available sources,
12 methods and means including, but not limited to, the National Change of Address database, skip
13 traces, and direct contact by the Administrator with Class Members.

14 1.10. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION
15 SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to
16 Class Members in English with a Spanish translation in the form, without material variation,
17 attached as Exhibit A and incorporated by reference into this Agreement.

18 1.11. “Class Period” means the period from September 28, 2021 to October 11, 2024.

19 1.12. “Class Representative” means the named Plaintiff in the operative complaint in the
20 Action seeking Court approval to serve as a Class Representative.

21 1.13. “Class Representative Service Payment” means the payment to the Class
22 Representative for initiating the Action and providing services in support of the Action.

23 1.14. “Court” means the Superior Court of California, County of Riverside.

24 1.15. “Defendant” means named Defendant Fairway Landscape & Irrigation, Inc.

25 1.16. “Defense Counsel” means Christine Baran and Kari E. Gibson of Fisher & Phillips
26 LLP.

27 1.17. “Effective Date” means the date when all of the following events have occurred:
28 (1) the Settlement Agreement has been executed by all Parties, Class Counsel, and Defendant’s
Counsel; (2) the Court has given preliminary approval to the Settlement; (3) the Class Notice has
been mailed to the Class Members, providing them with an opportunity to object to the terms of
the Class Settlement or opt out of the Class Settlement; (4) the Court has had a Final Approval

1 Hearing and entered a Final Approval Order and Judgment; (5) sixty-five calendar days have
2 passed since the Court entered a Final Approval Order and Judgment; and (6) in the event there
3 are written objections to the Class Settlement filed prior to the Final Approval Hearing which are
4 not later withdrawn or denied, the later of the following events: five business days after the period
5 for filing any appeal, writ, or other appellate proceeding opposing the Court's Final Approval
6 Order and Judgment has elapsed without any appeal, writ, or other appellate proceeding having
7 been filed, or, if any appeal, writ, or other appellate proceeding opposing the Court's Final
8 Approval Order and Judgment has been filed, five business days after any appeal, writ, or other
9 appellate proceedings opposing the Court's Final Approval Order and Judgment has finally and
conclusively been dismissed with no right to pursue further remedies or relief.

10 1.18. "Final Approval" means the Court's order granting final approval of the
Settlement.

11 1.19. "Final Approval Hearing" means the Court's hearing on the Motion for Final
12 Approval of the Settlement.

13 1.20. "Final Judgment" means the Judgment Entered by the Court upon Granting Final
14 Approval of the Settlement. A proposed Final Judgment form is attached as Exhibit F.

15 1.21. "Gross Settlement Amount" means \$250,000.00 which is the total amount
16 Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross
17 Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments,
18 the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative
Service Payment and the Administrator's Expenses.

19 1.22. "Individual Class Payment" means the Participating Class Member's pro rata
20 share of the Net Settlement Amount calculated according to the number of Workweeks worked
21 during the Class Period.

22 1.23. "Individual PAGA Payment" means the Class Member's pro rata share of 25% of
23 the PAGA Penalties calculated according to the number of Workweeks worked during the Class
Period.

24 1.24. "Judgment" means the judgment entered by the Court based upon the Final
25 Approval.

26 1.25. "LWDA" means the California Labor and Workforce Development Agency, the
27 agency entitled, under Labor Code section 2699, subd. (i).

1 1.26. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the
2 LWDA under Labor Code section 2699, subd. (i).

3 1.27. “Net Settlement Amount” means the Gross Settlement Amount, less the following
4 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
5 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
6 Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be
paid to Participating Class Members as Individual Class Payments.

7 1.28. “Non-Participating Class Member” means any Class Member who opts out of the
8 Settlement by sending the Administrator a valid and timely Request for Exclusion.

9 1.29. “Notice Packet” means the Class Notice (Exhibit A), the Election Not to
10 Participate in Settlement form (Exhibit B), the Workweek Dispute form (Exhibit C), and the
Objection form (Exhibit D) in English with Spanish translations.

11 1.30. “Workweek” means any Workweek during which a Class Member worked for
12 Defendant for at least one day during the Class Period.

13 1.31. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

14 1.32. “PAGA Notice” means Plaintiff’s September 19, 2022 letter to Defendant and the
15 LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

16 1.33. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from
17 the Gross Settlement Amount, allocated 25% to the Class Members (\$6,250.00) and the 75% to
LWDA (\$18,750.00) in settlement of PAGA claims.

18 1.34. “Participating Class Member” means a Class Member who does not submit a valid
19 and timely Request for Exclusion from the Settlement.

20 1.35. “Plaintiff” means Joel Gutierrez Alarcon, the named plaintiff in the Action.

21 1.36. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval
22 of the Settlement.

23 1.37. “Preliminary Approval Order” means the proposed Order Granting Preliminary
24 Approval and Approval of PAGA Settlement. A proposed Preliminary Approval Order form is
attached as Exhibit E.

25 1.38. “Released Class Claims” means the claims being released as described in
26 Paragraph 6.2 below.

27 1.39. “Released PAGA Claims” means the claims being released as described in

Paragraph 6.3 below.

1.40. “Released Parties” means: Defendant and each of its past, present, and future parent company, predecessors, successors, officers, directors, employees and agents.

1.41. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member. An Election Not to Participate in Settlement form is attached as Exhibit B.

1.42. “Response Deadline” means 45 days after the Administrator mails Notice to Class Members and Class Members, 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.

1.43. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

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

1.45. A Workweek Dispute form is attached as Exhibit C.

2. RECITALS.

2.1. On September 22, 2022, Plaintiff filed a Class Action Complaint alleging causes of action against Defendant for failure to pay wages (Lab. Code §§ 501, 1194, 1197, and 1198), failure to provide meal periods (Lab. Code §§ 226.7, 512, and 1198), failure to authorize and permit rest periods (Lab. Code §§ 226.7 and 1198), failure to indemnify for business expenses (Lab. Code §§ 1198 and 2802), failure to issue proper wage statements (Lab. Code § 226, failure to timely pay wages (Lab. Code § 203), and unfair competition (Bus. & Prof. Code §§ 17200, *et seq.*) On December 02, 2022, Plaintiff filed a First Amended Complaint adding an additional cause of action against Defendant for PAGA civil penalties (Lab. Code §§ 2698, *et seq.*). On December 14, 2022, upon stipulation of the Parties, Plaintiff filed a Second Amended Complaint which asserted the same claims but included a true and correct copy of Plaintiff’s PAGA Notice. On March 23, 2023, the Court granted Defendant’s motion to compel arbitration and dismissed Plaintiff’s class claims. For settlement purposes only, on December 5, 2024, pursuant to the stipulation of the

1 Parties and an order of the Court, Plaintiff reinstated class claims with the filing of a Third
2 Amended Complaint (the “Operative Complaint.”). This Settlement is contingent upon
3 Preliminary and Final Approval. If the Settlement does not become final and Effective, for
4 whatever reason, the fact that the Parties were willing to stipulate to the class action being
5 reinstated shall have no bearing on and shall not be admissible or used in any way in connection
6 with the question of whether the Action should proceed on a Class basis in light of existing
7 arbitration agreements. Should the Settlement not become final and Effective, the Action will
8 revert back to a PAGA action only which will be stayed pending arbitration of Plaintiff’s
individual claims.

9 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written
10 notice to Defendant and the LWDA by sending the PAGA Notice.

11 2.3. On July 22, 2024, the Parties participated in an all-day mediation presided over
12 by David Phillips, Esq. which led to this Agreement to settle the Action.

13 2.4. Prior to mediation and negotiating the Settlement, Plaintiff obtained, through
14 informal discovery, the number of comparable employees, the number of Workweeks, average
15 rates of pay, sample time records, sample payroll records, written policies, and related
16 information. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set
17 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*”).

18 2.5. The Court has not granted class certification.

19 2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware
20 of any other pending matter or action asserting claims that will be extinguished or affected by the
Settlement.

21 **3. MONETARY TERMS.**

22 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below,
23 Defendant promises to pay \$250,000.00 and no more as the Gross Settlement Amount and to
24 separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual
25 Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll
26 taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will
27 disburse the entire Gross Settlement Amount without asking or requiring Participating Class
Members or Class Members to submit any claim as a condition of payment. None of the Gross

1 Settlement Amount will revert to Defendant.

2 3.2. Payments from the Gross Settlement Amount. Subject to the terms and conditions
3 of this Agreement and final approval by the Court, the Administrator will make and deduct the
4 following payments from the Gross Settlement Amount:

5 3.2.1. To Plaintiff: Class Representative Service Payment to the Class
6 Representative of not more than \$5,000.00 (in addition to any Individual Class Payment and any
7 Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class
8 Member). Defendant will not oppose Plaintiff's request for a Class Representative Service
9 Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment
10 and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class
11 Representative Service Payments no later than 16 court days prior to the Final Approval Hearing.
12 If the Court approves a Class Representative Service Payment less than the amount requested, the
13 Administrator will retain the remainder in the Net Settlement Amount. If the Court does not
14 approve the entirety of the application for the Class Representative Service Payments, Plaintiff
15 shall not have the right to revoke the Settlement and it will remain binding and Released Parties
16 shall not be responsible for paying the difference between the amount requested and the amount
17 awarded. The Administrator will pay the Class Representative Service Payment using IRS Form
18 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class
19 Representative Service Payment.

20 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than
21 33.33%, which is currently estimated to be \$83,333.00 and a Class Counsel Litigation Expenses
22 Payment of not more than \$17,500.00. Defendant will not oppose requests for these payments
23 provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for
24 Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days
25 prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or
26 a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator
27 will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability
28 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

1 Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds
2 Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any
3 division or sharing of any of these Payments.

4 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
5 \$7,500.00 except for a showing of good cause and as approved by the Court. To the extent the
6 Administration Expenses are less or the Court approves payment less than \$7,500.00, the
7 Administrator will retain the remainder in the Net Settlement Amount and neither Defendant nor
8 Plaintiff shall be responsible for paying the difference between the amount requested and the
9 amount awarded.

10 3.2.4. To Each Participating Class Member: An Individual Class Payment is
11 calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked
12 by all Participating Class Members during the Class Period and (b) multiplying the result by each
13 Participating Class Member's Workweeks.

14 3.2.4.1. Tax Allocation of Individual Class Payments. 20.00% of
15 each Participating Class Member's Individual Class Payment will be allocated to settlement of
16 wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be
17 reported on an IRS W-2 Form. 80.00% of each Participating Class Member's Individual Class
18 Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage
19 Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on
20 IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any
21 employee taxes owed on their Individual Class Payment.

22 3.2.4.2. Effect of Non-Participating Class Members on Calculation
23 of Individual Class Payments. Non-Participating Class Members will not receive any Individual
24 Class Payments. The Administrator will retain amounts equal to their Individual Class Payments
25 in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

26 3.2.5. To the LWDA and Class Members: PAGA Penalties in the amount
27 of \$25,000.00 to be paid from the Gross Settlement Amount, with 75% (\$18,750.00) allocated to
28 the LWDA PAGA Payment and 25% (\$6,250.00) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment
by (a) dividing the amount of the Class Members' 25% share of PAGA Penalties \$6,250.00 by
the total number of Class Period Workweeks worked by all Class Members during the Class

1 Period and (b) multiplying the result by each Class Member's Class Period Workweeks. Class
2 Members assume full responsibility and liability for any taxes owed on their Individual PAGA
3 Payment.

4 3.2.5.2. If the Court approves PAGA Penalties of less than the amount
5 requested, the Administrator will allocate the remainder to the Net Settlement Amount. The
6 Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

7 **4. SETTLEMENT FUNDING AND PAYMENTS.**

8 4.1. Class Workweeks. Based on a review of its records as of July 22, 2024,
9 Defendant estimates there are 123 Class Members who collectively worked a total of 10,245
10 Workweeks.

11 4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval
12 of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in
13 the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the
14 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
15 of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator
16 employees who need access to the Class Data to effect and perform under this Agreement.
17 Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class
18 Data omitted class member identifying information and to provide corrected or updated Class
19 Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant
20 must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use
21 best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or
22 omitted Class Data.

23 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross
24 Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll
25 taxes (contingent upon the Administrator providing the amount owed by Defendant for such
26 payroll taxes) by transmitting the funds to the Administrator no later than 14 days after the
27 Effective Date.

28 4.4. 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

1 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
2 Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees
3 Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service
4 Payment shall not precede disbursement of Individual Class Payments and Individual PAGA
5 Payments.

6 4.4.1. The Administrator will issue checks for the Individual Class Payments
7 and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail,
8 postage prepaid. The face of each check shall prominently state the date (not less than 180 days
9 after the date of mailing) when the check will be voided. The Administrator will cancel all checks
10 not cashed by the void date. The Administrator will send checks for Individual Settlement
11 Payments to all Participating Class Members (including those for whom Notice Packet was
12 returned undelivered). The Administrator will send checks for Individual PAGA Payments to all
13 Class Members including Non-Participating Class Members who qualify as Class Members
14 (including those for whom Notice Packet was returned undelivered). The Administrator may send
15 Participating Class Members a single check combining the Individual Class Payment and the
16 Individual PAGA Payment. Before mailing any checks, the Administrator must update the
17 recipients' mailing addresses using the National Change of Address Database.

18 4.4.2. The Administrator must conduct a Class Member Address Search for all
19 other Class Members whose checks are returned undelivered without USPS forwarding address.
20 Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS
21 forwarding address provided or to an address ascertained through the Class Member Address
22 Search. The Administrator need not take further steps to deliver checks to Class Members whose
23 re-mailed checks are returned as undelivered. The Administrator shall promptly send a
24 replacement check to any Class Member whose original check was lost or misplaced, requested
25 by the Class Member prior to the void date.

26 4.4.3. For any Class Member whose Individual Class Payment check or
27 Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator
28 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).

4.4.4. The payment of Individual Class Payments and Individual PAGA

1 Payments shall not obligate Defendant to confer any additional benefits or make any additional
2 payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in
3 this Agreement.

4 **5. [OMITTED]**

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

9 6.1 Plaintiff's Release. Plaintiff and his respective former and present spouses,
10 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
11 and discharge Released Parties from all charges, complaints, claims, debts, liabilities, promises,
12 agreements, controversies, actions, suits, rights, demands, obligations, guarantees, costs, losses,
13 penalties, expenses, attorneys' fees, damages, transactions, occurrences, or causes of action of
14 any kind or nature, known or unknown, suspected or unsuspected, asserted or unasserted, or that
15 might have been asserted, that occurred during the Class Period, which Plaintiff, at any time prior
16 to the execution of this Settlement Agreement, had or claimed to have or may have, including,
17 but not limited to: (a) all claims based on the factual allegations and statutes asserted or that could
18 have been asserted in the Action and Operative Complaint, including failure to pay wages (Lab.
19 Code §§ 501, 1194, 1197, and 1198), failure to provide meal periods (Lab. Code §§ 226.7, 512,
20 and 1198), failure to authorize and permit rest periods (Lab. Code §§ 226.7 and 1198), failure to
21 indemnify for business expenses (Lab. Code §§ 1198 and 2802), failure to issue proper wage
22 statements (Lab. Code § 226, failure to timely pay wages (Lab. Code § 203), and unfair
23 competition (Bus. & Prof. Code §§ 17200, *et seq.*) or ascertained during the Action and released
24 under 6.2, below and (b) all PAGA claims based on the factual allegations and statutes asserted
25 or that could have been asserted in the Action, Operative Complaint, Plaintiff's PAGA Notice,
26 or ascertained during the Action and released under 6.3, below. ("Plaintiff's Release.") Plaintiff's
27 Release does not extend to any claims or actions to enforce this Agreement, or to any claims for
28 vested benefits, unemployment benefits, disability benefits, social security benefits, workers'
compensation benefits that arose at any time, or based on occurrences outside the Class Period.
Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to,
the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that

1 Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or
2 additional facts or Plaintiff's discovery of them.

3 6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
4 purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights,
5 and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

10 6.2 Release by Participating Class Members: Plaintiff and all Participating Class
11 Members, on behalf of themselves and their respective former and present representatives, agents,
12 attorneys, heirs, administrators, successors, and assigns, release and discharge Released Parties,
13 for the duration of the Class Period, claims based on the factual allegations and statutes asserted
14 or that could have been asserted in the Action and Operative Complaint, including failure to pay
15 wages including claims for off the clock work and failure to pay sick pay, vacation pay and/or
16 overtime at the regular rate of pay (Lab. Code §§ 501, 1194, 1197, and 1198), failure to pay
17 overtime compensation, failure to provide meal periods (Lab. Code §§ 226.7, 512, and 1198),
18 failure to authorize and permit rest periods (Lab. Code §§ 226.7 and 1198), failure to pay meal
19 period premium wages; (7) failure to pay rest period premium wages; failure to indemnify for
20 business expenses (Lab. Code §§ 1198 and 2802), failure to issue proper wage statements (Lab.
21 Code § 226, failure to timely pay wages (Lab. Code § 203), failure to maintain accurate payroll
22 records and unfair competition (Bus. & Prof. Code §§ 17200, *et seq.*), and associated penalties,
23 whether civil or statutory in nature, interest, attorneys' fees and costs, or any other associated
24 damages, and all other alleged violations of the Labor Code and Business and Professions Code
25 section 17200, *et seq.* Except as set forth in Section 6.3 of this Agreement, Participating Class
26 Members do not release any other claims, including claims for vested benefits, wrongful
27 termination, violation of the Fair Employment and Housing Act, unemployment insurance,
28 disability, social security, workers' compensation, or claims based on facts occurring outside the
Class Period.

6.3 Release of PAGA Claim by Class Members. Plaintiff and Class Members release

1 and forever discharge, for the duration of the Class Period, all claims for civil penalties that could
2 have been sought by the Labor Commissioner under the PAGA based on the factual allegations
3 and statutes asserted or that could have been asserted in the Action, the Operative Complaint and
4 Plaintiff's PAGA Notice. The Release of PAGA Claims also includes a release from the state of
5 California (to the extent Plaintiff is permitted to provide such a release for the state of California
6 for the Class period).

7 **7. MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and
8 file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with
9 the Court's current checklist for Preliminary Approvals. A Preliminary Approval Order form is
10 attached as Exhibit E.

11 7.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel
12 all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice,
13 and memorandum in support, of the Motion for Preliminary Approval of this Settlement that
14 includes an analysis of the Settlement under *Dunk/Kullar* and an order conditionally certifying
15 the Class for settlement purposes only; (ii) a draft proposed Order Granting Preliminary Approval
16 and Approval of the Settlement; (iii) a draft proposed Notice Packet; (iv) a signed declaration
17 from the Administrator attaching its "not to exceed" bid for administering the Settlement and
18 attesting to its willingness to serve; competency; operative procedures for protecting the security
19 of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other
20 misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members;
21 and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense
22 Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve
23 and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members,
24 and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its
25 competency to represent the Class Members; its timely transmission to the LWDA of all necessary
26 PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative
27 Complaint (Labor Code section 2699, subd. (1)(1)), this Agreement (Labor Code section 2699,
28 subd. (1)(2)); and (vii) all facts relevant to any actual or potential conflict of interest with Class
Members, and the Administrator. In their Declarations, Plaintiff and Class Counsel Declaration

1 shall aver that they are not aware of any other pending matter or action asserting claims that will
2 be extinguished or adversely affected by the Settlement.

3 7.2 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly
4 responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later
5 than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the
6 Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion
7 for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary
Approval to the Administrator.

8 7.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion
9 for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
10 Defense Counsel will expeditiously work together on behalf of the Parties by telephone, and in
good faith, to resolve the disagreement.

11 **8. SETTLEMENT ADMINISTRATION.**

12 8.1 Selection of Administrator. The Parties have jointly selected Phoenix Class
13 Action Administration Solutions to serve as the Administrator and verified that, as a condition of
14 appointment, Phoenix Class Action Administration Solutions agrees to be bound by this
15 Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for
16 payment of Administration Expenses. The Parties and their Counsel represent that they have no
17 interest or relationship, financial or otherwise, with the Administrator other than a professional
relationship arising out of prior experiences administering settlements.

18 8.2 Employer Identification Number. The Administrator shall have and use its own
19 Employer Identification Number for purposes of calculating payroll tax withholdings and
20 providing reports state and federal tax authorities.

21 8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund
22 that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury
Regulation section 468B-1.

23 8.4 Notice to Class Members.

24 8.4.1 No later than three (3) business days after receipt of the Class Data, the
25 Administrator shall notify Class Counsel that the list has been received and state the number of
26 Class Members, and Workweeks in the Class Data.

27 8.4.2 Using best efforts to perform as soon as possible, and in no event later than

1 14 days after receiving the Class Data, the Administrator will send to all Class Members identified
2 in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Notice Packet
3 with Spanish translation, if applicable, substantially in the forms attached to this Agreement as
4 **Exhibits A, B, C, and D.** The first page of the Class Notice shall prominently estimate the dollar
5 amounts of any Individual Class Payment to the Participating Class Member and/or Individual PAGA
6 Payment payable to the Class Member, and the number of Workweeks (if applicable) used to
7 calculate these amounts. Before mailing Notice Packets, the Administrator shall update Class
8 Member addresses using the National Change of Address database.

8 8.4.3 Not later than 3 business days after the Administrator’s receipt of any
9 Notice Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice
10 Packet using any forwarding address provided by the USPS. If the USPS does not provide a
11 forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail
12 the Notice Packet to the most current address obtained. The Administrator has no obligation to
13 make further attempts to locate or send Notice Packet to Class Members whose Notice Packet is
14 returned by the USPS a second time.

14 8.4.4 The deadlines for Class Members’ written objections, Challenges to
15 Workweeks (disputes), and Requests for Exclusion will be extended an additional 14 days beyond
16 the 45 days otherwise provided in the Class Notice for all Class Members whose notice is re-
17 mailed. The Administrator will inform the Class Member of the extended deadline with the re-
18 mailed Notice Packet.

18 8.4.5 If the Administrator, Defendant or Class Counsel is contacted by or
19 otherwise discovers any persons who believe they should have been included in the Class Data
20 and should have received Notice Packet, the Parties will expeditiously meet and confer by
21 telephone, and in good faith, in an effort to agree on whether to include them as a Class Member.
22 If the Parties agree, such persons will be a Class Member entitled to the same rights as other Class
23 Members, and the Administrator will send, via email or overnight delivery, a Class Notice
24 requiring them to exercise options under this Agreement not later than 14 days after receipt of
25 Class Notice, or the deadline dates in the Class Notice, which ever are later.

25 8.5 Requests for Exclusion (Opt-Outs).

26 8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class
27 Settlement must send the Administrator, by fax, email, or mail, a signed written Request for
28

1 Exclusion not later than 45 days after the Administrator mails the Notice Packet (plus an
2 additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for
3 Exclusion is a letter from a Class Member or his/her representative that reasonably communicates
4 the Class Member's election to be excluded from the Settlement and includes the Class Member's
5 name, address and email address or telephone number and the last four digits of the Class
6 Member's social security number. To be valid, a Request for Exclusion must be signed by the
7 Class Member or his/her representative and timely faxed, emailed, or postmarked and delivered
8 to the Administrator by the Response Deadline. An Election Not to Participate in Settlement form,
attached as Exhibit B, may be used for this purpose but is not required.

9 8.5.2 A Request for Exclusion will not be valid if it is not timely submitted (*e.g.*,
10 postmarked on or before the Response Deadline), not signed by the Class Member, and/or does
not contain the name and address of the Class Member.

11 8.5.3 Class Members who fail to submit valid and timely Exclusion Forms will
12 automatically be included in the Settlement and will become Participating Class Members upon
13 the expiration of the Response Deadline. Each Participating Class Member shall be bound by all
14 terms of the Settlement and any Final Judgment entered in this Action if the Settlement is finally
15 approved by the Court and becomes Effective, including the Participating Class Members'
16 Releases under Paragraphs 6.2 and 6.3 of this Agreement and shall receive an Individual Class
17 Payment regardless of whether the Participating Class Member has objected to the Settlement. If
18 there is a question about the authenticity of a signed Exclusion Form, the Administrator may
19 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.

20 8.5.4 Every Class Member who submits a valid and timely Request for
21 Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment
22 or have the right to object to the class action components of the Settlement. Nothing in this
23 Settlement will constitute or be construed as a waiver of any defense that Defendant or the
24 Released Parties have or could assert against anyone who timely submits an Exclusion Form.
25 Notwithstanding the foregoing, the Parties agree there is no statutory or other right for any Class
26 Member to opt out or otherwise exclude himself or herself from the PAGA portion of the
27 Settlement, which releases the PAGA claims. A Class Member who submits a valid and timely
request for exclusion shall still receive his or her share of the Individual PAGA Payment and shall

1 release the PAGA claims as set forth in Paragraph 6.3.

2 8.6 Challenges to Calculation of Workweeks. Each Class Member shall have 45 days
3 after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members
4 whose Notice Packet is re-mailed) to challenge the number of Class Workweeks (if any) allocated
5 to the Class Member in the Class Notice. This is also known as a dispute. A Workweek Dispute
6 form, attached as Exhibit C, may be used for this purpose but is not required. The Class Member
7 may challenge the allocation by communicating with the Administrator via fax, email or mail.
8 The Administrator must encourage the challenging Class Member to submit supporting
9 documentation. In the absence of any contrary documentation, the Administrator is entitled to
10 presume that the Workweeks contained in the Class Notice are correct so long as they are
11 consistent with the Class Data. The Administrator's determination of each Class Member's
12 allocation of Workweeks shall be final and not appealable or otherwise susceptible to challenge.
13 The Administrator shall promptly provide copies of all challenges to calculation of Workweeks
14 to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

15 8.7 Objections to Settlement.

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

20 8.7.2 Participating Class Members may send written objections to the
21 Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear
22 in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval
23 Hearing. A Participating Class Member who elects to send a written objection to the
24 Administrator must do so not later than 45 days after the Administrator's mailing of the Notice
25 Packet (plus an additional 14 days for Class Members whose Notice Packet was re-mailed). An
26 The Objection form attached as Exhibit D may be used for this purpose but is not required. The
27 form notwithstanding, for an objection to be valid, it must: (i) be signed by the objecting Class
28 Member or his or her lawful representative; (ii) include the objecting Class Member's full name,
address, telephone number, and last four digits of the Social Security Number; (iii) include the
words "Notice of Objection" or "Formal Objection;" (iv) state the case name and case number of
the Action; (v) include any and all supporting papers, briefs, written evidence, and/or other

evidence; and (5) be postmarked no later than the Response Deadline.

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

8.7.4 If a Class Member objects to this Settlement, the Class Member will remain a member of the Class. Moreover, if the Court grants final approval of the Settlement, the Class Member will be bound by the terms of the Settlement and any Final Approval Order and Final Judgment.

8.7.5 The Settlement Administrator shall send all objections to the Parties' counsel. Class Counsel will be responsible for filing the objections with the Court in advance of the Final Approval Hearing. Class Counsel and Defense Counsel will be permitted to respond in writing to any properly submitted objections no later than nine (9) court days before the Final Approval Hearing.

8.7.6 If a Class Member submits both an Exclusion Form and written objection to the Administrator prior to the Response Deadline, the Settlement Administrator will first attempt to contact this Class Member to determine if they intended to submit only the Exclusion Form or written objection. If the Settlement Administrator is unable to contact the Class Member within ten (10) calendar days of receiving both the Exclusion Form and written objection or the Class Member fails to respond to the Settlement Administrator within ten (10) calendar days of being contacted, then the forms will be deemed invalid and the Class Member will be included in the Settlement, will receive an Individual Class Payment and be bound by all terms and conditions of the Settlement including the releases provided in paragraphs 6.2 and 6.3.

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

8.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Notice Packet, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

1 8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator
2 will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not
3 later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the
4 Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names
5 and other identifying information of Class Members who have timely submitted valid Requests
6 for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class
7 Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for
8 Exclusion from Settlement submitted (whether valid or invalid).

9 8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide
10 written reports to Class Counsel and Defense Counsel that, among other things, tally the number
11 of: Notice Packets mailed or re-mailed, Notice Packets returned undelivered, Requests for
12 Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks
13 received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA
14 Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s
15 assessment of the validity of Requests for Exclusion and attach copies of all Requests for
16 Exclusion and objections received.

17 8.8.4 Workweek Challenges. The Administrator has the authority to address and
18 make final decisions consistent with the terms of this Agreement on all Class Member challenges
19 over the calculation of Workweeks. The Administrator’s decision shall be final and not
20 appealable or otherwise susceptible to challenge.

21 8.8.5 Administrator’s Declaration. Not later than 14 days before the date by
22 which Plaintiff is required to file the Motion for Final Approval of the Settlement, the
23 Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable
24 for filing in Court attesting to its due diligence and compliance with all of its obligations under
25 this Agreement, including, but not limited to, its mailing of the Notice Packets, the Notice Packets
26 returned as undelivered, the re-mailing of Notice Packets, attempts to locate Class Members, the
27 total number of Requests for Exclusion from Settlement it received (both valid or invalid), the
28 number of written objections and attach the Exclusion List. The Administrator will supplement
its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible
for filing the Administrator’s declaration(s) in Court.

 8.8.6 Final Report by Administrator. Within 10 days after the Administrator

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

8 **9. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Defendant's best estimate
9 for the number of workweeks through July 22, 2024 is approximately 10,245 Workweeks. In the
10 event the number of Workweeks through the Class Period increases by more than 10%, or more
11 than 11,270 Workweeks worked, then Defendant shall, at its option, either (a) increase the Gross
12 Settlement Amount proportionally by the Workweeks in excess of the 10%; or (b) cap the Class
13 Period as of the date the number of Workweeks reaches but does not exceed 10%. Under option
14 (a) an increase by more than 10% shall mean should the number of Workweeks increase by more
15 than 10% through the Class Period, this will increase the Gross Settlement
16 Amount proportionally over the 10% increase. For example, if the number of Workweeks
17 increase by 11% through the Class Period, and Defendant elects option (a) set forth above, then
18 the Gross Settlement Amount shall increase by 1%.

19 **10. DEFENDANT'S RIGHT TO WITHDRAW.** Notwithstanding any other provision of
20 this Settlement, Defendant shall retain the right, in the exercise of its sole discretion, to
21 unilaterally withdraw from and terminate the Settlement no later than five (5) court days prior to
22 the date of the Final Approval Hearing if Class Members representing more than an aggregate
23 total of 10% of the verified workweeks opt out of the Settlement. In such an event, Defendant
24 shall be solely responsible for settlement administration costs from the third-party administrator
25 to date. In the event of Defendant's withdrawal, no party may use the fact that the Parties agreed
26 to the Settlement for any reason. In addition, Defendant and Plaintiff shall retain the right, in the
27 exercise of their sole discretion, to unilaterally withdraw from and terminate the Settlement if the
28 Court makes or orders material changes to the basic Settlement terms. Basic Settlement terms
include the amount of the Gross Settlement Amount; the time period of the Released Class

1 Claims; the covered Class or PAGA Period; the Escalator Clause; and/or the Parties' respective
2 Option to Revoke Settlement as set forth herein.

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

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

16 11.2 Continuing Jurisdiction of the Court. The Parties agree that, after entry of
17 Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for
18 purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
19 administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

20 11.3 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms
21 and conditions of this Agreement, specifically including the Class Counsel Fees Payment and
22 Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their
23 respective counsel, and all Participating Class Members who did not object to the Settlement as
24 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to
25 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions
26 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver
27 of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the
28 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.

11.4 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If

1 the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a
2 material modification of this Agreement (including, but not limited to, the scope of release to be
3 granted by Class Members), this Agreement shall be null and void. An appellate decision to
4 vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any
5 payments to Class Counsel shall not constitute a material modification of the Judgment within
6 the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

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

10 **13. ADDITIONAL PROVISIONS.**

11 13.1 No Admission of Liability, Class Certification or Representative Manageability
12 for Other Purposes. This Agreement represents a compromise and settlement of highly disputed
13 claims. Nothing in this Agreement is intended or should be construed as an admission by
14 Defendant that any of the allegations in the Action have merit or that Defendant has any liability
15 for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that
16 Defendant's defenses in the Action have merit. Defendant generally and specifically denies any
17 and all liability or wrongdoing with any of the claims alleged in the Action or that it has violated
18 any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to
19 any statute or any other applicable laws, regulations, or legal requirements; breached any contract;
20 violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any
21 other unlawful conduct with respect to its employees. Defendant further makes no concessions
22 or admissions of liability of any sort, makes no concessions or admissions that any Class Member
23 is or was employed by Defendant, and contends that for any purpose other than settlement, the
24 Action is not appropriate for class or representative treatment. Defendant asserts several defenses
25 to the claims and has denied any wrongdoing or liability arising out of any of the alleged facts or
26 conduct in the Action. The monies being paid as part of the settlement are genuinely disputed,
27 and the Parties agree the provisions of Labor Code section 206.5 are not applicable to this
28 Settlement. Neither this Agreement, nor any document referred to or contemplated herein, nor
any action taken to carry out this Agreement, is or may be construed as, or may be used as an

1 admission, concession, or indication by or against Defendant or any of the Released Parties of
2 any fault, wrongdoing, or liability whatsoever. Nor should the Agreement be construed as an
3 admission that Plaintiffs can serve as adequate Class Representatives. There has been no final
4 determination by any court as to the merits of the claims asserted or as to whether a class or
5 classes should be certified, other than for settlement purposes only. Except as necessary in a
6 proceeding to enforce the terms of this Settlement, this Agreement and its terms and provisions
7 shall not be offered or received as evidence in any action or proceeding to establish any liability
8 or admission on the part of Defendant or to establish the existence of any condition constituting
9 a violation of, or a non-compliance with, federal, state, local or other applicable law. Nor shall
10 anything in this Agreement be construed or deemed an admission that the Action was properly
11 brought as a class action pursuant to California Code of Civil Procedure section 382 and under
12 California Business and Professions Code section 17200 and/or that the Action was properly
13 brought as Private Attorney General Actions under PAGA. Finally, nothing in this Agreement or
14 in the Preliminary Approval or Order Granting Final Approval shall be deemed a waiver of
15 Defendant's right to enforce the arbitration agreements of Class Members or Aggrieved
16 Employees in the future.

15 13.2 No Admission of Class Certification or Representative Manageability for Other
16 Purposes. The Parties agree that class certification and representative treatment is for purposes of
17 this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval
18 or enter Judgment, Defendant reserves the right to contest certification of any class for any
19 reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiff
20 reserves the right to move for class certification on any grounds available and to contest
21 Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the
22 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).

23 13.3 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel,
24 Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval
25 of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or
26 cause or permit another person to disclose, disseminate or publicize, any of the terms of the
27 Agreement directly or indirectly, specifically or generally, to any person, corporation, association,
28 government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses,

1 all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter;
2 (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a
3 court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal
4 government agency.

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

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

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

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

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

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

3 13.8 No Prior Assignments. The Parties separately represent and warrant that they
4 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
5 or encumber to any person or entity and portion of any liability, claim, demand, action, cause of
6 action, or right released and discharged by the Party in this Settlement.

7 13.9 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense
8 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
9 Settlement be relied upon as such within the meaning of United States Treasury Department
10 Circular 230 (31 CFR Part 10, as amended) or otherwise.

11 13.10 Modification of Agreement. This Agreement, and all parts of it, may be
12 amended, modified, changed, or waived only by an express written instrument signed by all
13 Parties or their representatives, and approved by the Court.

14 13.11 Agreement Binding on Successors. This Agreement will be binding upon, and
15 inure to the benefit of, the successors of each of the Parties.

16 13.12 Applicable Law. All terms and conditions of this Agreement and its exhibits will
17 be governed by and interpreted according to the internal laws of the state of California, without
18 regard to conflict of law principles.

19 13.13 Cooperation in Drafting. The Parties have cooperated in the drafting and
20 preparation of this Agreement. This Agreement will not be construed against any Party on the
21 basis that the Party was the drafter or participated in the drafting.

22 13.14 Confidentiality. To the extent permitted by law, all agreements made, and orders
23 entered during Action and in this Agreement relating to the confidentiality of information shall
24 survive the execution of this Agreement.

25 13.15 Use and Return of Class Data. Information provided to Class Counsel pursuant
26 to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class
27 Counsel by Defendant in connection with the mediation, other settlement negotiations, or in
28 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

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

5 13.16 Headings. The descriptive heading of any section or paragraph of this Agreement
6 is inserted for convenience of reference only and does not constitute a part of this Agreement.

7 13.17 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement
8 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
9 weekend or federal legal holiday, such date or deadline shall be on the first business day
10 thereafter.

11 13.18 Notice. All notices, demands or other communications between the Parties in
12 connection with this Agreement will be in writing and deemed to have been duly given as of the
13 third business day after mailing by United States mail, or the day sent by email or messenger,
14 addressed as follows:

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

22 To Defendant:
23 Christine Baran, Esq.
24 Kari E. Gibson, Esq.
25 Fisher & Phillips LLP
26 2050 Main Street
27 Suite 1000
28 Irvine, CA 92614
cbaran@fisherphillips.com
kgibson@fisherphillips.com

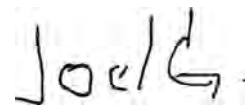
13.19 Execution in Counterparts. This Agreement may be executed in one or more
counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this
Agreement shall be accepted as an original. All executed counterparts and each of them will be
deemed to be one and the same instrument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

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

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

8 Dated: 01/13/2025
9 _____, 2024

By:


JOEL GUTIERREZ ALARCON

11 Dated: 01/15/2025, 2024

By:

Alicia Martinez
Alicia Martinez (Jan 15, 2025 10:57 PST)
Alicia Martinez, Authorized
Representative for Defendant
FAIRWAY LANDSCAPE &
IRRIGATION, INC.

16 THE SPIVAK LAW FIRM

17 Dated: 01/15/2024
18 _____, 2024

By:


DAVID GLENN SPIVAK, Attorneys
for Plaintiff, JOEL GUTIERREZ
ALARCON, and all others similarly
situated

22 BENOWITZ LAW CORPORATION

23 Dated: January 14,
24 2025, 2024

By:

Louis Benowitz
LOUIS M. BENOWITZ, Attorneys for
Plaintiff, JOEL GUTIERREZ
ALARCON, and all others similarly
situated

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Dated: 01/15/2025, 2024

FISHER & PHILLIPS LLP

By: 

KARI E. GIBSON, CHRISTINE
BARAN, Attorneys for Defendant,
FAIRWAY LANDSCAPE &
IRRIGATION, INC.

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EXHIBIT A

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

(case name: Joel Gutierrez Alarcon v. Fairway Landscape & Irrigation, Inc. and number
CVRI2204068)

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Fairway Landscape & Irrigation, Inc. (abbreviate name; “Defendant” is used herein as a placeholder) for alleged violations of California’s labor laws. The Action was filed by one of Defendant’s employees Joel Gutierrez Alarcon (“Plaintiff”) and seeks payment of (1) wages and other relief for a class of all persons currently or formerly employed by Defendant in California, as non-exempt, hourly-paid employees during the Class Period (the “Class Members”). It shall be an opt-out class. The Class Period is September 28, 2021 to October 11, 2024; and (2) penalties under the California Private Attorney General Act (“PAGA”) for Class Members during the Class Period.

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

Based on Defendant’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$<<IndividualClassPaymentAmount>> (less withholding) and your Individual PAGA Payment is estimated to be \$<<IndividualPAGAPaymentAmount>>.** The estimated dollar value of a Workweek is <<\$increment type value>>. The actual amount you may receive likely will be different and will depend on a number of factors. The individual payments amounts will vary. However, the average Individual Class Payment to a Class Member is estimated to be <<\$Average Individual Class Payment Amount>>. The average Individual PAGA Payment to a Class Member is estimated to be <<\$Average Individual PAGA Payment Amount>>. The highest Individual Class Payment to a Class Member is estimated to be <<\$Highest Individual Class Payment Amount>> and the lowest is estimated to be <<\$Lowest Individual Class Payment Amount>>. The highest Individual PAGA Payment to a Class Member is estimated to be <<\$Highest Individual PAGA Payment Amount>> and the lowest is estimated to be <<\$Lowest Individual PAGA Payment Amount>>.

The above estimates are based on Defendant’s records showing that **you worked <<____>> Workweeks** during the Class Period. If you believe that you worked more Workweeks, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. The Court has determined only that there is sufficient evidence to suggest that the proposed settlement

might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the Final Approval Hearing. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Class Members to give up their rights to assert certain claims against Defendant.

If you worked for Defendant during the Class Period, you have two basic options under the Settlement:

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

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting a written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment and you will not give up the right to sue the Released Parties, including Defendant, for any of the Released Claims as defined in 3 I & J below. If you "opt out" you will still receive a portion of the Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will release all the Released Claims as defined in Section 3 I & J below and you will give up your right to pursue the Released claims as defined in Section 3 I & J below. (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is <<RESPONSE DEADLINE>>	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. You can use the enclosed Election Not To Participate In Settlement form for this purpose. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.

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	You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Class Members and Plaintiff releases Defendant from civil penalties it may owe to the Class Members.
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by <<RESPONSE DEADLINE>>	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. You can use the enclosed Objection form for this purpose. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the <<FinalApprovalHearingDate>> Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on <<FinalApprovalHearingDate>>. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing whether or not they submitted a written objection. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks Written Challenges Must be Submitted by <<RESPONSE DEADLINE>>	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many Workweeks you worked at least one day during the Class Period. The number Class Period Workweeks you worked according to Defendant’s records is stated on the first page of this Notice. If you disagree with either of this number, you must challenge it by <<RESPONSE DEADLINE>>. See Section 4 of this Notice. You can use the enclosed Workweeks Dispute form for this purpose.
1. WHAT IS THE ACTION ABOUT? On September 22, 2022, Plaintiff Gutierrez Alarcon filed a wage and hour class action lawsuit against Defendant in the Superior Court of California, County of Riverside, alleging violations (1) failure to pay wages (Lab. Code §§ 501, 1194, 1197, and 1198) (2) failure to provide meal periods (Lab. Code §§ 226.7, 512, and 1198) (3) failure to authorize and permit rest periods (Lab. Code §§ 226.7 and 1198) (4) failure to indemnify for business expenses (Lab. Code §§ 1198 and 2802), (5) failure to issue proper wage statements (Lab. Code § 226, failure to timely pay wages (Lab. Code § 203), (6) and unfair competition (Bus. & Prof. Code §§ 17200, <i>et seq.</i>)	
4	

1 On September 19, 2022, Plaintiff provided written notice to the California Labor and
2 Workforce Development Agency (LWDA) and Defendant of the specific provisions of the
Labor Code he contends were violated and the theories supporting his contentions.

3 On December 02, 2022, Plaintiff filed a First Amended Complaint adding an additional cause of
4 action against Defendant for PAGA civil penalties (Lab. Code §§ 2698, *et seq.*).

5 On March 23, 2023, the Court granted Defendant's motion to compel arbitration and dismissed
6 Plaintiff's class claims. On or about December 5, 2024, pursuant to a stipulation of the Parties
7 and as part of this Settlement only, the Court to reinstated Plaintiff's class claims with the filing
of a Third Amended Complaint.

8 After engaging in discovery, investigations, and negotiation, on July 22, 2024, the Parties
9 remotely attended mediation with mediator David Phillips, Esq. resulting in a settlement.

10 Plaintiff is represented by attorneys in the Action: David Glenn Spivak of The Spivak Law Firm
and Louis M. Benowitz of Benowitz Law Corporation ("Class Counsel").

11 Defendant disagrees with the allegations made by Plaintiff Gutierrez and expressly denies it did
12 anything to Plaintiff or any other Class Member that was illegal or would result in any liability
13 under the employment laws. Defendant also does not admit it employed any Class Member at
any time.

14 The Court has not made any determination as to whether the claims advanced by Plaintiff has
15 any merit. In other words, the Court has not determined whether any laws have been violated nor
16 has it decided in favor of the Parties. Instead, both sides agreed to resolve the lawsuit with no
17 decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all Parties
avoid the risks and cost of a trial.

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

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

25 Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they
26 believe that: (1) Defendant has agreed to pay a fair, reasonable and adequate amount considering
27 the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement
is in the best interests of the Class Members. The Court preliminarily approved the proposed

Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

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

A. Gross Settlement Amount. Defendant will pay \$250,000.00 as the Gross Settlement Amount (Gross Settlement). Defendant has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement after final approval of the Settlement Agreement by the Court. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Defendant will fund the Gross Settlement not more than 14 days after the Effective Date of the Settlement. The Effective Date is defined as the date when all of the following events have occurred: (1) the Settlement Agreement has been executed by all Parties, Class Counsel, and Defendant's Counsel; (2) the Court has given preliminary approval to the Settlement; (3) the Class Notice has been mailed to the Class Members, providing them with an opportunity to object to the terms of the Class Settlement or opt out of the Class Settlement; (4) the Court has had a Final Approval Hearing and entered a Final Approval Order and Judgment; (5) sixty-five calendar days have passed since the Court entered a Final Approval Order and Judgment; and (6) in the event there are written objections to the Class Settlement filed prior to the Final Approval Hearing which are not later withdrawn or denied, the later of the following events: five business days after the period for filing any appeal, writ, or other appellate proceeding opposing the Court's Final Approval Order and Judgment has elapsed without any appeal, writ, or other appellate proceeding having been filed, or, if any appeal, writ, or other appellate proceeding opposing the Court's Final Approval Order and Judgment has been filed, five business days after any appeal, writ, or other appellate proceedings opposing the Court's Final Approval Order and Judgment has finally and conclusively been dismissed with no right to pursue further remedies or relief

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

1. Attorney Fees and Costs. Up to \$83,333.00 (33.33% of the Gross Settlement to Class Counsel for attorneys' fees and up to \$17,500.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

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

3. Administration Expenses. Up to \$7,500.00 to the Administrator for services administering the Settlement.

1
2 4. PAGA Penalties. Up to \$25,000.00 for PAGA Penalties, allocated 75% to
3 the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Class Members based
4 on their Class Period Workweeks.

5
6 Participating Class Members have the right to object to any of these deductions. The Court
7 will consider all objections.

8 Defendant's best estimate for the number of workweeks through July 22,
9 2024 is approximately 10,245 Workweeks. In the event the number of Workweeks through the
10 Class Period increases by more than 10%, or more than 11,270 Workweeks worked, then
11 Defendant shall, at its option, either (a) increase the Gross Settlement Amount proportionally by
12 the Workweeks in excess of the 10%; or (b) cap the Class Period as of the date the number of
13 Workweeks reaches but does not exceed 10%. Under option (a) an increase by more than 10%
14 shall mean should the number of Workweeks increase by more than 10% through the Class
15 Period, this will increase the Gross Settlement Amount proportionally over the 10%
16 increase. For example, if the number of Workweeks increase by 11% through the Class Period,
17 and Defendant elects option (a) set forth above, then the Gross Settlement Amount shall increase
18 by 1%.

19 C. Net Settlement Distributed to Class Members. After making the above deductions
20 in amounts approved by the Court, the Administrator will distribute the rest of the Gross
21 Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class
22 Members based on their Class Period Workweeks.

23 D. Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking
24 the Court to approve an allocation of 20.00% of each Individual Class Payment to taxable wages
25 ("Wage Portion") and 80.00% to interest and penalties ("Non-Wage Portion."). The Wage Portion
26 is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay
27 employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted
28 as penalties rather than wages for tax purposes. The Administrator will report the Individual
PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099
Forms.

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

E. Need to Promptly Cash Payment Checks. The front of every check issued for
Individual Class Payments and Individual PAGA Payments will show the date when the check
expires (the void date). If you don't cash it by the void date, your check will be automatically
cancelled, and the monies will be deposited with the California Controller's Unclaimed Property
Fund (https://www.sco.ca.gov/search_upd.html) in your name.

1 If the monies represented by your check is sent to the Controller's Unclaimed Property Fund, you
2 should consult the rules of the Fund for instructions on how to retrieve your money. You can
3 contact the Unclaimed Property Fund at (800) 992-4647.

4 F. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated
5 as a Participating Class Member, participating fully in the Class Settlement, unless you notify the
6 Administrator in writing, not later than <<RESPONSE DEADLINE>>, that you wish to opt-out.
7 The easiest way to notify the Administrator is to email, fax, or mail a written and signed Request
8 for Exclusion by the <<RESPONSE DEADLINE>> Response Deadline. The Request for
9 Exclusion should be a letter from a Class Member or his/her representative setting forth a Class
10 Member's name, present address, email or telephone number and the last four digits of the Class
11 Member's social security number, and a simple statement electing to be excluded from the
12 Settlement. You may use the enclosed Election Not To Participate In Settlement form for this
13 purpose. Excluded Class Members (i.e., Non-Participating Class Members) will not receive
14 Individual Class Payments and you will not give up the right to sue the Released Parties, including
15 Defendant, for any of the Released Claims as defined in 3 I & J below.

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

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

25 H. Administrator. The Court has appointed a neutral company, Phoenix Class Action
26 Administration Solutions (the "Administrator") to send this Notice, calculate and make payments,
27 and process Class Members' Requests for Exclusion. The Administrator will also decide Class
28 Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and
perform other tasks necessary to administer the Settlement. The Administrator's contact
information is contained in Section 9 of this Notice.

I. Participating Class Members' Release. Effective on the date when Defendant fully
funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage
Portion of the Individual Class Payments, Plaintiff and Participating Class Members will be
legally barred from asserting any of the claims released under the Settlement. This means that
unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue,
continue to sue, or be part of any other lawsuit against Defendant or its past or present officers,
directors, employees, and agents for wages and PAGA penalties based on the Class Period facts,
as alleged in the Action and resolved by this Settlement.

Plaintiff and the Participating Class Members will be bound by the following
release:

Plaintiff and all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release and discharge Released Parties, for the duration of the Class Period, claims based on the factual allegations and statutes asserted or that could have been asserted in the Action and Operative Complaint, including failure to pay wages including claims for off the clock work and failure to pay sick pay, vacation pay and/or overtime at the regular rate of pay (Lab. Code §§ 501, 1194, 1197, and 1198), failure to pay overtime compensation, failure to provide meal periods (Lab. Code §§ 226.7, 512, and 1198), failure to authorize and permit rest periods (Lab. Code §§ 226.7 and 1198), failure to pay meal period premium wages; (7) failure to pay rest period premium wages; failure to indemnify for business expenses (Lab. Code §§ 1198 and 2802), failure to issue proper wage statements (Lab. Code § 226, failure to timely pay wages (Lab. Code § 203), failure to maintain accurate payroll records and unfair competition (Bus. & Prof. Code §§ 17200, *et seq.*), and associated penalties, whether civil or statutory in nature, interest, attorneys' fees and costs, or any other associated damages, and all other alleged violations of the Labor Code and Business and Professions Code section 17200, *et seq.* Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

J. The PAGA Release. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff and Class Members release and forever discharge, for the duration of the Class Period, all claims for civil penalties that could have been sought by the Labor Commissioner under the PAGA based on the factual allegations and statutes asserted or that could have been asserted in the Action, the Operative Complaint and Plaintiff's PAGA Notice. The Release of PAGA Claims also includes a release from the state of California (to the extent Plaintiff is permitted to provide such a release for the state of California for the Class period.)

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

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

B. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$6,250.00 by the total number of Workweeks worked by all Class Members and (b) multiplying the result by the number of Class Period Workweeks worked by each individual Class Member.

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

6 You need to support your challenge by submitting copies of pay stubs or other records.
7 The Administrator will accept Defendant's calculation of Workweeks based on Defendant's
8 records as accurate unless you send copies of records containing contrary information. You
9 should send copies rather than originals because the documents will not be returned to you. The
Administrator will resolve Workweek challenges based on your submission and on input from
Class Counsel and Defendant's Counsel. The Administrator's decision is final. You can't appeal
or otherwise challenge its final decision.

10 5. HOW WILL I GET PAID?

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

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

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

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

21 Email, fax, or mail a written and signed letter with your name, present address, email or
22 telephone number and the last four digits of your social security number, and a simple statement
23 that you do not want to participate in the Settlement. You may use the enclosed Election Not To
24 Participate In Settlement form for this purpose. The Administrator will exclude you based on any
25 writing communicating your request be excluded. Be sure to personally sign your request,
26 identify the Action as *Joel Gutierrez Alarcon vs. Fairway Landscape & Irrigation, Inc.*, Case No.
CVRI2204068, and include your identifying information (full name, address, telephone number,
approximate dates of employment, and social security number for verification purposes). You
must make the request yourself. If someone else makes the request for you, it will not be valid.
You should send your Request for Exclusion to the Administrator by email, fax, or send by regular
U.S. mail. **The Administrator must be sent your request to be excluded by <<RESPONSE**

DEADLINE>>, or it will be invalid. Section 9 of the Notice has the Administrator’s contact information. If you are a Class Member, you will still receive an Individual PAGA Payment.

7. HOW DO I OBJECT TO THE SETTLEMENT?

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

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is <<RESPONSE DEADLINE>>.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action, *Joel Gutierrez Alarcon vs. Fairway Landscape & Irrigation, Inc.*, case no. CVRI2204068, and include your name, current address, email or telephone number, and approximate dates of employment for Defendant and sign the objection. Section 9 of this Notice has the Administrator’s contact information. You may use the enclosed Objection form for this purpose. You should send your objection to the Administrator by email, fax, or send by regular U.S. mail.

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

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don’t have to, attend the Final Approval Hearing on <<FINAL APPROVAL HEARING DATE>> at <<FINAL APPROVAL HEARING TIME>> in Department 1 of the Riverside Superior Court, located at Riverside Historic Courthouse, 4050 Main Street, Riverside, CA 92501. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually by <<CourtConnect/CourtCall/MicrosoftTeams>>

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

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

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendant and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to the Administrator's website at <<CLERK OF COURT'S PHONE NUMBER>>. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.<<COURT'S WEBSITE>>.aspx>) and entering the Case Number for the Action, Case No. CVRI2204068. You can also make an appointment to personally review court documents in the Clerk's Office at the Riverside Historic Courthouse by calling <<CLERK OF COURT'S PHONE NUMBER>>.

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

Class Counsel:

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

Administrator:

Name of Company:	Phoenix Class Action Administration Solutions
Email Address:	—
Mailing Address:	—
Telephone:	—
Fax Number:	—

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

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

1 (https://www.sco.ca.gov/search_upd.html) for instructions on how to retrieve the funds. You can
2 contact the Unclaimedx Property Fund at (800) 992-4647.

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

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

Gutierrez Alarcon v. Fairway Landscape & Irrigation, Inc.
Superior Court of the State of California, County of Riverside
Case No. CVRI2204068

ELECTION NOT TO PARTICIPATE IN SETTLEMENT FORM

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

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

Gutierrez Alarcon v. Fairway Landscape & Irrigation, Inc. Class Action Administrator
c/o ____

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

(Typed or Printed Name)

(Address)

(City, State, Zip Code)

(Telephone Number, Including Area Code)

(Identification Number)

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

Dated: ____.
(Signature)

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EXHIBIT C

1 **WORKWEEK DISPUTE FORM**

2 Superior Court of The State of California

3 For The County of Riverside

4 *Joel Gutierrez Alarcon v. Fairway Landscape & Irrigation, Inc.*, Case No. CVRI2204068

5 Indicate Name/Address Changes, if any:

6 <<Name>>

7 <<Address>>

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

9 XX – XX – ____

10 TO ALL PERSONS CURRENTLY OR FORMERLY EMPLOYED BY DEFENDANT IN CALIFORNIA, AS NON-EXEMPT, HOURLY-PAID EMPLOYEES DURING THE CLASS PERIOD DEFINED AS SEPTEMBER 28, 2021 TO OCTOBER 11, 2024 (THE “CLASS MEMBERS”):

11 The amount of your estimated Settlement Award is based upon the number of Eligible Workweeks you worked between September 28, 2021 and October 11, 2024. “Individual Class Workweeks” are defined as any Workweek in which you worked at least one (1) day as a non-exempt, hourly-paid of Fairway Landscape & Irrigation, Inc. (“Defendant”) in California during the calendar week. The number of Class Workweeks applicable to your claim is set forth below.

12 **YOUR ELIGIBLE WORKWEEKS**

13 Defendant’s records indicate that you worked <<number of Workweeks>> Workweeks between September 28, 2021 and October 11, 2024.

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

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

16 If you wish to dispute the number of Workweeks credited to you, you must complete and return this form by indicating what you believe is incorrect on the blank lines below and return it on or before <<RESPONSE DEADLINE>> to the Administrator by email, fax, or regular U.S. Mail with proof of the submission date (such as a postmark or delivery service date stamp). You may use this Workweeks Dispute form for this purpose. You must also send any documents or other information that you contend supports your belief that the information set forth above is incorrect. The Administrator will resolve any dispute based upon Defendant’s records and any information

1 you provide. Please be advised that the information on this Workweeks Dispute Form is
2 presumed to be correct unless the documents you submit are company records from Defendant.

3 _____
4 _____

5 **UNLESS YOU ARE FILING A DISPUTE REGARDING THE NUMBER OF**
6 **WORKWEEKS, RECEIPT OF A SETTLEMENT PAYMENT, OR YOUR**
7 **EMPLOYMENT STATUS, YOU DO NOT NEED TO TAKE ANY ACTION**

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EXHIBIT D

1 **OBJECTION FORM**

2 **Joel Gutierrez Alarcon v. Fairway Landscape & Irrigation, Inc.**
3 **Superior Court of the State California, County of Riverside**
4 **Case No. CVRI2204068**

5 Please verify and/or complete any missing identifying information:

6 CPT ID: <<CPT ID>>

7 <<Name>>

8 <<Address1>>

9 <<Address2>>

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

CORRECT NAME AND ADDRESS HERE:

Telephone Number: (____) ____ - ____

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

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

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

27 [] I OBJECT to the *Joel Gutierrez Alarcon v. Fairway Landscape & Irrigation, Inc.*
28 Settlement on the following grounds (if additional space necessary, please include additional
sheets of paper):

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

Executed on _____, 2024

(Signature)

<<Name>>
(Printed Name)

EMAIL TO THE ADMINISTRATOR: <<_____.COM>>

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

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

Joel Gutierrez Alarcon v. **Fairway Landscape & Irrigation, Inc.**
Administrator
[ADDRESS]
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EXHIBIT E

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

JOEL GUTIERREZ ALARCON, on behalf of
himself and all others similarly situated, and as
an “Class Member” on behalf of other “Class
Members” under the Labor Code Private
Attorneys General Act of 2004,

Plaintiff(s),

vs.

FAIRWAY LANDSCAPE & IRRIGATION,
INC., a California corporation; and DOES 1–50,
inclusive,

Defendant(s).

Case No. CVRI2204068

[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT

Action filed: September 22, 2022
Dept: 1, The Honorable Harold
W. Hopp

The Motion of Plaintiff Joel Gutierrez Alarcon (hereafter referred to as “Plaintiff”) for
Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court,
The Honorable Harold W. Hopp presiding. The Court having considered the Motion, the Class
Action and PAGA Settlement Agreement and Class Notice (“Settlement” or “Settlement

Agreement”), and supporting papers, HEREBY ORDERS THE FOLLOWING:

1. The Court grants preliminary approval of the Settlement and the Settlement Class based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary Approval. All terms herein shall have the same meaning as defined in the Settlement. 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. The Court will make a determination at the hearing on the motion for final approval of class action settlement (the “Final Approval Hearing”) as to whether the Settlement is fair, adequate and reasonable to the Settlement Class.

2. For purposes of this Preliminary Approval Order, the “Settlement Class” means all persons currently or formerly employed by Defendant in California, as non-exempt or hourly-paid employees during the Class Period. It shall be an opt-out class. The “Class Period” shall mean the period of time from September 28, 2021, through October 11, 2024.

3. Defendant’s best estimate for the number of workweeks through July 22, 2024 is approximately 10,245 Workweeks. In the event the number of Workweeks through the Class Period increases by more than 10%, or more than 11,270 Workweeks worked, then Defendant shall, at its option, either (a) increase the Gross Settlement Amount proportionally by the Workweeks in excess of the 10%; or (b) cap the Class Period as of the date the number of Workweeks reaches but does not exceed 10%. Under option (a) an increase by more than 10% shall mean should the number of Workweeks increase by more than 10% through the Class Period, this will increase the Gross Settlement Amount proportionally over the 10% increase. For example, if the number of Workweeks increase by 11% through the Class Period, and Defendant elects option (a) set forth above, then the Gross Settlement Amount shall increase

1 by 1%.

2 4. “Effective Date” means the date when all of the following events have occurred:
3 (1) the Settlement Agreement has been executed by all Parties, Class Counsel, and Defendant’s
4 Counsel; (2) the Court has given preliminary approval to the Settlement; (3) the Class Notice has
5 been mailed to the Class Members, providing them with an opportunity to object to the terms of
6 the Class Settlement or opt out of the Class Settlement; (4) the Court has had a Final Approval
7 Hearing and entered a Final Approval Order and Judgment; (5) sixty-five calendar days have
8 passed since the Court entered a Final Approval Order and Judgment; and (6) in the event there
9 are written objections to the Class Settlement filed prior to the Final Approval Hearing which are
10 not later withdrawn or denied, the later of the following events: five business days after the period
11 for filing any appeal, writ, or other appellate proceeding opposing the Court’s Final Approval
12 Order and Judgment has elapsed without any appeal, writ, or other appellate proceeding having
13 been filed, or, if any appeal, writ, or other appellate proceeding opposing the Court’s Final
14 Approval Order and Judgment has been filed, five business days after any appeal, writ, or other
15 appellate proceedings opposing the Court’s Final Approval Order and Judgment has finally and
16 conclusively been dismissed with no right to pursue further remedies or relief.

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

20 6. Not later than 15 days after the Court grants Preliminary Approval of the
21 Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form
22 of a Microsoft Excel spreadsheet. To protect Class Members’ privacy rights, the Administrator
23 must maintain the Class Data in confidence, use the Class Data only for purposes of the Settlement
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1 and for no other purpose, and restrict access to the Class Data to Administrator employees who
2 need access to the Class Data to effect and perform under the Settlement Agreement. Defendant
3 has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data
4 omitted class member identifying information and to provide corrected or updated Class Data as
5 soon as reasonably feasible. Without any extension of the deadline by which Defendant must send
6 the Class Data to the Administrator, the Parties and their counsel will expeditiously use best
7 efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted
8 Class Data.
9

10 7. No later than three (3) business days after receipt of the Class Data, the
11 Administrator shall notify Class Counsel that the list has been received and state the number of
12 Class Members, And Workweeks in the Class Data.
13

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

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

5 10. Class Counsel's contact information is David Glenn Spivak, Esq., The Spivak Law
6 Firm, 8605 Santa Monica Bl, PMB 42554, West Hollywood, CA 90069. Defense Counsel's
7 contact information is Kari E. Gibson, Esq., Fisher & Phillips LLP, 2050 Main Street, Suite 1000,
8 Irvine, CA, 92614.

9 11. The deadlines for Class Members' written objections, Challenges to Workweeks
10 (disputes), and Requests for Exclusion will be extended an additional 14 days beyond the 45 days
11 otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The
12 Administrator will inform the Class Member of the extended deadline with the re-mailed Notice
13 Packet.

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

22 13. Requests for Exclusion. Class Members who wish to exclude themselves (opt-out
23 of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written
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1 Request for Exclusion not later than 45 days after the Administrator mails the Notice Packet (plus
2 an additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for
3 Exclusion is a letter from a Class Member or his/her representative that reasonably communicates
4 the Class Member's election to be excluded from the Settlement, must be signed and include the
5 Class Member's name, address and email address or telephone number and last four digits of the
6 Class Member's social security number. To be valid, a Request for Exclusion must be timely
7 faxed, emailed, or postmarked by the Response Deadline. An Election Not to Participate in
8 Settlement form, attached as Exhibit B, may be used for this purpose but is not required.

10 14. A Request for Exclusion will not be valid if it is not timely submitted (*e.g.*,
11 postmarked on or before the Response Deadline), not signed by the Class Member, and/or does
12 not contain the name and address of the Class Member. Class Members who fail to submit valid
13 and timely Exclusion Forms will automatically be included in the Settlement and will become
14 Participating Class Members upon the expiration of the Response Deadline. Each Participating
15 Class Member shall be bound by all terms of the Settlement and any Final Judgment entered in
16 this Action if the Settlement is finally approved by the Court and becomes Effective, including
17 the Participating Class Members' Releases under Paragraphs 6.2 and 6.3 of the Settlement
18 Agreement and shall receive an Individual Class Payment regardless of whether the Participating
19 Class Member has objected to the Settlement. If there is a question about the authenticity of a
20 signed Exclusion Form, the Administrator may demand additional proof of the Class Member's
21 identity. The Administrator's determination of authenticity shall be final and not appealable or
22 otherwise susceptible to challenge.

23 15. Every Class Member who submits a valid and timely Request for Exclusion is a
24 Non-Participating Class Member and shall not receive an Individual Class Payment or have the
25 right to object to the class action components of the Settlement. Nothing in the Settlement
26 Agreement will constitute or be construed as a waiver of any defense that Defendant or the
27 Released Parties have or could assert against anyone who timely submits an Exclusion Form.
28 There is no statutory or other right for any Class Member to opt out or otherwise exclude himself

1 or herself from the PAGA portion of the Settlement, which releases the PAGA claims. A Class
2 Member who submits a valid and timely request for exclusion shall still receive his or her share
3 of the Individual PAGA Payment and shall release the PAGA claims as set forth in Paragraph 6.3
4 of the Settlement Agreement.

5 16. Challenges to Calculation of Workweeks. Each Class Member shall have 45 days
6 after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members
7 whose Notice Packet is re-mailed) to challenge the number of Class Workweeks (if any) allocated
8 to the Class Member in the Class Notice. This is also known as a dispute. A Workweek Dispute
9 form, attached as Exhibit C, may be used for this purpose but is not required. The Class Member
10 may challenge the allocation by communicating with the Administrator via fax, email or mail.
11 The Administrator must encourage the challenging Class Member to submit supporting
12 documentation. In the absence of any contrary documentation, the Administrator is entitled to
13 presume that the Workweeks contained in the Class Notice are correct so long as they are
14 consistent with the Class Data. The Administrator's determination of each Class Member's
15 allocation of Workweeks shall be final and not appealable or otherwise susceptible to challenge.
16 The Administrator shall promptly provide copies of all challenges to calculation of Workweeks
17 to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

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

22 18. Participating Class Members may send written objections to the Administrator, by
23 fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire
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1 an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A
2 Participating Class Member who elects to send a written objection to the Administrator must do
3 so not later than 45 days after the Administrator's mailing of the Notice Packet (plus an additional
4 14 days for Class Members whose Notice Packet was re-mailed). An The Objection form attached
5 as Exhibit D may be used for this purpose but is not required.

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

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

19
20 21. The Court approves, as to form and content, the Class Notice in substantially the
21 form attached as Exhibit A to this Order, the Election Not to Participate in Settlement form in
22 substantially the form attached as Exhibit B to this Order, the Workweeks Dispute form in
23 substantially the form attached as Exhibit C to this Order, and the Objection form in substantially
24 the form attached as Exhibit D to this Order.

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26 22. The Court approves, for settlement purposes only, David Glenn Spivak of The
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1 Spivak Law Firm and Louis M. Benowitz of Benowitz Law Corporation as Class Counsel.

2 23. The Court approves, for settlement purposes only, Joel Gutierrez Alarcon as the
3 Class Representative.

4 24. The Court approves Phoenix Class Action Administration Solutions as the
5 Administrator.

6 25. The Court preliminarily approves Class Counsel's request for attorneys' fees and
7 costs subject to final review by the Court.

8 26. The Court preliminarily approves the estimated Administrator costs payable to the
9 Administrator subject to final review by the Court.

10 27. The Court preliminarily approves Plaintiff's Class Representative Service
11 Payment subject to final review by the Court.

12 28. A Final Approval Hearing shall be held on ____ at _____.m. in Department 1 of the
13 Superior Court for the State of California, County of Riverside, located at the Riverside Historic
14 Courthouse, 4050 Main Street, Riverside, CA 92501 to consider the fairness, adequacy and
15 reasonableness of the proposed Settlement preliminarily approved by this Preliminary Approval
16 Order, and to consider the application of Class Counsel for attorneys' fees and costs and the Class
17 Representative Service Payment to the Class Representative. The notice of motion and all briefs
18 and materials in support of the motion for final approval of class action settlement and motion for
19 attorneys' fees and litigation costs shall be served and filed with this Court on or before ____.
20 Plaintiff's counsel must give notice to any objecting party of any continuance of the hearing of
21 the motion for final approval.

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

4 30. The Court expressly reserves the right to adjourn or continue the Final Approval
5 Hearing from time to time without further notice to members of the Class. The Plaintiff shall give
6 prompt notice of any continuance to Settlement Class Members who object to the Settlement.
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8 **IT IS SO ORDERED.**

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11 **DATE**

11 **THE HONORABLE HAROLD W.**
12 **HOPP**
13 **SUPERIOR COURT JUDGE**

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

JOEL GUTIERREZ ALARCON, on behalf of
himself and all others similarly situated, and as
an “Class Member” on behalf of other “Class
Members” under the Labor Code Private
Attorneys General Act of 2004,

Plaintiff(s),

vs.

FAIRWAY LANDSCAPE & IRRIGATION,
INC., a California corporation; and DOES 1–50,
inclusive,

Defendant(s).

Case No. CVRI2204068

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

Action filed: September 22, 2022
Dept: 1, The Honorable Harold W.
Hopp

20 This matter came on for hearing on ____ at ____m. in Department 1 of the above-captioned
21 court on Plaintiff’s Motion for Final Approval of a Class Action Settlement pursuant to California
22 Rules of Court, Rule 3.769, as set forth in the Joint Stipulation of Class Action Settlement and
23 Release of Claims (the “Settlement”) filed herewith which provides for a Gross Settlement
24 Amount (“GSA”) of up to \$250,000.00 in compromise of all disputed claims on behalf of all
25 persons currently or formerly employed by Defendant in California, as non-exempt or hourly-
26 paid employees during the Class Period defined as September 28, 2021 to October 11, 2024 (the
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1 “Class Members”). It shall be an opt-out class. September 28, 2021 to October 11, 2024 is the
2 Class Period. All capitalized terms used herein shall have the same meaning as defined in the
3 Settlement.

4 In accordance with the Court’s prior Order Granting Preliminary Approval of Class
5 Action Settlement, Class Members have been given notice of the terms of the Settlement and the
6 opportunity to submit a claim, request exclusion, comment upon or object to it or to any of its
7 terms. Having received and considered the Settlement, the supporting papers filed by the Parties,
8 and the evidence and argument received by the Court in conjunction with the motions for
9 preliminary and final approval of the Settlement, the Court grants final approval of the Settlement
10 and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE FOLLOWING
11 DETERMINATIONS¹:
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13 1. The Court has jurisdiction over the subject matter of the Action and over all Parties
14 to the Action, including all Class Members. Pursuant to this Court’s Order Granting Preliminary
15 Approval of Class Action Settlement of ____, the Notice Packet was sent to each Class Member
16 by First Class U.S. mail. The Notice Packet informed Class Members of the terms of the
17 Settlement, their right to receive their proportional share of the Settlement, their right to request
18 exclusion, their right to comment upon or object to the Settlement, and their right to appear in
19 person or by counsel at the final approval hearing and be heard regarding final approval of the
20 Settlement. Adequate periods of time were provided by each of these procedures. No member of
21 the Settlement Class presented written objections to the proposed Settlement as part of this notice
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25 _____
26 ¹ A true and correct copy of the Court’s ruling on the Motion for Final Approval of Class Action
27 Settlement entered on [REDACTED] is attached hereto as **Exhibit A** and incorporated by reference. A true
28 and correct copy of the Court’s Minute Order dated [REDACTED] is attached hereto as **Exhibit B** and
incorporated by reference.

1 process, stated an intention to appear, or actually appeared at the final approval hearing.

2 2. For purposes of this Final Order and Judgment, the Class Members are all persons
3 currently or formerly employed by Defendant in California, as non-exempt or hourly-paid
4 employees during the Class Period.

5 3. The Court finds and determines that the notice procedure afforded adequate
6 protections to Class Members and provides the basis for the Court to make an informed decision
7 regarding final approval of the Settlement based on the responses of Class Members. The Court
8 finds and determines that the notice provided in this case was the best notice practicable, which
9 satisfied the requirements of law and due process as to all persons entitled to such notice.
10

11 **Release by Plaintiff and Class Members.** The Parties agree that it is their intent that the
12 resolution set forth in this Settlement will release and discharge the Released Claims by way of
13 any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action
14 of any kind by each and all of the Settlement Class Members (including participation to any extent
15 in any representative or collective action) against the Released Parties. This release will not take
16 effect until Defendant has paid the Gross Settlement Amount in full per this Settlement
17 Agreement.
18

19 **PAGA Release.** Plaintiff and Class Member release and forever discharge for the duration
20 of the Class Period, all claims for civil penalties that could have been sought by the Labor
21 Commissioner under the PAGA, based on the factual allegations and statutes asserted or that
22 could have been asserted in the Action, the Operative Complaint and Plaintiff's PAGA Notice.
23 The Release of PAGA Claims also includes a release from the state of California (to the extent
24 Plaintiff is permitted to provide such a release for the state of California for the Class period
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1 **“Released Claims”** shall mean all claims based on the factual allegations and statutes
2 asserted or that could have been asserted in the Action or Operative Complaint.

3 **“Released Parties”** shall mean Defendant, and its current or former officers, directors,
4 employees and agents.

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

16 3. The Court finds and determines that (a) the Settlement Shares to be paid to
17 Participating Class Members and (b) the LWDA payment as civil penalties under the California
18 Labor Code Private Attorneys General Act of 2004, as amended, California Labor Code sections
19 2699 *et seq.*, as provided for by the Settlement are fair and reasonable. The Court hereby grants
20 final approval to, and orders the payment of, those amounts be made to the Participating Class
21 Members and to the California Labor & Workforce Development Agency (“LWDA”), in
22 accordance with the terms of the Settlement.

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

2 a. Class Counsel fees & costs of \$83,333.00 in attorneys' fees and \$17,500.00
3 in litigation costs to Class Counsel;

4 b. \$5,000.00 as a Class Representative Service Payment award payable to
5 Plaintiff Joel Gutierrez Alarcon for his service as a Class Representative;

6 c. \$7,500.00 in costs of the Administrator payable to Phoenix Class Action
7 Administration Solutions for its services as the Administrator; and

8 d. Payment of \$18,750.00 (75% of the (\$25,000.00 PAGA penalty) to the
9 LWDA.
10

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

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

25 9. Other than its employer side payroll taxes, Defendant's payment of such sums
26 shall be the sole financial obligation of Defendant under the Settlement, and shall be in full
27

1 satisfaction of all claims released herein, including, without limitation, all claims for wages,
2 penalties, interest, attorneys' fees, costs and expenses.

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

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

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

26 13. The Court hereby enters final judgment in this case in accordance with the terms
27

1 of the Settlement, Order Granting Preliminary Approval of Class Action Settlement, and this Final
2 Order and Judgment.

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

4 15. The Parties shall bear their own costs and attorneys' fees except as otherwise
5 provided by the Settlement and this Final Order and Judgment.
6

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

22 17. This document shall constitute a Judgment for purposes of California Rule of
23 Court 3.769(h).
24

25 **IT IS SO ORDERED, ADJUDGED AND DECREED.**
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DATE

**THE HONORABLE HAROLD W.
HOPP
SUPERIOR COURT JUDGE**

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I am an accredited translator registered with the American Translators Association and that I am certified/accredited to translate from the English language to the Spanish language. I further declare that I have translated the attached document (“Class Action and PAGA Settlement Agreement and Class Notice”) from the English language to the Spanish language.

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

Blanca Edwards

1

1 DAVID GLENN SPIVAK (SBN 179684)
david@spivaklaw.com

2 THE SPIVAK LAW FIRM

8605 Santa Monica Bl

3 PMB 42554

West Hollywood, CA 90069

4 Teléfono: (213) 725-9094

5 Facsímil: (213) 634-2485

6 Abogado del demandante(s),

JOEL GUTIERREZ ALARCON, y todas las demás personas en situación similar

7 (Abogados adicionales de las partes en la página siguiente)

8 **TRIBUNAL SUPERIOR DEL ESTADO DE CALIFORNIA**

9 **PARA EL CONDADO DE RIVERSIDE**

10 **(JURISDICCIÓN ILIMITADA)**

11 JOEL GUTIERREZ ALARCON, en nombre
12 propio y de todas las demás personas en situación
13 similar, y como “Miembro del Grupo” en nombre
14 de otros “Miembros del Grupo” según el Código
Laboral y la Ley General de Abogados Privados de
2004,

15 *Demandante(s),*

16 vs.

17 FAIRWAY LANDSCAPE & IRRIGATION, INC.,
18 una corporación de California; y DOES 1–50,
19 inclusive,

20 *Demandado(s).*

Caso No. CVRI2204068

**ACCIÓN DE GRUPO Y ACUERDO DE
CONCILIACIÓN PAGA Y
NOTIFICACIÓN DEL GRUPO**

Acción 22 de septiembre de 2022
interpuesta:

Departamento: 1, El Honorable Harold W.
Hopp

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ABOGADOS ADICIONALES DEL DEMANDANTE(S)

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Abogados de los demandantes,
JOEL GUTIERREZ ALARCON, y todas las demás personas en situación similar

ABOGADOS DEL DEMANDADO

KARI E. GIBSON (SBN 293418)
kgibson@fisherphillips.com
CHRISTINE BARAN (SBN 158603)
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Teléfono: (949) 851-2424 Oficina
Facsímil: (949) 851-0152

Abogados del demandado,
FAIRWAY LANDSCAPE & IRRIGATION, INC.

La presente Acción de Grupo y Acuerdo de Conciliación PAGA (“Acuerdo”) se realiza entre el demandante Joel Gutiérrez Alarcón (“Demandante”) y el demandado Fairway Landscape & Irrigation, Inc. (“Fairway Landscape & Irrigation, Inc.”). El Acuerdo se refiere al Demandante y al Demandado colectivamente como “Partes”, o individualmente como “Parte”.

1. DEFINICIONES.

1.1. El término “Acción” en el presente documento incluye: (1) La Acción de Grupo del Demandante y la Demanda de la Ley General de Abogados Privados (PAGA, por sus siglas en inglés) en la que se alegan violaciones de salarios y horas y sanciones civiles bajo PAGA contra Fairway Landscape & Irrigation, Inc. titulada “Joel Gutiérrez Alarcón, en nombre propio y de todas las demás personas en situación similar, y como ‘Miembro del Grupo’ en nombre de otros ‘Miembros del Grupo’, *Demandante(s)*, contra Fairway Landscape & Irrigation, Inc., una corporación de California; y DOES 1 a 50, inclusive, *Demandados*”, Caso No. CVRI2204068 iniciado el 22 de septiembre de 2022, incluidos todos y cada uno de los alegatos enmendados, pendiente en el Tribunal Superior del Estado de California, Condado de Riverside (“Acción Civil”); (2) Notificación por escrito del Demandante a la Agencia del Desarrollo del Trabajo y la Fuerza Laboral (LWDA) con fecha del 19 de septiembre de 2022 de conformidad con la Sección 2699.3 del Código Laboral de California de las disposiciones específicas del Código Laboral de California que supuestamente fueron violadas por el Demandado, LWDA-AP-3730013 (“Notificación PAGA”) y (3) la Acción de Arbitraje iniciada por el Demandante el 17 de agosto de 2023, haciendo valer las reclamaciones individuales de PAGA, así como la Primera Declaración Enmendada de Reclamaciones en Arbitraje agregando reclamaciones individuales (no salariales) contra el Demandado, Caso JAMS No. 5230000252 (Acción de Arbitraje).

1.2. “Administrador” significa Phoenix Class Action Administration Solutions, la entidad neutral que las Partes acordaron designar para administrar el Acuerdo.

1.3. “Pago de Gastos de Administración” significa el monto que se le pagará al Administrador del Monto Bruto del Acuerdo para reembolsar sus honorarios y gastos razonables de conformidad con la oferta del Administrador de “no exceder” presentada al Tribunal en relación con la Aprobación Preliminar del Acuerdo.

1.4. “Grupo” significa todos los empleados actuales o anteriores remunerados por hora o no exentos del Demandado empleados por el Demandado en California en cualquier momento durante el Período de la Acción de Grupo. Será una acción de grupo de exclusión voluntaria.

1.5. “Abogado del Grupo” se refiere a David Glenn Spivak de The Spivak Law Firm y Louis M. Benowitz de Benowitz Law Corporation.

1.6. “Pago de Honorarios del Abogado del Grupo” y “Pago de los Gastos de Litigio del Abogado del Grupo” significan los montos asignados al Abogado del Grupo para el reembolso de los honorarios y gastos razonables del abogado, respectivamente, incurridos para procesar la Acción.

1.7. “Datos del Grupo” significa la información de identificación del Miembro del Grupo en posesión del Demandado, incluyendo el nombre del Miembro del Grupo, la última dirección postal conocida, el Número de Seguro Social y el número de Semanas Laborales del Período del Grupo.

1.8. “Miembro del Grupo” o “Miembro del Grupo del Acuerdo” significa un miembro del Grupo, ya sea como Miembro del Grupo Participante o Miembro del Grupo No Participante (incluido un Miembro del Grupo No Participante que califique como Miembro del Grupo).

1.9. “Búsqueda de Direcciones de los Miembros del Grupo” significa la investigación y búsqueda por parte del Administrador de las direcciones postales actuales de los Miembros del Grupo utilizando todas las fuentes, métodos y medios razonablemente disponibles, incluyendo, entre otros, la base de datos nacional de cambio de dirección, la búsqueda de personas desaparecidas y el contacto directo del Administrador con los Miembros del Grupo.

1.10. “Notificación del Grupo” significa la NOTIFICACIÓN APROBADA POR EL TRIBUNAL DE LA CONCILIACIÓN DE LA ACCIÓN DE GRUPO Y LA FECHA DE LA AUDIENCIA PARA LA APROBACIÓN FINAL DEL TRIBUNAL, que se enviará por correo a los Miembros del Grupo en inglés con una traducción al español en el formulario, sin variaciones materiales, adjunto como Anexo A e incorporada como referencia en este Acuerdo.

1.11. “Período del Grupo” significa el período del 28 de septiembre de 2021 al 11 de octubre de 2024.

1.12. “Representante del Grupo” significa el Demandante nombrado en la Denuncia Operativa de la Acción que solicita la aprobación del Tribunal para actuar como Representante del Grupo.

1.13. “Pago por los Servicios del Representante del Grupo” significa el pago al Representante del Grupo por iniciar la Acción y proporcionar servicios en apoyo de la Acción.

1.14. “Tribunal” significa el Tribunal Superior de California, Condado de Riverside.

1.15. “Demandado” se refiere al Demandado nombrado Fairway Landscape & Irrigation, Inc.

1.16. “Abogados de la Defensa” significa Christine Baran y Kari E. Gibson de Fisher & Phillips LLP.

1.17. “Fecha de Entrada en Vigor” significa la fecha en la que han ocurrido todos los siguientes eventos: (1) el Acuerdo de Conciliación ha sido firmado por todas las Partes, el Abogado del Grupo y el Abogado del Demandado; (2) el Tribunal ha dado la aprobación preliminar al Acuerdo; (3) la Notificación del Grupo ha sido enviada por correo a los Miembros del Grupo, dándoles la oportunidad

de objetar los términos del Acuerdo del Grupo o de optar por no participar en el Acuerdo del Grupo; (4) el Tribunal ha llevado a cabo una Audiencia de Aprobación Final y ha emitido una Orden de Aprobación Final y una Sentencia; (5) han transcurrido sesenta y cinco días calendario desde que el Tribunal emitió una Orden de Aprobación Final y una Sentencia; y (6) en caso de que existan objeciones escritas al Acuerdo del Grupo presentadas antes de la Audiencia de Aprobación Final que no se retiren o denieguen posteriormente, el último de los siguientes eventos: cinco días hábiles después de que haya transcurrido el plazo para presentar apelaciones, escritos u otros procedimientos de apelación contra la Orden de Aprobación Final y Sentencia del Tribunal sin que se haya presentado ninguna apelación, escrito u otro procedimiento de apelación, o, si se ha presentado alguna apelación, escrito u otro procedimiento de apelación que se oponga a la Orden de Aprobación Final y Sentencia del Tribunal, cinco días hábiles después de que cualquier apelación, escrito u otro procedimiento de apelación que se oponga a la Orden de Aprobación Final y Sentencia del Tribunal haya sido desestimado de manera definitiva y concluyente sin derecho a interponer nuevos procedimientos o medidas.

1.18. “Aprobación Final” significa la orden del Tribunal que otorga la aprobación final del Acuerdo.

1.19. “Audiencia de Aprobación Final” significa la audiencia del Tribunal sobre la Moción de Aprobación Final del Acuerdo.

1.20. “Sentencia Final” significa la Sentencia dictada por el Tribunal al otorgar la Aprobación Final del Acuerdo. Se adjunta como Anexo F un formulario de propuesta de Sentencia Final.

1.21. “Monto Bruto del Acuerdo” significa \$250,000.00, que es el monto total que el Demandado acepta pagar según lo establecido en el Acuerdo, excepto lo dispuesto en el Párrafo 9 más adelante. El Monto Bruto del Acuerdo se utilizará para pagar los Pagos Individuales del Grupo, los Pagos Individuales de PAGA, el Pago de PAGA a la LWDA, los Honorarios del Abogado del Grupo, los Gastos del Abogado del Grupo, el Pago de los Servicios del Representante del Grupo y los Gastos del Administrador.

1.22. “Pago Individual del Grupo” significa la parte prorrateada del Miembro del Grupo Participante del Monto Neto del Acuerdo calculado según el número de Semanas Laborales trabajadas durante el Período del Grupo.

1.23. “Pago Individual de PAGA” significa la parte prorrateada del Miembro del Grupo del 25% de las Sanciones PAGA calculadas según el número de Semanas Laborales trabajadas durante el Período del Grupo.

1.24. “Sentencia” significa la sentencia dictada por el Tribunal basada en la Aprobación Final.

1.25. “LWDA” significa la Agencia de Desarrollo Laboral y de la Fuerza Laboral de California

(California Labor and Workforce Development Agency), la agencia autorizada, según la sección 2699, subsección (i) del Código Laboral.

1.26. “Pago de PAGA a la LWDA” significa el 75% de las Sanciones de PAGA pagadas a la LWDA según la sección 2699, subsección (i) del Código Laboral.

1.27. “Monto Neto del Acuerdo” significa el Monto Bruto del Acuerdo, menos los siguientes pagos en los montos aprobados por el Tribunal: Pagos Individuales de PAGA, el Pago de PAGA a la LWDA, el Pago de Servicios del Representante del Grupo, el Pago de Honorarios del Abogado del Grupo, el Pago de Gastos de Litigio del Abogado del Grupo y el Pago de Gastos de Administración. El resto se pagará a los Miembros del Grupo Participantes como Pagos Individuales del Grupo.

1.28. “Miembro del Grupo No Participante” significa todo Miembro del Grupo que opte por no participar del Acuerdo enviando al Administrador una Solicitud de Exclusión válida y oportuna.

1.29. “Paquete de Notificación” significa la Notificación del Grupo (Anexo A), el formulario de Elección de No Participar en el Acuerdo (Anexo B), el Formulario de Disputa de Semanas Laborales (Anexo C) y el formulario de Objeción (Anexo D) en inglés con traducciones al español.

1.30. “Semana Laboral” significa cualquier Semana Laboral durante la cual un Miembro del Grupo trabajó para el Demandado por lo menos un día durante el Período del Grupo.

1.31. “PAGA” significa Ley General de Abogados Privados (Código Laboral §§ 2698. *et seq.*).

1.32. “Notificación de PAGA” se refiere a la carta del Demandante del 19 de septiembre de 2022 al Demandado y a la LWDA en la que se notifica de conformidad con la sección 2699.3, subsección (a) del Código Laboral.

1.33. “Sanciones de PAGA” se refiere al monto total de las sanciones civiles de PAGA que se pagarán del Monto Bruto del Acuerdo, asignando el 25% a los Miembros del Grupo (\$6,250.00) y el 75% a la LWDA (\$18,750.00) como liquidación de las reclamaciones de PAGA.

1.34. “Miembro del Grupo Participante” significa un Miembro del Grupo que no presenta una Solicitud de Exclusión del Acuerdo válida y oportuna.

1.35. “Demandante” significa Joel Gutiérrez Alarcón, el demandante nombrado en la Acción.

1.36. “Aprobación Preliminar” significa la Orden del Tribunal que otorga la Aprobación Preliminar del Acuerdo.

1.37. “Orden de Aprobación Preliminar” significa la Orden propuesta que otorga la Aprobación Preliminar y la Aprobación del Acuerdo PAGA. Se adjunta como Anexo E una propuesta de formulario de Orden de Aprobación Preliminar.

1.38. “Reclamaciones del Grupo Exoneradas” significa las reclamaciones que se exoneran según se describe en el Párrafo 6.2 más adelante.

1.39. “Reclamaciones PAGA exoneradas” se refiere a las reclamaciones que se exoneran según se describe en el Párrafo 6.3 más adelante.

1.40. “Partes Exoneradas” significa el Demandado y cada una de sus empresas matrices pasadas, presentes y futuras, predecesores, sucesores, funcionarios, directores, empleados y agentes.

1.41. “Solicitud de Exclusión” significa la presentación por parte de un Miembro del Grupo de una solicitud por escrito para ser excluido del Acuerdo del Grupo firmada por el Miembro del Grupo. Se adjunta como Anexo B un formulario de Elección de no participar en el Acuerdo.

1.42. “Plazo de Respuesta” significa 45 días después de que el Administrador envíe por correo la Notificación a los Miembros del Grupo y a los Miembros del Grupo, y será la última fecha en la que los Miembros del Grupo podrán: (a) enviar por fax, correo electrónico o correo postal Solicitudes de Exclusión del Acuerdo, o (b) enviar por fax, correo electrónico o correo postal su Objeción al Acuerdo. Los Miembros del Grupo a quienes se les vuelvan a enviar los Paquetes de Notificación después de haber sido devueltos al Administrador como no entregados tendrán 14 días calendario adicionales después de que haya expirado el Plazo de Respuesta.

1.43. “Acuerdo” significa la disposición de la Acción efectuada por este Acuerdo y la Sentencia.

1.44. “Semana laboral” significa cualquier semana durante la cual un Miembro del Grupo trabajó para el Demandado por lo menos un día, durante el Período del Grupo.

1.45. Se adjunta como Anexo C un formulario de disputa de semana laboral.

2. CONSIDERANDOS.

2.1. El 22 de septiembre de 2022, el Demandante presentó una Acción de Grupo alegando causas de acción contra el Demandado por no pagar salarios (Código Laboral §§ 501, 1194, 1197 y 1198), por no proporcionar períodos de comida (Código Laboral §§ 226.7, 512 y 1198), por no autorizar ni permitir períodos de descanso (Código Laboral §§ 226.7 y 1198), por no indemnizar los gastos de la empresa (Código Laboral §§ 1198 y 2802), por no emitir declaraciones de salario adecuadas (Código Laboral § 226), por no pagar los salarios a tiempo (Código Laboral § 203) y por competencia desleal (Código de Negocios y Profesiones §§ 17200, *et seq.*) El 2 de diciembre de 2022, el Demandante presentó una Primera Demanda Enmendada agregando una causa de acción adicional contra el Demandado por sanciones civiles de PAGA (Código Laboral §§ 2698, *et seq.*). El 14 de diciembre de 2022, por estipulación de las Partes, el Demandante presentó una Segunda Demanda Enmendada que afirmaba las mismas reclamaciones, pero incluía una copia fiel y correcta de la Notificación de PAGA del Demandante. El 23 de marzo de 2023, el Tribunal aceptó la moción del Demandado de obligar al

arbitraje y desestimó las reclamaciones de grupo del Demandante. Únicamente a los efectos de conciliación, el 5 de diciembre de 2024, de conformidad con la estipulación de las Partes y una orden del Tribunal, el Demandante volvió a presentar las reclamaciones de grupo con la presentación de una Tercera Denuncia Enmendada (la “Denuncia Operativa”). Este Acuerdo está sujeto a la Aprobación Preliminar y Final. Si el Acuerdo no se torna definitivo y efectivo, por cualquier motivo, el hecho de que las Partes estuvieran dispuestas a estipular que se restableciera la acción de grupo no tendrá incidencia y no será admisible ni se utilizará de ninguna manera en relación con la cuestión de si la Acción debe proceder como Acción de Grupo a la luz de los acuerdos de arbitraje existentes. Si el Acuerdo no se torna definitivo y efectivo, la Acción volverá a ser únicamente una acción de PAGA que se suspenderá a la espera del arbitraje de las reclamaciones individuales del Demandante.

2.2. De conformidad con la sección 2699.3, subsección (a) del Código Laboral, el Demandante notificó oportunamente por escrito al Demandado y a la LWDA enviando la Notificación de PAGA.

2.3. El 22 de julio de 2024, las Partes participaron en una mediación que duró todo el día, dirigida por David Phillips, Esq., que dio lugar a este Acuerdo para resolver la Acción.

2.4. Antes de la mediación y la negociación del Acuerdo, el Demandante obtuvo, a través de la presentación informal de pruebas, el número de empleados comparables, el número de semanas laborales, las tasas de pago promedio, registros de los horarios de trabajo, registros de nóminas salariales, políticas por escrito e información relacionada. La investigación del Demandante fue suficiente para satisfacer los criterios para la aprobación del tribunal establecidos en *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 y *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

2.5. El Tribunal no ha otorgado la certificación del grupo.

2.6. Las Partes, el Abogado del Grupo y el Abogado de la Defensa declaran que no tienen conocimiento de ningún otro asunto o acción pendiente que haga valer las reclamaciones que se extinguirán o se verán afectadas por el Acuerdo.

3. TÉRMINOS MONETARIOS.

3.1. Monto Bruto del Acuerdo. Salvo que se disponga lo contrario en el párrafo 9 más adelante, el Demandado se compromete a pagar \$250,000.00 y no más como Monto Bruto del Acuerdo y pagar por separado todos y cada uno de los impuestos sobre la nómina del empleador adeudados en las Porciones Salariales de los Pagos Individuales del Grupo. El Demandado no tiene obligación de pagar el Monto Bruto del Acuerdo (ni ningún impuesto sobre la nómina) antes de la fecha límite establecida en el Párrafo 4.3 de este Acuerdo. El Administrador desembolsará la totalidad del Monto Bruto del Acuerdo

1 sin solicitar ni exigir a los Miembros del Grupo Participantes o a los Miembros del Grupo que presenten
2 ninguna reclamación como condición para el pago. Ninguna parte del Monto Bruto del Acuerdo revertirá
3 al Demandado.

4 3.2. Pagos procedentes del Monto Bruto del Acuerdo. Sujeto a los términos y condiciones
5 de este Acuerdo y a la aprobación final del Tribunal, el Administrador realizará y deducirá los siguientes
6 pagos del Monto Bruto del Acuerdo:

7 3.2.1. Al Demandante: Pago por Servicios de Representante del Grupo al Representante
8 del Grupo de no más de \$5,000.00 (además de cualquier Pago Individual del Grupo y cualquier Pago
9 Individual de PAGA que el Representante del Grupo tenga derecho a recibir como Miembro del Grupo
10 Participante). El Demandado no se opondrá a la solicitud del Demandante de un Pago por Servicios de
11 Representante del Grupo que no exceda este monto. Como parte de la moción para el Pago de Honorarios
12 del Abogado del Grupo y el Pago de los Gastos de Litigio del Grupo, el Demandante solicitará la
13 aprobación del Tribunal para cualquier Pago de Servicios de Representantes del Grupo a más tardar 16
14 días hábiles antes de la Audiencia de la Aprobación Final. Si el Tribunal aprueba un Pago por Servicios
15 de Representante del Grupo inferior al monto solicitado, el Administrador retendrá el resto en el Monto
16 Neto del Acuerdo. Si el Tribunal no aprueba la totalidad de la solicitud de Pagos por Servicios de
17 Representantes del Grupo, el Demandante no tendrá derecho a revocar el Acuerdo, y el demandante
18 seguirá teniendo carácter vinculante y las Partes Exoneradas no serán responsables de pagar la diferencia
19 entre el monto solicitado y el monto adjudicado. El Administrador efectuará el Pago por Servicios de
20 Representante del Grupo utilizando el Formulario 1099 del IRS. El Demandante asumirá toda la
21 responsabilidad y obligación de los impuestos adeudados sobre el Pago por Servicios de Representante
22 del Grupo.

23 3.2.2. Al Abogado del Grupo: Un Pago de Honorarios al Abogado del Grupo de no más
24 del 33.33%, que actualmente se estima en \$83,333.00 y un Pago de gastos de Litigio al Abogado del
25 Grupo de no más de \$17,500.00. El Demandado no se opondrá a las solicitudes de estos pagos siempre
26 que no excedan dichos montos. El Demandante y/o el Abogado del Grupo presentarán una moción para
27 el Pago de Honorarios del Abogado del Grupo y el Pago de Gastos del Litigio del Grupo a más tardar 16
28 días hábiles antes de la Audiencia de Aprobación Final. Si el Tribunal aprueba un Pago de Honorarios
del Abogado del Grupo y/o un Pago de Gastos de Litigio del Abogado del Grupo menor a los montos
solicitados, el Administrador asignará el resto al Monto Neto del Acuerdo. Las Partes Exoneradas no
tendrán ninguna responsabilidad ante el Abogado del Grupo ni ante ningún otro Abogado del
Demandante que surja de alguna reclamación de cualquier porción de cualquier Pago de Honorarios al
Abogado del Grupo y/o Pago de Gastos de Litigio al Abogado del Grupo. El Administrador pagará el

Pago de Honorarios del Abogado del Grupo y el Pago de los Gastos de Litigio del Abogado del Grupo utilizando uno o más formularios 1099 del IRS. El Abogado del Grupo asume toda la responsabilidad y obligación de los impuestos adeudados sobre el Pago de Honorarios del Abogado del Grupo y el Pago de Gastos de Litigio del Abogado del Grupo y exime e indemniza al Demandado de cualquier disputa o controversia relacionada a cualquier división o distribución de cualquiera de estos Pagos.

3.2.3. Al Administrador: Un Pago por Gastos de Administración que no exceda los \$7,500.00, excepto que se demuestre una causa justificada y el Tribunal lo apruebe. En la medida en que los gastos de administración sean menores o el Tribunal apruebe un pago menor a \$7,500.00, el Administrador retendrá el resto en el Monto Neto del Acuerdo. y ni el Demandado ni el Demandante serán responsables de pagar la diferencia entre el monto solicitado y el monto adjudicado.

3.2.4. A Cada Miembro del Grupo Participante: Un Pago Individual del Grupo se calcula (a) dividiendo el Monto Neto del Acuerdo por el número total de Semanas Laborales trabajadas por todos los Miembros del Grupo Participantes durante el Período del Grupo y (b) multiplicando el resultado por las Semanas Laborales de cada Miembro del Grupo Participante.

3.2.4.1. Asignación de Impuestos a los Pagos Individuales del Grupo. El 20.00% del Pago Individual del Grupo de cada Miembro Participante se asignará a la liquidación de reclamaciones salariales (la "Porción Salarial"). Las Porciones Salariales están sujetas a retención de impuestos y se declararán en un formulario W-2 del IRS. El 80.00% del Pago Individual de Cada Miembro del Grupo Participante se asignará a la liquidación de reclamaciones por intereses y sanciones (la "Porción No Salarial"). Las Porciones No Salariales no están sujetas a retenciones salariales y se declararán en los formularios 1099 del IRS. Los Miembros del Grupo Participantes asumen toda la responsabilidad y obligación de pagar los impuestos adeudados de su Pago Individual del Grupo.

3.2.4.2. Efecto de los Miembros del Grupo No Participantes en el cálculo de los Pagos Individuales del Grupo. Los Miembros del Grupo No Participantes no recibirán ningún Pago Individual del Grupo. El Administrador retendrá los montos equivalentes a sus Pagos Individuales del Grupo en el Monto Neto del Acuerdo para distribuirlos a los Miembros del Grupo Participantes de manera prorrateada.

3.2.5. A la LWDA y a los Miembros del Grupo: Las Sanciones de PAGA por un monto de \$25,000.00 que se pagará del Monto Bruto del Acuerdo, con el 75% (\$18,750.00) asignado al Pago de PAGA a la LWDA y el 25% (\$6,250.00) asignado a los Pagos Individuales de PAGA.

3.2.5.1. El Administrador calculará cada Pago Individual de PAGA (a) dividiendo el monto de la participación del 25 % de los Miembros del Grupo en las Sanciones de PAGA de \$6,250.00 por el número total de Semanas Laborales del Período del Grupo trabajadas por todos los Miembros del

Grupo durante el Período del Grupo y (b) multiplicando el resultado por las Semanas Laborales del Período del Grupo de cada Miembro del Grupo. Los Miembros del Grupo asumen toda la responsabilidad de pagar cualquier impuesto adeudado de su Pago Individual de PAGA.

3.2.5.2. Si el Tribunal aprueba Sanciones de PAGA menores al monto solicitado, el Administrador asignará el resto al Monto Neto del Acuerdo. El Administrador informará de los Pagos Individuales de PAGA en los Formularios 1099 del IRS.

4. FINANCIACIÓN Y PAGOS DEL ACUERDO.

4.1. Semanas Laborales del Grupo. Basándose en una revisión de sus registros al 22 de julio de 2024, el Demandado estima que hay 123 Miembros del Grupo que colectivamente trabajaron un total de 10,245 Semanas Laborales.

4.2. Datos del Grupo. A más tardar 15 días después de que el Tribunal otorgue la Aprobación Preliminar del Acuerdo, el Demandado entregará simultáneamente los Datos del Grupo al Administrador, en formato de una hoja de cálculo de Microsoft Excel. Para proteger los derechos de privacidad de los Miembros del Grupo, el Administrador deberá mantener la confidencialidad de los Datos del Grupo, utilizarlos únicamente para los fines del presente Acuerdo y para ningún otro propósito, y restringir el acceso a los Datos del Grupo a los empleados del Administrador que necesiten acceder a los Datos del Grupo para llevar a cabo y cumplir lo dispuesto en el presente Acuerdo. El Demandado tiene el deber continuo de notificar inmediatamente al Abogado del Grupo si tiene conocimiento de que los Datos del Grupo omiten información de identificación de los miembros del Grupo y de proporcionar Datos del Grupo corregidos o actualizados tan pronto como sea razonablemente posible. Sin ninguna extensión del plazo en el que el Demandado debe enviar los Datos del Grupo al Administrador, las Partes y sus abogados harán todo lo posible de manera expedita, de buena fe, para reconstruir o resolver cualquier problema relacionado con los Datos del Grupo faltantes u omitidos.

4.3. Financiación del Monto Bruto del Acuerdo. El Demandado financiará íntegramente el Monto Bruto del Acuerdo, y también financiará los montos necesarios para pagar íntegramente la participación del Demandado de los impuestos sobre la nómina (sujeto a que el Administrador proporcione el monto adeudado por el Demandado por dichos impuestos sobre la nómina) transmitiendo los fondos al Administrador a más tardar 14 días después de la Fecha de Entrada en Vigor.

4.4. Pagos del Monto Bruto del Acuerdo. En el plazo de 14 días después de que el Demandado financie el Monto Bruto del Acuerdo, el Administrador enviará por correo los cheques correspondientes a todos los Pagos Individuales del Grupo, todos los Pagos Individuales de PAGA, el Pago de PAGA a la LWDA, el Pago de Gastos de Administración, el Pago de Honorarios del Abogado

del Grupo, el Pago de Gastos de Litigio del Abogado del Grupo y el Pago por Servicios de Representante del Grupo. El desembolso del Pago de Honorarios del Abogado del Grupo, el Pago de Gastos de Litigio del Abogado del Grupo y el Pago por Servicios de Representante del Grupo no precederán al desembolso de los Pagos Individuales del Grupo y los Pagos Individuales de PAGA.

4.4.1. El Administrador emitirá los cheques de los Pagos Individuales del Grupo y/o los Pagos Individuales de PAGA y los enviará a los Miembros del Grupo mediante Correo de Primera Clase de Estados Unidos, con franqueo prepago. En el anverso de cada cheque se indicará de forma destacada la fecha (no menos de 180 días después de la fecha de envío) en que se anulará el cheque. El Administrador cancelará todos los cheques no cobrados antes de la fecha de anulación. El Administrador enviará los cheques correspondientes a los Pagos Individuales del Acuerdo a todos los Miembros del Grupo Participantes (incluyendo a los miembros cuyo Paquete de Notificación haya sido devuelto sin entregar). El Administrador enviará los cheques correspondientes a los Pagos Individuales de PAGA a todos los Miembros del Grupo, incluyendo a los Miembros del Grupo No Participantes que reúnan los requisitos para ser considerados como Miembros del Grupo (incluyendo a los miembros cuyo Paquete de Notificación haya sido devuelto sin entregar). El Administrador puede enviar a los Miembros del Grupo Participantes un solo cheque que combine el Pago Individual del Grupo y el Pago Individual de PAGA. Antes de enviar cualquier cheque, el Administrador debe actualizar las direcciones postales de los destinatarios utilizando la Base de Datos Nacional de Cambio de Dirección.

4.4.2. El Administrador debe realizar una Búsqueda de Dirección de los Miembros del Grupo para todos los demás Miembros del Grupo cuyos cheques sean devueltos sin entregar sin una dirección de reenvío de USPS. En un plazo de 7 días de recibir un cheque devuelto, el Administrador deberá volver a enviar los cheques a la dirección de reenvío de USPS proporcionada o a una dirección determinada a través de la Búsqueda de Direcciones de los Miembros del Grupo. El Administrador no necesitará tomar medidas adicionales para entregar los cheques a los Miembros del Grupo cuyos cheques reenviados sean devueltos como no entregados. El Administrador enviará de inmediato un cheque de reemplazo a cualquier Miembro del Grupo cuyo cheque original se haya perdido o extraviado, si así lo solicita el Miembro del Grupo antes de la fecha de anulación.

4.4.3. Para los Miembros del Grupo cuyo cheque de Pago Individual del Grupo o cheque de Pago Individual de PAGA no se haya cobrado y se haya cancelado después de la fecha de anulación, el Administrador transmitirá los fondos representados por dichos cheques al Fondo de Propiedad No Reclamada del Contralor de California a nombre del Miembro del Grupo, con lo cual no quedará ningún “saldo sin pagar” sujeto a los requisitos de la Sección 384, subsección (b) del Código de Procedimiento Civil de California.

4.4.4. El pago de los Pagos Individuales del Grupo y Pagos Individuales de PAGA no obligará al Demandado a conferir ningún beneficio adicional ni a realizar ningún pago adicional a los Miembros del Grupo (como contribuciones 401(k) o bonificaciones) más allá de los que se especifican en este Acuerdo.

5. [OMITIDO]

6. EXONERACIÓN DE RECLAMACIONES. A partir de la fecha en que el Demandado financie en su totalidad el Monto Bruto del Acuerdo y financie todos los impuestos sobre la nómina de empleador adeudados sobre la Porción Salarial de los Pagos Individuales del Grupo, el Demandante, los Miembros del Grupo y el Abogado del Grupo exonerarán las reclamaciones contra todas las Partes Exoneradas de la siguiente manera:

6.1 Exoneración del Demandante. El Demandante y sus respectivos cónyuges anteriores y actuales, representantes, agentes, abogados, herederos, administradores, sucesores y cesionarios en general, liberan y exoneran a las Partes Exoneradas de todos los cargos, denuncias, reclamaciones, deudas, responsabilidades, promesas, acuerdos, controversias, acciones, juicios, derechos, demandas, obligaciones, garantías, costos, pérdidas, sanciones, gastos, honorarios de abogados, daños y perjuicios, transacciones, sucesos o causas de acción de cualquier tipo o naturaleza, conocidas o desconocidas, sospechadas o insospechadas, afirmadas o no afirmadas, o que pudieran haberse afirmado, ocurridas durante el Período del Grupo, que el Demandante, en cualquier momento antes de firmar el presente Acuerdo, tenía o afirmaba tener o podía tener, incluyendo, entre otras: (a) todas las reclamaciones basadas en las alegaciones fácticas y los estatutos afirmados o que podrían haberse afirmado en la Acción y la Denuncia Operativa, incluyendo el no pagar salarios (Código Laboral §§ 501, 1194, 1197 y 1198), no proporcionar períodos de comida (Código Laboral §§ 226.7, 512 y 1198), no autorizar ni permitir períodos de descanso (Código Laboral §§ 226.7 y 1198), no indemnizar los gastos de la empresa (Código Laboral §§ 1198 y 2802), no emitir declaraciones de salario adecuadas (Código Laboral § 226), no pagar los salarios a tiempo (Código Laboral § 203) y competencia desleal (Código de Negocios y Profesiones §§ 17200, *et seq.*) o determinadas durante la Acción y exoneradas de conformidad con el párrafo 6.2, de este Acuerdo y (b) todas las reclamaciones PAGA basadas en las alegaciones fácticas y los estatutos afirmados o que podrían haberse afirmado en la Acción, la Denuncia Operativa, la Notificación de PAGA del Demandante, o constatadas durante la Acción y exoneradas según el párrafo 6.3, de este Acuerdo. (“Exención del Demandante”). La Exoneración del Demandante no se extiende a ninguna reclamación o acción para hacer cumplir este Acuerdo, ni a ninguna reclamación por beneficios adquiridos, beneficios por desempleo, beneficios por discapacidad, beneficios del seguro social, beneficios de compensación de trabajadores que surgieron en cualquier momento o se basaron en sucesos que no se produjeron

1 durante el Período del Grupo. El Demandante reconoce que puede descubrir leyes o hechos diferentes o
2 adicionales a las leyes o hechos que ahora conoce o cree que son verdaderos, pero acepta, no obstante,
3 que la Exoneración del Demandante será y seguirá siendo efectiva en todos los aspectos, a pesar de dichos
4 hechos diferentes o adicionales o del hallazgo de los mismos por parte del Demandante.

5 6.1.1 Renuncia del demandante a sus derechos de conformidad a la sección 1542 del
6 Código Civil de California. A los efectos de la exoneración del Demandante, el Demandante renuncia y
7 cede expresamente las disposiciones, derechos y beneficios, si los hubiera, de la sección 1542 del Código
8 Civil de California, que dice:

9 **Una exoneración general no se extiende a las reclamaciones que el acreedor o la parte**
10 **exonerante no conoce o sospecha que existen a su favor al momento de suscribir la**
11 **exoneración, y que, de haberlas conocido, habrían afectado sustancialmente su acuerdo con**
12 **el deudor o la Parte Exonerada.**

13 6.2 Exoneración por parte de los Miembros del Grupo Participantes: El Demandante y todos
14 los Miembros del Grupo Participantes, en nombre propio y en el de sus respectivos representantes,
15 agentes, abogados, herederos, administradores, sucesores y cesionarios anteriores y actuales, liberan y
16 exoneran a las Partes Exoneradas, por la duración del Período del Grupo, de las reclamaciones basadas
17 en las alegaciones fácticas y los estatutos afirmados o que podrían haberse afirmado en la Acción y la
18 Denuncia Operativa, incluyendo no pagar salarios, incluyendo las reclamaciones por trabajo no
19 registrado o fuera de horario y no pagar el pago por enfermedad, pago de vacaciones y/o horas extras a
20 la tasa de pago regular (Código Laboral §§ 501, 1194, 1197 y 1198), no pagar la compensación por horas
21 extras, no proporcionar períodos de comida (Código Laboral §§ 226.7, 512 y 1198), no autorizar ni
22 permitir períodos de descanso (Código Laboral §§ 226.7 y 1198), no pagar salarios premium por período
23 de comida; (7) no pagar salarios premium por período de descanso; no indemnizar los gastos de la
24 empresa (Código Laboral §§ 1198 y 2802), no emitir declaraciones de salario adecuadas (Código Laboral
25 § 226, no pagar los salarios a tiempo (Código Laboral § 203), no mantener registros de nómina precisos
26 y competencia desleal (Código de Negocios y Profesiones §§ 17200, *et seq.*), y sanciones asociadas, ya
27 sean de naturaleza civil o estatutaria, intereses, honorarios de abogados y costos o cualquier otro daño
28 asociado, y todas las demás supuestas violaciones del Código Laboral y del Código de Negocios y
Profesiones, sección 17200, *et seq.* Salvo lo establecido en el párrafo 6.3 de este Acuerdo, los Miembros
del Grupo Participantes no renuncian a ninguna otra reclamación, incluidas reclamaciones por beneficios
adquiridos, despido injustificado, violación de la Ley de Empleo y Vivienda Justos, seguro de desempleo,
discapacidad, seguro social, compensación de los trabajadores o reclamaciones basadas en hechos que

1 ocurrieron fuera del Período del Grupo.

2 6.3 Exoneración de la Reclamación de PAGA por Parte de los Miembros del Grupo. El
3 Demandante y los Miembros del Grupo liberan y exoneran para siempre, por la duración del Período del
4 Grupo, de todas las reclamaciones por sanciones civiles que podría haber solicitado el Comisionado
5 Laboral de conformidad con PAGA basándose en las alegaciones fácticas y los estatutos afirmados o que
6 podrían haberse afirmado en la Acción, la Denuncia Operativa y la Notificación de PAGA del
7 Demandante. La exoneración de las reclamaciones de PAGA también incluye una exoneración del estado
8 de California (en la medida en que se le permita al Demandante proporcionar dicha exoneración para el
9 estado de California durante el Período del Grupo).

10 **7. MOCIÓN DE APROBACIÓN PRELIMINAR.** Las Partes acuerdan preparar y presentar
11 conjuntamente una moción de aprobación preliminar (“Moción de Aprobación Preliminar”) que cumpla
12 con la lista de verificación actual del Tribunal para Aprobaciones Preliminares. Se adjunta como Anexo
13 E un formulario de Orden de Aprobación Preliminar.

14 7.1 Responsabilidades del Demandante. El Demandante preparará y entregará al Abogado
15 de la Defensa todos los documentos necesarios para obtener la Aprobación Preliminar, incluyendo: (i)
16 una propuesta de la notificación y un memorando de apoyo a la Moción para la Aprobación Preliminar
17 de este Acuerdo que incluya un análisis del Acuerdo de conformidad con *Dunk/Kullar* y una orden que
18 certifique condicionalmente el Grupo sólo para propósitos del acuerdo; (ii) una redacción de la propuesta
19 de la Orden que otorgue Aprobación Preliminar y la Aprobación del Acuerdo; (iii) una redacción de la
20 propuesta del Paquete de Notificación; (iv) una declaración firmada por el Administrador adjuntando su
21 oferta de “no exceder” para administrar el Acuerdo y certificando su voluntad de servicio; competencia;
22 procedimientos operativos para proteger la seguridad de los Datos del Grupo; montos de la cobertura de
23 seguro para cualquier violación de datos, malversación de fondos u otra mala conducta; todos los hechos
24 relevantes a cualquier conflicto de intereses real o potencial con los Miembros del Grupo; y la naturaleza
25 y el alcance de cualquier relación financiera con el Demandante, el Abogado del Grupo o el Abogado de
26 la Defensa; (v) una declaración firmada por el Demandante en la que confirme su voluntad y competencia
27 para servir y divulgar todos los hechos relevantes a cualquier conflicto de intereses real o potencial con
28 los Miembros del Grupo, y/o el Administrador; (v) una declaración firmada por cada uno de los
Abogados del Grupo certificando su competencia para representar a los Miembros del Grupo; la
transmisión oportuna a la LWDA de todos los documentos de PAGA necesarios (notificación inicial de
violaciones (Código Laboral, sección 2699.3, subsección (a)), Denuncia Operativa (Código Laboral,

sección 2699, subsección (l)(1)), este Acuerdo (Código Laboral, sección 2699, subsección (l)(2)); y (vii) todos los hechos relevantes a cualquier conflicto de intereses real o potencial con los Miembros del Grupo y el Administrador. En sus Declaraciones, el Demandante y el Abogado del Grupo deberán afirmar que no tienen conocimiento de ningún otro asunto o acción pendiente que haga valer reclamaciones que se extinguirán o se verán afectadas negativamente por el Acuerdo.

7.2 Responsabilidades del Abogado. El Abogado del Grupo y los Abogados de la Defensa son responsables conjuntamente de finalizar y presentar rápidamente la Moción de Aprobación Preliminar a más tardar 30 días después de que se haya firmado por completo de este Acuerdo; de obtener una fecha de audiencia rápida para la Moción de Aprobación Preliminar; y de comparecer ante el Tribunal para abogar a favor de la Moción de Aprobación Preliminar. El Abogado el Grupo es responsable de entregar la Aprobación Preliminar del Tribunal al Administrador.

7.3 Deber de Cooperación. Si las Partes no están conformes con algún aspecto de la Moción de Aprobación Preliminar propuesta y/o las declaraciones y documentos de apoyo, el Abogado del Grupo y los Abogados de la Defensa colaborarán de forma expedita en nombre de las Partes por teléfono y de buena fe, para resolver el desacuerdo.

8. ADMINISTRACIÓN DE LIQUIDACIONES.

8.1 Selección de Administrador. Las Partes han seleccionado conjuntamente a Phoenix Class Action Administration Solutions para que actúe como Administrador y han verificado que, como condición de su nombramiento, Phoenix Class Action Administration Solutions acepta quedar vinculada por este Acuerdo y desempeñar, como fiduciario, todas las funciones especificadas en este Acuerdo a cambio del pago de los Gastos de Administración. Las Partes y sus Abogados declaran que no tienen ningún interés o relación, financiera o de otro tipo, con el Administrador, salvo una relación profesional que surge de experiencias anteriores en la administración de acuerdos.

8.2 Número de Identificación Patronal. El Administrador deberá tener y utilizar su propio Número de Identificación Patronal para efectos de calcular las retenciones de impuestos sobre la nómina y proporcionar informes a las autoridades fiscales estatales y federales.

8.3 Fondo de Liquidación Calificado. El Administrador deberá establecer un fondo de liquidación que cumpla con los requisitos de un Fondo de Liquidación Calificado (“QSF”, por sus siglas en inglés) de conformidad con la sección 468B-1 del Reglamento del Tesoro de los Estados Unidos.

8.4 Notificación a los Miembros del Grupo.

8.4.1 En un plazo de tres (3) días hábiles después de recibir los Datos del Grupo, el Administrador deberá notificar al Abogado del Grupo que ha recibido la lista e indicará el número de Miembros del Grupo y las Semanas Laborales que figuran en los Datos del Grupo.

8.4.2 Haciendo todo lo posible para realizarlo lo antes posible, y en ningún caso más de 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 del correo de primera clase del Servicio Postal de los Estados Unidos (“USPS”), el Paquete de Notificación con traducción al español, si corresponde, sustancialmente en los formularios adjuntos a este Acuerdo como **Anexos A, B, C y D**. En la a primera página del Notificación del Grupo deberá estimar de manera destacada los montos en dólares de cualquier Pago Individual del Grupo al Miembro del Grupo Participante y/o el Pago Individual de PAGA pagadero al Miembro del Grupo, y el número de Semanas Laborales (si corresponde) utilizadas para calcular estos montos. Antes de enviar por correo los Paquetes de Notificación, el Administrador deberá actualizar las direcciones de los Miembros del Grupo utilizando la base de datos Nacional de Cambio de Dirección.

8.4.3 En un plazo de 3 días hábiles después de que el Administrador reciba algún Paquete de Notificación devuelto por USPS como no entregado, el Administrador deberá volver a enviar por correo el Paquete de Notificación utilizando la dirección de reenvío proporcionada por USPS. Si USPS no proporciona una dirección de reenvío, el Administrador realizará una búsqueda de dirección de los Miembros del Grupo y volverá a enviar por correo el Paquete de Notificación a la dirección más actualizada obtenida. El Administrador no tiene obligación de realizar intentos adicionales para localizar o enviar el Paquete de Notificación a los Miembros del Grupo cuyo Paquete de Notificación haya sido devuelto por USPS por segunda vez.

8.4.4 Los plazos para las objeciones por escrito de los Miembros del Grupo, las Impugnaciones de las Semanas Laborales (disputas) y las Solicitudes de Exclusión se ampliarán 14 días más además del plazo de los 45 días previstos en la Notificación del Grupo para todos los Miembros del Grupo cuya notificación se vuelva a enviar por correo. El Administrador informará al Miembro del Grupo de la ampliación del plazo con el Paquete de Notificación enviado nuevamente por correo.

8.4.5 Si el Administrador, el Demandado o el Abogado del Grupo son contactados o descubren de alguna otra manera a personas que creen que deberían haber sido incluidas en los Datos del Grupo y deberían haber recibido el Paquete de Notificación, las Partes se reunirán y consultarán rápidamente por teléfono y de buena fe, en un esfuerzo por acordar si incluirlas como Miembros del Grupo. Si las Partes así lo deciden, dichas personas serán Miembros del Grupo con los mismos derechos que los demás Miembros del Grupo, y el Administrador les enviará, por correo electrónico o entrega de un día para el otro, una Notificación del Grupo en las que se les solicitará que ejerzan las opciones previstas en el presente Acuerdo en un plazo de 14 días después de recibir la Notificación del Grupo, o de los plazos indicados en la Notificación del Grupo, el que sea primero.

8.5 Solicitudes de Exclusión (Opt-Outs).

1 8.5.1 Los Miembros del Grupo que deseen excluirse (optar por no participar) del
2 Acuerdo del Grupo deben enviar al Administrador, por fax, correo electrónico o correo postal, una
3 Solicitud de Exclusión por escrito y firmada en un plazo máximo de 45 días después de que el
4 Administrador envíe por correo el Paquete de Notificación (más 14 días adicionales para los Miembros
5 del Grupo cuyo Paquete de Notificación se vuelva a enviar por correo). Una Solicitud de Exclusión es
6 una carta de un Miembro del Grupo o su representante que comunica razonablemente la elección del
7 Miembro del Grupo de ser excluido del Acuerdo e incluye el nombre, la dirección y la dirección de correo
8 electrónico o el número de teléfono del Miembro del Grupo y los últimos cuatro dígitos del número de
9 seguro social del Miembro del Grupo. Para que sea válida, una Solicitud de Exclusión debe estar firmada
10 por el Miembro del Grupo o su representante y enviada oportunamente por fax, correo electrónico o con
11 el sello postal y entregada al Administrador antes del Plazo de Respuesta. Se puede utilizar para este
propósito el formulario de Elección de No Participar en el Acuerdo, adjunto como Anexo B, pero no es
obligatorio.

12 8.5.2 Una Solicitud de Exclusión no será válida si no se presenta a tiempo (*por ejemplo,*
13 con el sello postal en o antes del Plazo de Respuesta), si no está firmada por el Miembro del Grupo y/o
14 no contiene el nombre y la dirección del Miembro del Grupo.

15 8.5.3 Los Miembros del Grupo que no presenten los Formularios de Exclusión válidos
16 y a tiempo serán incluidos automáticamente del Acuerdo y se convertirán en Miembros del Grupo
17 Participantes al vencimiento del Plazo de Respuesta. Cada Miembro del Grupo Participante estará
18 obligado a cumplir con todos los términos del Acuerdo y con la Sentencia Final dictada en esta Acción
19 si el Acuerdo es finalmente aprobado por el Tribunal y entra en vigor, incluyendo las Exoneraciones de
20 los Miembros del Grupo Participantes según los párrafos 6.2 y 6.3 de este Acuerdo y recibirá un Pago
21 Individual del Grupo independientemente de si el Miembro del Grupo Participante ha objetado al
22 Acuerdo. Si existe alguna duda sobre la autenticidad de un Formulario de Exclusión firmado, el
Administrador podrá exigir pruebas adicionales de la identidad del Miembro del Grupo. La
determinación de autenticidad del Administrador será definitiva y no será apelable ni susceptible de
impugnación.

23 8.5.4 Todo Miembro del Grupo que presente una Solicitud de Exclusión válida y
24 oportuna es un Miembro del Grupo No Participante y no recibirá un Pago Individual del Grupo ni tendrá
25 derecho a objetar los componentes de Acción de Grupo del Acuerdo. Nada de lo dispuesto en este
26 Acuerdo constituirá ni se interpretará como una renuncia a cualquier defensa que el Demandado o las
27 Partes Exoneradas tengan o puedan presentar contra cualquier persona que presente oportunamente un
28 Formulario de Exclusión. No obstante lo anterior, las Partes acuerdan que no existe ningún derecho legal

ni de otra índole para que un Miembro del Grupo opte por no participar o se excluya de alguna manera de la porción de PAGA del Acuerdo, lo que libera las reclamaciones de PAGA. Un Miembro del Grupo que presente una solicitud de exclusión válida y oportuna seguirá recibiendo su parte del Pago Individual de PAGA y liberará las reclamaciones de PAGA como se establece en el Párrafo 6.3.

8.6 Impugnación del Cálculo de las Semanas Laborales. Cada Miembro del Grupo dispondrá de 45 días después de que el Administrador envíe por correo el Paquete de Notificación (más 14 días adicionales para los Miembros del Grupo cuyo Paquete de Notificación se vuelva a enviar por correo) para impugnar el número de Semanas Laborales del Grupo (si las hubiera) asignadas al Miembro del Grupo en la Notificación del Grupo. Esto también se conoce como disputa. Se puede utilizar para este propósito el formulario de disputa de Semanas Laborales, adjunto como Anexo C, pero no es obligatorio. El Miembro del Grupo puede impugnar la asignación comunicándose con el Administrador por fax, correo electrónico o correo postal. El Administrador debe alentar al Miembro del Grupo impugnante a presentar documentación acreditativa. En ausencia de documentación contraria, el Administrador tiene derecho a presumir que las Semanas Laborales contenidas en la Notificación del Grupo son correctas siempre que sean consistentes con los Datos del Grupo. La determinación del Administrador sobre la asignación de Semanas Laborales a cada Miembro del Grupo será definitiva e inapelable o susceptible de impugnación. El Administrador deberá proporcionar prontamente copias de todas las impugnaciones al cálculo de las Semanas Laborales a los Abogados de la Defensa y al Abogado del Grupo, y la determinación del Administrador sobre las impugnaciones.

8.7 Objeciones al Acuerdo.

8.7.1 Sólo los Miembros del Grupo Participantes pueden objetar a los componentes de la Acción de Grupo del Acuerdo y/o este Acuerdo, incluyendo impugnar la imparcialidad del Acuerdo y/o los montos solicitados para el Pago de Honorarios del Abogado del Grupo, el Pago de Gastos de Litigio del Abogado del Grupo y/o el Pago por Servicios de Representante del Grupo.

8.7.2 Los Miembros del Grupo Participantes pueden enviar objeciones por escrito al Administrador, por fax, correo electrónico o correo postal. Como alternativa, los Miembros del Grupo Participantes pueden comparecer ante el Tribunal (o contratar a un abogado para que comparezca ante el Tribunal) para presentar objeciones verbales en la Audiencia de Aprobación Final. Los Miembros del Grupo Participantes que elijan enviar una objeción por escrito al Administrador deberán hacerlo en un plazo de 45 días después de que el Administrador haya enviado por correo el Paquete de Notificación (más 14 días adicionales para los Miembros del Grupo cuyo Paquete de Notificación haya sido enviado nuevamente por correo). Se puede utilizar para este propósito, el formulario de objeción adjunto como Anexo D, pero no es obligatorio. No obstante la forma, para que una objeción sea válida, debe: (i) estar

firmada por el Miembro del Grupo que presenta la objeción o su representante legal; (ii) incluir el nombre completo, la dirección, el número de teléfono y los últimos cuatro dígitos del Número de Seguro Social del Miembro del Grupo que presenta la objeción; (iii) incluir las palabras “Notificación de Objeción” u “Objeción Formal”; (iv) indicar el nombre del caso y el número de caso de la Acción; (v) incluir todos y cada uno de los documentos justificativos, informes, pruebas escritas y/u otra evidencia; y (5) tener el sello del correo postal antes que finalice el Plazo de Respuesta.

8.7.3 Los Miembros del Grupo No Participantes no tienen derecho a objetar ninguno de los componentes de la Acción de Grupo del Acuerdo.

8.7.4 Si un Miembro del Grupo se opone a este Acuerdo, seguirá siendo Miembro del Grupo. Además, si el Tribunal otorga la aprobación final del Acuerdo, el Miembro del Grupo deberá cumplir con los términos del Acuerdo y con cualquier Orden de Aprobación Final y Sentencia Final.

8.7.5 El Administrador del Acuerdo enviará todas las objeciones a los abogados de las Partes. El Abogado del Grupo será responsable de presentar las objeciones ante el Tribunal antes de la Audiencia de Aprobación Final. El Abogado del Grupo y los Abogados de la Defensa podrán responder por escrito a cualquier objeción debidamente presentada a más tardar nueve (9) días hábiles antes de la Audiencia de Aprobación Final.

8.7.6 Si un Miembro del Grupo presenta un Formulario de Exclusión y una objeción por escrito al Administrador antes del Plazo de Respuesta, el Administrador del Acuerdo primero intentará comunicarse con este Miembro del Grupo para determinar si tenía la intención de presentar sólo el Formulario de Exclusión o una objeción por escrito. Si el Administrador del Acuerdo no puede comunicarse con el Miembro del Grupo en un plazo de diez (10) días calendario de recibir el Formulario de Exclusión y la objeción por escrito, o si el Miembro del Grupo no responde al Administrador del Acuerdo dentro de los diez (10) días calendario de ser contactado, entonces los formularios se considerarán no válidos y el Miembro del Grupo será incluido en el Acuerdo, recibirá un Pago Individual del Grupo y estará sujeto a todos los términos y condiciones del Acuerdo, incluidas las exoneraciones estipuladas en los párrafos 6.2 y 6.3.

8.8 Deberes del Administrador. El Administrador tiene el deber de realizar o acatar todas las diligencias que debe realizar o acatar establecidas en este Acuerdo o en otras disposiciones.

8.8.1 Sitio web, dirección de correo electrónico y número gratuito. El Administrador establecerá, mantendrá y utilizará un sitio web en Internet para publicar información de interés para los Miembros del Grupo, incluyendo la fecha, hora y lugar de la Audiencia de Aprobación Final y copias del Acuerdo de Conciliación, la Moción de Aprobación Preliminar, la Aprobación Preliminar, el Paquete de Notificación, la Moción de Aprobación Final, la Moción de Pago de Honorarios al Abogado del

Grupo, el Pago de Gastos de Litigio al Abogado del Grupo y el Pago por Servicios de Representante del Grupo, la Aprobación Final y la Sentencia. El Administrador también mantendrá y supervisará una dirección de correo electrónico y un número de teléfono gratuito para recibir llamadas, faxes y correos electrónicos de los Miembros del Grupo.

8.8.2 Solicitudes de Exclusión (opt-outs) y Lista de Exclusión. El Administrador revisará de forma expedita y continua las Solicitudes de Exclusión para determinar su validez. A más tardar 5 días después del vencimiento de la fecha límite para presentar Solicitudes de Exclusión, el Administrador enviará por correo electrónico una lista al Abogado del Grupo y a los Abogados de la Defensa que contenga (a) los nombres y otra información de identificación de los Miembros del Grupo que hayan presentado a tiempo Solicitudes de Exclusión válidas (“Lista de Exclusión”); (b) los nombres y otra información de identificación de los Miembros del Grupo que hayan presentado Solicitudes de Exclusión no válidas; (c) copias de todas las Solicitudes de Exclusión del Acuerdo presentadas (ya sean válidas o no válidas).

8.8.3 Informes Semanales. El Administrador debe, semanalmente, proporcionar informes por escrito al Abogado del Grupo y a los Abogados de la Defensa que, entre otras cosas, detallen el número de: Paquetes de Notificación enviados o reenviados, Paquetes de Notificación devueltos sin entregar, Solicitudes de Exclusión (válidas o no válidas) recibidas, objeciones recibidas, impugnaciones a las Semanas Laborales recibidas y/o resueltas, y cheques enviados por correo para los Pagos Individuales del Grupo y Pagos Individuales de PAGA (“Informe Semanal”). Los Informes Semanales deben incluir la evaluación del Administrador sobre la validez de las Solicitudes de Exclusión y adjuntar copias de todas las Solicitudes de Exclusión y objeciones recibidas.

8.8.4 Impugnaciones de las Semanas Laborales. El Administrador está facultado para resolver y adoptar decisiones finales, de conformidad con los términos del presente Acuerdo, sobre todas las impugnaciones de los Miembros del Grupo sobre el cálculo de las Semanas Laborales. La decisión del Administrador será definitiva y no será apelable ni susceptible de impugnación.

8.8.5 Declaración del Administrador. A más tardar 14 días antes de la fecha en la que el Demandante deba presentar la Moción para la Aprobación Final del Acuerdo, el Administrador proporcionará al Abogado del Grupo y a los Abogados de la Defensa, una declaración firmada, apta para su presentación ante el Tribunal que certifique su debida diligencia y el cumplimiento de todas sus obligaciones de conformidad con el presente Acuerdo, incluyendo, entre otros, el envío por correo de los Paquetes de Notificación, los Paquetes de Notificación devueltos como no entregados, el reenvío por correo de los Paquetes de Notificación, los intentos de localizar a los Miembros del Grupo, el número total de Solicitudes de Exclusión del Acuerdo que recibió (válidas y no válidas), el número de objeciones

por escrito y adjuntará la Lista de Exclusiones. El Administrador complementará su declaración según sea necesario o solicitado por las Partes y/o el Tribunal. El Abogado del Grupo es responsable de presentar las declaraciones del Administrador ante el Tribunal.

8.8.6 Informe Final del Administrador. En un plazo de 10 días después de que el Administrador desembolse todos los fondos del Monto Bruto del Acuerdo, el Administrador proporcionará al Abogado del Grupo y a los Abogados de la Defensa un informe final detallando sus desembolsos por número de identificación de empleado únicamente de todos los pagos realizados de conformidad con el presente Acuerdo. Por lo menos 15 días antes de cualquier plazo establecido por el Tribunal, el Administrador preparará y presentará al Abogado del Grupo y a los Abogados de la Defensa una declaración firmada apta para su presentación ante el Tribunal que certifique el desembolso de todos los pagos requeridos de conformidad con el presente Acuerdo. El Abogado del Grupo es responsable de presentar la declaración del Administrador ante el Tribunal.

9. ESTIMACIONES DE TAMAÑO DEL GRUPO Y CLÁUSULA DE REAJUSTE. La mejor estimación del Demandado para el número de Semanas Laborales hasta el 22 de julio de 2024 es de aproximadamente 10,245 Semanas Laborales. En caso de que el número de Semanas Laborales durante el Período del Grupo aumente en más del 10%, o más de 11,270 Semanas Laborales trabajadas, entonces el Demandado deberá, a su opción, (a) aumentar el Monto Bruto del Acuerdo proporcionalmente por las Semanas Laborales que excedan el 10%; o (b) limitar el Período del Grupo a partir de la fecha en que el número de Semanas Laborales alcance, pero no supere el 10%. Según la opción (a), un aumento de más del 10% significará que, si el número de Semanas Laborales aumenta en más del 10% durante el Período del Grupo, el Monto Bruto del Acuerdo aumentará proporcionalmente por encima del aumento del 10%. Por ejemplo, si el número de Semanas Laborales aumenta en un 11% durante el Período del Grupo, y el Demandado elige la opción (a) establecida anteriormente, entonces el Monto Bruto del Acuerdo aumentará en un 1%.

10. DERECHO DEL DEMANDADO A RETIRARSE. Sin perjuicio de cualquier otra disposición de este Acuerdo, el Demandado conservará el derecho, en el ejercicio de su exclusiva discreción, de retirarse unilateralmente y dar por terminado el Acuerdo a más tardar cinco (5) días hábiles antes de la fecha de la Audiencia de Aprobación Final si los Miembros del Grupo que representan más de un total agregado del 10% de las Semanas Laborales verificadas optan por no participar en el presente Acuerdo. En tal caso, el Demandado será el único responsable de los costos de administración del Acuerdo del Administrador independiente hasta la fecha. En caso de que el Demandado se retire, ninguna de las

partes podrá utilizar el hecho de que las Partes acordaron el Acuerdo por ningún motivo. Además, el Demandado y el Demandante conservarán el derecho, en el ejercicio de su exclusiva discreción, de retirarse unilateralmente y dar por terminado el presente Acuerdo si el Tribunal realiza u ordena cambios materiales a los términos básicos del Acuerdo. Los términos básicos del Acuerdo incluyen la cantidad del Monto Bruto del Acuerdo; el período de tiempo de las Reclamaciones Exoneradas del Grupo; el Período de PAGA o el Grupo incluido; la Cláusula de Reajuste; y/o la respectiva Opción de las Partes para Revocar el Acuerdo como se establece en este documento.

11. MOCIÓN PARA APROBACIÓN FINAL. A más tardar 16 días hábiles antes de la Audiencia de Aprobación Final programada, el Demandante presentará ante el Tribunal una moción para la aprobación final del Acuerdo que incluye una solicitud de aprobación del acuerdo PAGA de conformidad con la sección 2699, subsección (I) del Código Laboral, una Propuesta de Orden de Aprobación Final y una propuesta de Sentencia (colectivamente “Moción para la Aprobación Final”). El Demandante proporcionará propuestas preliminares de estos documentos a los Abogados de la Defensa a más tardar 7 días antes de presentar la Moción de Aprobación Final. El Abogado del Grupo y los Abogados de la Defensa se reunirán y consultarán de manera expedita en persona o por teléfono, y de buena fe, para resolver cualquier desacuerdo relacionado con la Moción de Aprobación Final.

11.1 Respuesta a las Objeciones. Cada Parte se reserva el derecho de responder a cualquier objeción planteada por un Miembro del Grupo Participante, incluido el derecho a presentar documentos de respuesta ante el Tribunal a más tardar 5 días hábiles antes de la Audiencia de Aprobación Final, o según lo ordenado o aceptado por el Tribunal.

11.2 Continuación de la Jurisdicción del Tribunal. Las Partes acuerdan que, una vez dictada la Sentencia, el Tribunal conservará su jurisdicción sobre las Partes, la Acción y el Acuerdo únicamente a los efectos de (i) hacer cumplir este Acuerdo y/o Sentencia, (ii) atender los asuntos de administración del acuerdo y (iii) atender los asuntos posteriores a la Sentencia que estén permitidos por la ley.

11.3 Renuncia al Derecho de Apelación. Siempre que la Sentencia sea consistente con los términos y condiciones de este Acuerdo, incluyendo específicamente el Pago de Honorarios del Abogado del Grupo y el Pago de Gastos de Litigio del Abogado del Grupo reflejados en este Acuerdo, las Partes, sus respectivos abogados y todos los Miembros del Grupo Participantes que no se opusieron al Acuerdo según lo dispuesto en este Acuerdo, renuncian a todos los derechos de apelación de la Sentencia, incluyendo todos los derechos a procedimientos posteriores a la sentencia y de apelación, el derecho a presentar mociones para anular la sentencia, mociones para un nuevo juicio, escritos extraordinarios y apelaciones. La renuncia a la apelación no incluye ninguna renuncia al derecho de oponerse a dichas

1 mociones, escritos o apelaciones. Si un objetor apela la Sentencia, las obligaciones de las Partes de
2 cumplir el presente Acuerdo quedarán suspendidas hasta que la apelación se resuelva definitivamente y
3 la Sentencia sea definitiva, excepto en lo que respecta a asuntos que no afecten al pago del Monto Neto
4 del Acuerdo.

5 11.4 Órdenes del Tribunal de Apelaciones de Anular, Revocar o Modificar Materialmente la
6 Sentencia. Si el Tribunal revisor anula, revoca o modifica la Sentencia de una manera que requiera una
7 modificación material de este Acuerdo (incluido, entre otros, el alcance de la exoneración que otorgan
8 los Miembros del Grupo), este Acuerdo será nulo y sin efecto. Una decisión de apelación de anular,
9 revocar o modificar la adjudicación del Tribunal del Pago por Servicios de Representante del Grupo o
10 cualquier pago al Abogado del Grupo no constituirá una modificación material de la Sentencia en el
11 sentido de este párrafo, siempre que el Monto Bruto del Acuerdo permanezca sin cambios.

12 **12. SENTENCIA ENMENDADA.** Si se requiere una sentencia enmendada de conformidad con la
13 sección 384 del Código de Procedimiento Civil, las Partes colaborarán de buena fe para presentar
14 conjuntamente una propuesta de sentencia enmendada.

15 **13. DISPOSICIONES ADICIONALES.**

16 13.1 No se Admiten Responsabilidades, ni Certificaciones de Grupos ni se Permite la
17 Capacidad de Gestión del Representante para Otros Propósitos. El presente Acuerdo representa un
18 compromiso y liquidación de las reclamaciones objeto de gran controversia. Nada de lo dispuesto en el
19 presente Acuerdo pretende ni debe interpretarse como una admisión por parte del Demandado de que
20 alguna de las alegaciones en la Acción tiene fundamento o de que el Demandado tiene alguna
21 responsabilidad por alguna de las reclamaciones presentadas; tampoco pretende ni debe interpretarse
22 como una admisión por parte del Demandante de que las defensas del Demandado en la Acción tienen
23 fundamento. El Demandado niega de forma general y específica cualquier responsabilidad o
24 irregularidad con respecto a cualquiera de las reclamaciones alegadas en la Acción o que haya violado
25 cualquier ley federal, estatal o local; violado cualquier reglamento o directriz promulgada de
26 conformidad con cualquier estatuto o cualquier otra ley, reglamento o requisito legal aplicable;
27 incumplido cualquier contrato; violado o incumplido cualquier deber; incurrido en cualquier
28 tergiversación o engaño; o incurrido en cualquier otra conducta ilegal con respecto a sus empleados. El
Demandado tampoco hace concesiones ni admite responsabilidades de ningún tipo, no hace concesiones
ni admite que algún Miembro del Grupo sea o haya sido empleado por el Demandado y sostiene que,
para cualquier otro propósito que no sea el Acuerdo, la Acción no es apropiada para el procesamiento de

1 grupo o representativo. El Demandado hace valer varias defensas frente a las reclamaciones y ha negado
2 cualquier irregularidad o responsabilidad derivada de cualquiera de los hechos o conductas alegados en
3 la Acción. Los montos que se pagan como parte del acuerdo son genuinamente disputados y las Partes
4 acuerdan que las disposiciones de la sección 206.5 del Código Laboral no son aplicables a este Acuerdo.
5 Ni este Acuerdo, ni ningún documento al que se haga referencia o que se contemple en el mismo, ni
6 ninguna acción tomada para llevar a cabo este Acuerdo, es o puede ser interpretado como, ni puede
7 utilizarse como una admisión, concesión o indicación por o en contra del Demandado o contra cualquiera
8 de las Partes Exoneradas de cualquier falta, irregularidad o responsabilidad de cualquier tipo. El Acuerdo
9 tampoco debe interpretarse como una admisión de que los Demandantes pueden actuar como
10 Representantes que representen adecuadamente al Grupo. Ningún tribunal ha tomado una decisión final
11 sobre los fundamentos de las reclamaciones presentadas ni sobre si se debe certificar uno o más grupos
12 de demandantes, excepto a efectos de conciliación únicamente. Excepto cuando sea necesario en un
13 procedimiento para hacer cumplir los términos del presente Acuerdo, este Acuerdo y sus términos y
14 disposiciones no se ofrecerán ni recibirán como evidencia en ninguna acción o procedimiento para
15 establecer ninguna responsabilidad o admisión por parte del Demandado o para establecer la existencia
16 de cualquier condición que constituya una violación o un incumplimiento de la ley federal, estatal, local
17 u otra ley aplicable. Tampoco nada en este Acuerdo se interpretará ni se considerará una admisión de
18 que la Acción fue presentada correctamente como una Acción de Grupo de conformidad con la sección
19 382 del Código de Procedimiento Civil de California y la sección 17200 del Código de Negocios y
20 Profesionales de California y/o que la Acción fue presentada correctamente como una Acción de
21 Procurador General Privado de conformidad con PAGA. Finalmente, nada en este Acuerdo o en la
22 Aprobación Preliminar u Orden que Otorga la Aprobación Final se considerará una renuncia al derecho
23 del Demandado de hacer cumplir los acuerdos de arbitraje de los Miembros del Grupo o los Empleados
24 Agraviados en el futuro.

25 13.2 No se Admitirá la Certificación del Grupo ni la Capacidad de Gestión del
26 Representantes para Otros Propósitos. Las Partes acuerdan que la certificación del grupo y el tratamiento
27 representativo son únicamente para los propósitos de este Acuerdo. Si, por cualquier motivo, el Tribunal
28 otorga la Aprobación Preliminar, la Aprobación Final o dicta Sentencia, el Demandado se reserva el
derecho de impugnar la certificación de cualquier grupo por cualquier motivo, y el Demandado se reserva
todas las defensas disponibles frente a las reclamaciones de la Acción, y el Demandante se reserva el
derecho de solicitar la certificación del Grupo por cualquier motivo disponible y de impugnar las defensas
del Demandado. La Conciliación, el presente Acuerdo y la voluntad de las Partes de conciliar la Acción
no influirán en ningún litigio ni serán admisibles en relación con el litigio (excepto en los procedimientos

1 para hacer cumplir o hacer efectivo la Conciliación y el presente Acuerdo).

2 13.3 Confidencialidad Antes de la Aprobación Preliminar. El Demandante, el Abogado del
3 Grupo, el Demandado y el Abogado de la Defensa acuerdan por separado que, hasta que se presente la
4 Moción para la Aprobación Preliminar del Acuerdo, ellos y cada uno de ellos no divulgarán, difundirán
5 y/o publicitarán, ni harán ni permitirán que otra persona divulgue, difunda o publique, ninguno de los
6 términos del Acuerdo directa o indirectamente, específica o generalmente, a ninguna persona,
7 corporación, asociación, agencia gubernamental u otra entidad excepto: (1) a los abogados, contadores o
8 cónyuges de las Partes, a quienes se les instruirá que mantengan la confidencialidad de este Acuerdo; (2)
9 al abogado en un asunto relacionado; (3) en la medida necesaria para declarar los ingresos a las
autoridades fiscales correspondientes; (4) en respuesta a una orden o citación judicial; o (5) en respuesta
a una consulta o citación emitida por una agencia gubernamental estatal o federal.

10 Cada Parte acuerda notificar inmediatamente a la otra Parte cualquier orden,
11 investigación o citación judicial o de una agencia que solicite dicha información. El Demandante, el
12 Abogado del Grupo, el Demandado y los Abogados de la Defensa acuerdan por separado no iniciar,
13 directa o indirectamente, ninguna conversación u otra comunicación, antes de la presentación de la
14 Moción para la Aprobación Preliminar, con ninguna otra persona relacionada con este Acuerdo ni de los
15 asuntos que dieron lugar a este Acuerdo, excepto para responder únicamente que “el asunto se resolvió”
16 o palabras a tal efecto. Este párrafo no restringe las comunicaciones del Abogado del Grupo con los
17 Miembros del Grupo de conformidad con las obligaciones éticas del Abogado del Grupo para con los
Miembros del Grupo.

18 13.4 No solicitar. Las Partes acuerdan por separado que ellas y sus respectivos abogados y
19 empleados no solicitarán a ningún Miembro del Grupo que opte por no participar en el Acuerdo, que se
20 oponga al Acuerdo, o que apele la Sentencia. Nada de lo dispuesto en este párrafo se interpretará como
21 una restricción a la capacidad del Abogado del Grupo de comunicarse con los Miembros del Grupo de
conformidad con las obligaciones éticas del Abogado del Grupo para con los Miembros del Grupo.

22 13.5 Acuerdo Integrado. Una vez firmado por todas las Partes y sus abogados, el presente
23 Acuerdo junto con sus anexos constituirá el acuerdo completo entre las Partes en relación con el Acuerdo,
24 sustituyendo a todas y cada una de las declaraciones, garantías, convenios o incentivos verbales hechos
por cualquiera de las Partes.

25 13.6 Autorización del Abogado. El Abogado del Grupo y los Abogados de la Defensa
26 garantizan y declaran por separado que están autorizados por el Demandante y el Demandado,
27 respectivamente, a tomar todas las medidas apropiadas requeridas o permitidas por dichas Partes de
28 conformidad con este Acuerdo para hacer efectivos sus términos, y para suscribir cualquier otro

1 documento razonablemente requerido para hacer efectivos los términos de este Acuerdo, incluyendo
2 cualquier enmienda a este Acuerdo.

3 13.7 Cooperación. Las Partes y sus abogados cooperarán entre sí y harán todo lo posible, de
4 buena fe, para implementar la Conciliación, entre otras cosas, modificando el Acuerdo, presentando
5 pruebas suplementarias y complementando puntos y autoridades según lo solicite el Tribunal. En caso
6 de que las Partes no puedan llegar a un acuerdo sobre la forma o el contenido de cualquier documento
7 necesario para implementar la Conciliación, o sobre cualquier modificación del Acuerdo que pueda
8 resultar necesaria para implementar la Conciliación, las Partes podrán solicitar la asistencia de un
mediador y/o del Tribunal para su resolución.

9 13.8 Sin Cesiones Previas. Las Partes declaran y garantizan por separado que no han cedido,
10 transferido, gravado ni intentado ceder, transferir o gravar, directa o indirectamente, a ninguna persona
11 o entidad ni parte de ninguna responsabilidad, reclamación, demanda, acción, causa de acción o derecho
liberado y exonerado por las Partes en este Acuerdo.

12 13.9 Sin Asesoramiento fiscal. Ni el Demandante, ni el Abogado del Grupo, ni el
13 Demandado, ni los Abogados de la Defensa proporcionan asesoramiento alguno relacionado con los
14 impuestos o la tributación, ni nada de lo contenido en esta Conciliación se considerará como tal en el
15 sentido de la Circular 230 del Departamento del Tesoro de los Estados Unidos (31 CFR Parte 10, en su
versión enmendada) ni de ninguna otra manera.

16 13.10 Modificación del Acuerdo. Este Acuerdo, y todas sus partes, podrán enmendarse,
17 modificarse, cambiarse o anularse únicamente mediante un instrumento expreso por escrito firmado por
todas las Partes o sus representantes y aprobado por el Tribunal.

18 13.11 Acuerdo Vinculante para los Sucesores. El presente Acuerdo será vinculante y
19 redundará en beneficio de los sucesores de cada una de las Partes.

20 13.12 Ley Aplicable. Todos los términos y condiciones de este Acuerdo y sus anexos se
21 regirán e interpretarán de acuerdo con las leyes internas del estado de California, sin tener en cuenta los
22 principios de conflicto de leyes.

23 13.13 Cooperación en la Redacción. Las Partes han cooperado en la redacción y preparación
24 de este Acuerdo. El presente Acuerdo no se interpretará en contra de ninguna de las Partes basándose en
que la Parte fue la que redactó o participó en la redacción.

25 13.14 Confidencialidad. En la medida en que lo permita la ley, todos los acuerdos firmados y
26 las órdenes dictadas durante la Acción y en el presente Acuerdo relacionados con la confidencialidad de
27 la información subsistirán después de la suscripción del presente Acuerdo.

28 13.15 Uso y Devolución de Datos del Grupo. La información proporcionada al Abogado del

Grupo de conformidad con el Código de Pruebas de California §1152 y todas las copias y extractos de los Datos del Grupo proporcionados al Abogado del Grupo por el Demandado en relación con la mediación, otras negociaciones de la conciliación o en relación con el Acuerdo, podrán utilizarse únicamente con respecto a este Acuerdo, y para ningún otro propósito, y no podrán utilizarse de ninguna manera que viole algún acuerdo contractual, estatuto o norma judicial existente. A más tardar 90 días después de la fecha en que el Tribunal cumpla con la obligación del Administrador de proporcionar una Declaración que confirme el pago final de todos los fondos del Acuerdo, el Demandante destruirá todas las versiones en papel y electrónicas de los Datos del Grupo recibidos del Demandado a menos que, antes de que el Tribunal cumpla con la obligación del Administrador, el Demandado solicite por escrito al Abogado del Grupo la devolución, en lugar de la destrucción de los Datos del Grupo.

13.16 Títulos. El título descriptivo de las secciones o párrafos del presente Acuerdo se incluye únicamente para facilitar su consulta y no constituye una parte de este Acuerdo.

13.17 Días Calendario. A menos que se indique lo contrario, toda referencia a “días” en el presente Acuerdo se refiere a días calendario. En el caso de que cualquier fecha o plazo establecido en el presente Acuerdo caiga en un fin de semana o en día festivo legal federal, dicha fecha o plazo será el primer día hábil siguiente.

13.18 Notificación. Todas las notificaciones, escritos u otras comunicaciones entre las Partes en relación con el presente Acuerdo se harán por escrito y se considerarán debidamente entregadas a partir del tercer día hábil después del envío por correo postal de los Estados Unidos, o el día en que se envíen por correo electrónico o mensajero, dirigidas de la siguiente manera:

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

Al demandado:
Christine Baran, Esq.
Kari E. Gibson, Esq.
Fisher & Phillips LLP
2050 Main Street
Suite 1000
Irvine, CA 92614
cbaran@fisherphillips.com
kgibson@fisherphillips.com

13.19 Firma por Duplicado. El presente Acuerdo puede firmarse en uno o más originales por fax, electrónicamente (es decir, DocuSign) o correo electrónico, que para los propósitos del presente Acuerdo se aceptarán como originales. Todos los originales firmados y cada uno de dichos ejemplares originales se considerarán un único y mismo instrumento si los abogados de las Partes intercambian entre sí los ejemplares originales firmados. Todo ejemplar original firmado será admisible como prueba para acreditar la existencia y contenido del presente Acuerdo.

13.20 Suspensión del Litigio. Las Partes acuerdan que después de firmar el presente Acuerdo, se suspenderá el litigio, excepto para hacer efectivos los términos de este Acuerdo. Asimismo, las Partes acuerdan que, después de firmar el presente Acuerdo, de conformidad con la sección 583.330 del Código de Procedimiento Civil (CCP, por sus siglas en inglés), se extenderán la fecha para llevar el caso a juicio de conformidad con la sección 583.310 del Código de Procedimiento Civil (CCP) durante todo el período de este proceso de conciliación.

Con fecha de: 27/12 /2024, 2024

Por: Joel G.
JOEL GUTIERREZ ALARCON

Con fecha de: _____, 2024

Por: _____
Alicia Martinez, Representante
Autorizada del Demandado FAIRWAY
LANDSCAPE & IRRIGATION, INC.

THE SPIVAK LAW FIRM

Con fecha de: _____, 2024

Por: _____
DAVID GLENN SPIVAK, Abogados del
Demandante, JOEL GUTIERREZ
ALARCON, y todas las demás personas
en situación similar

BENOWITZ LAW CORPORATION

Fecha: _____, 2024

Por: _____
LOUIS M. BENOWITZ, Abogados del
Demandante, JOEL GUTIERREZ
ALARCON, y todas las demás personas
en situación similar

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FISHER & PHILLIPS LLP

Fecha: _____, 2024

Por:

KARI E. GIBSON, CHRISTINE
BARAN, Abogados del Demandado,
FAIRWAY LANDSCAPE &
IRRIGATION, INC.

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EXHIBIT A

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

case name: Joel Gutierrez Alarcon v. Fairway Landscape & Irrigation, Inc. and number
CVRI2204068)

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Fairway Landscape & Irrigation, Inc. (abbreviate name; “Defendant” is used herein as a placeholder) for alleged violations of California’s labor laws. The Action was filed by one of Defendant’s employees Joel Gutierrez Alarcon (“Plaintiff”) and seeks payment of (1) wages and other relief for a class of all persons currently or formerly employed by Defendant in California, as non-exempt, hourly-paid employees during the Class Period (the “Class Members”). It shall be an opt-out class. The Class Period is September 28, 2021 to October 11, 2024; and (2) penalties under the California Private Attorney General Act (“PAGA”) for Class Members during the Class Period.

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

Based on Defendant’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$<<IndividualClassPaymentAmount>> (less withholding) and your Individual PAGA Payment is estimated to be \$<<IndividualPAGAPaymentAmount>>.** The estimated dollar value of a Workweek is <<\$increment type value>>. The actual amount you may receive likely will be different and will depend on a number of factors. The individual payments amounts will vary. However, the average Individual Class Payment to a Class Member is estimated to be <<\$Average Individual Class Payment Amount>>. The average Individual PAGA Payment to a Class Member is estimated to be <<\$Average Individual PAGA Payment Amount>>. The highest Individual Class Payment to a Class Member is estimated to be <<\$Highest Individual Class Payment Amount>> and the lowest is estimated to be <<\$Lowest Individual Class Payment Amount>>. The highest Individual PAGA Payment to a Class Member is estimated to be <<\$Highest Individual PAGA Payment Amount>> and the lowest is estimated to be <<\$Lowest Individual PAGA Payment Amount>>.

The above estimates are based on Defendant’s records showing that **you worked <<__>> Workweeks** during the Class Period. If you believe that you worked more Workweeks, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. The Court has determined only that there is sufficient evidence to suggest that the proposed settlement

might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the Final Approval Hearing. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Class Members to give up their rights to assert certain claims against Defendant.

If you worked for Defendant during the Class Period, you have two basic options under the Settlement:

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

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting a written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment and you will not give up the right to sue the Released Parties, including Defendant, for any of the Released Claims as defined in 3 I & J below. If you "opt out" you will still receive a portion of the Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will release all the Released Claims as defined in Section 3 I & J below and you will give up your right to pursue the Released claims as defined in Section 3 I & J below. (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is <<RESPONSE DEADLINE>>	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. You can use the enclosed Election Not To Participate In Settlement form for this purpose. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.

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	You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Class Members and Plaintiff releases Defendant from civil penalties it may owe to the Class Members.
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by <<RESPONSE DEADLINE>>	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. You can use the enclosed Objection form for this purpose. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the <<FinalApprovalHearingDate>> Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on <<FinalApprovalHearingDate>>. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing whether or not they submitted a written objection. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks Written Challenges Must be Submitted by <<RESPONSE DEADLINE>>	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many Workweeks you worked at least one day during the Class Period. The number Class Period Workweeks you worked according to Defendant’s records is stated on the first page of this Notice. If you disagree with either of this number, you must challenge it by <<RESPONSE DEADLINE>>. See Section 4 of this Notice. You can use the enclosed Workweeks Dispute form for this purpose.

1. WHAT IS THE ACTION ABOUT?

On September 22, 2022, Plaintiff Gutierrez Alarcon filed a wage and hour class action lawsuit against Defendant in the Superior Court of California, County of Riverside, alleging violations (1) failure to pay wages (Lab. Code §§ 501, 1194, 1197, and 1198) (2) failure to provide meal periods (Lab. Code §§ 226.7, 512, and 1198) (3) failure to authorize and permit rest periods (Lab. Code §§ 226.7 and 1198) (4) failure to indemnify for business expenses (Lab. Code §§ 1198 and 2802), (5) failure to issue proper wage statements (Lab. Code § 226, failure to timely pay wages (Lab. Code § 203), (6) and unfair competition (Bus. & Prof. Code §§ 17200, *et seq.*)

1 On September 19, 2022, Plaintiff provided written notice to the California Labor and
2 Workforce Development Agency (LWDA) and Defendant of the specific provisions of the
Labor Code he contends were violated and the theories supporting his contentions.

3 On December 02, 2022, Plaintiff filed a First Amended Complaint adding an additional cause of
4 action against Defendant for PAGA civil penalties (Lab. Code §§ 2698, *et seq.*).

5 On March 23, 2023, the Court granted Defendant's motion to compel arbitration and dismissed
6 Plaintiff's class claims. On or about December 5, 2024, pursuant to a stipulation of the Parties
7 and as part of this Settlement only, the Court to reinstated Plaintiff's class claims with the filing
of a Third Amended Complaint.

8 After engaging in discovery, investigations, and negotiation, on July 22, 2024, the Parties
9 remotely attended mediation with mediator David Phillips, Esq. resulting in a settlement.

10 Plaintiff is represented by attorneys in the Action: David Glenn Spivak of The Spivak Law Firm
and Louis M. Benowitz of Benowitz Law Corporation ("Class Counsel).

11 Defendant disagrees with the allegations made by Plaintiff Gutierrez and expressly denies it did
12 anything to Plaintiff or any other Class Member that was illegal or would result in any liability
13 under the employment laws. Defendant also does not admit it employed any Class Member at
any time.

14 The Court has not made any determination as to whether the claims advanced by Plaintiff has
15 any merit. In other words, the Court has not determined whether any laws have been violated nor
16 has it decided in favor of the Parties. Instead, both sides agreed to resolve the lawsuit with no
17 decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all Parties
avoid the risks and cost of a trial.

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

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

25 Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they
26 believe that: (1) Defendant has agreed to pay a fair, reasonable and adequate amount considering
27 the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement
is in the best interests of the Class Members. The Court preliminarily approved the proposed

Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

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

A. Gross Settlement Amount. Defendant will pay \$250,000.00 as the Gross Settlement Amount (Gross Settlement). Defendant has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement after final approval of the Settlement Agreement by the Court. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Defendant will fund the Gross Settlement not more than 14 days after the Effective Date of the Settlement. The Effective Date is defined as the date when all of the following events have occurred: (1) the Settlement Agreement has been executed by all Parties, Class Counsel, and Defendant's Counsel; (2) the Court has given preliminary approval to the Settlement; (3) the Class Notice has been mailed to the Class Members, providing them with an opportunity to object to the terms of the Class Settlement or opt out of the Class Settlement; (4) the Court has had a Final Approval Hearing and entered a Final Approval Order and Judgment; (5) sixty-five calendar days have passed since the Court entered a Final Approval Order and Judgment; and (6) in the event there are written objections to the Class Settlement filed prior to the Final Approval Hearing which are not later withdrawn or denied, the later of the following events: five business days after the period for filing any appeal, writ, or other appellate proceeding opposing the Court's Final Approval Order and Judgment has elapsed without any appeal, writ, or other appellate proceeding having been filed, or, if any appeal, writ, or other appellate proceeding opposing the Court's Final Approval Order and Judgment has been filed, five business days after any appeal, writ, or other appellate proceedings opposing the Court's Final Approval Order and Judgment has finally and conclusively been dismissed with no right to pursue further remedies or relief

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

1. Attorney Fees and Costs. Up to \$83,333.00 (33.33% of the Gross Settlement to Class Counsel for attorneys' fees and up to \$17,500.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

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

3. Administration Expenses. Up to \$7,500.00 to the Administrator for services administering the Settlement.

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2 4. PAGA Penalties. Up to \$25,000.00 for PAGA Penalties, allocated 75% to
3 the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Class Members based
4 on their Class Period Workweeks.

5
6 Participating Class Members have the right to object to any of these deductions. The Court
7 will consider all objections.

8 Defendant's best estimate for the number of workweeks through July 22,
9 2024 is approximately 10,245 Workweeks. In the event the number of Workweeks through the
10 Class Period increases by more than 10%, or more than 11,270 Workweeks worked, then
11 Defendant shall, at its option, either (a) increase the Gross Settlement Amount proportionally by
12 the Workweeks in excess of the 10%; or (b) cap the Class Period as of the date the number of
13 Workweeks reaches but does not exceed 10%. Under option (a) an increase by more than 10%
14 shall mean should the number of Workweeks increase by more than 10% through the Class
15 Period, this will increase the Gross Settlement Amount proportionally over the 10%
16 increase. For example, if the number of Workweeks increase by 11% through the Class Period,
17 and Defendant elects option (a) set forth above, then the Gross Settlement Amount shall increase
18 by 1%.

19 C. Net Settlement Distributed to Class Members. After making the above deductions
20 in amounts approved by the Court, the Administrator will distribute the rest of the Gross
21 Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class
22 Members based on their Class Period Workweeks.

23 D. Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking
24 the Court to approve an allocation of 20.00% of each Individual Class Payment to taxable wages
25 ("Wage Portion") and 80.00% to interest and penalties ("Non-Wage Portion."). The Wage Portion
26 is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay
27 employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted
28 as penalties rather than wages for tax purposes. The Administrator will report the Individual
PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099
Forms.

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

E. Need to Promptly Cash Payment Checks. The front of every check issued for
Individual Class Payments and Individual PAGA Payments will show the date when the check
expires (the void date). If you don't cash it by the void date, your check will be automatically
cancelled, and the monies will be deposited with the California Controller's Unclaimed Property
Fund (https://www.sco.ca.gov/search_upd.html) in your name.

1 If the monies represented by your check is sent to the Controller's Unclaimed Property Fund, you
2 should consult the rules of the Fund for instructions on how to retrieve your money. You can
3 contact the Unclaimed Property Fund at (800) 992-4647.

4 F. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated
5 as a Participating Class Member, participating fully in the Class Settlement, unless you notify the
6 Administrator in writing, not later than <<RESPONSE DEADLINE>>, that you wish to opt-out.
7 The easiest way to notify the Administrator is to email, fax, or mail a written and signed Request
8 for Exclusion by the <<RESPONSE DEADLINE>> Response Deadline. The Request for
9 Exclusion should be a letter from a Class Member or his/her representative setting forth a Class
10 Member's name, present address, email or telephone number and the last four digits of the Class
11 Member's social security number, and a simple statement electing to be excluded from the
12 Settlement. You may use the enclosed Election Not To Participate In Settlement form for this
13 purpose. Excluded Class Members (i.e., Non-Participating Class Members) will not receive
14 Individual Class Payments and you will not give up the right to sue the Released Parties, including
15 Defendant, for any of the Released Claims as defined in 3 I & J below.

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

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

25 H. Administrator. The Court has appointed a neutral company, Phoenix Class Action
26 Administration Solutions (the "Administrator") to send this Notice, calculate and make payments,
27 and process Class Members' Requests for Exclusion. The Administrator will also decide Class
28 Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and
perform other tasks necessary to administer the Settlement. The Administrator's contact
information is contained in Section 9 of this Notice.

I. Participating Class Members' Release. Effective on the date when Defendant fully
funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage
Portion of the Individual Class Payments, Plaintiff and Participating Class Members will be
legally barred from asserting any of the claims released under the Settlement. This means that
unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue,
continue to sue, or be part of any other lawsuit against Defendant or its past or present officers,
directors, employees, and agents for wages and PAGA penalties based on the Class Period facts,
as alleged in the Action and resolved by this Settlement.

Plaintiff and the Participating Class Members will be bound by the following
release:

1 Plaintiff and all Participating Class Members, on behalf of themselves and their
2 respective former and present representatives, agents, attorneys, heirs,
3 administrators, successors, and assigns, release and discharge Released Parties, for
4 the duration of the Class Period, claims based on the factual allegations and
5 statutes asserted or that could have been asserted in the Action and Operative
6 Complaint, including failure to pay wages including claims for off the clock work
7 and failure to pay sick pay, vacation pay and/or overtime at the regular rate of pay
8 (Lab. Code §§ 501, 1194, 1197, and 1198), failure to pay overtime compensation,
9 failure to provide meal periods (Lab. Code §§ 226.7, 512, and 1198), failure to
10 authorize and permit rest periods (Lab. Code §§ 226.7 and 1198), failure to pay
11 meal period premium wages; (7) failure to pay rest period premium wages; failure
12 to indemnify for business expenses (Lab. Code §§ 1198 and 2802), failure to issue
13 proper wage statements (Lab. Code § 226, failure to timely pay wages (Lab. Code
14 § 203), failure to maintain accurate payroll records and unfair competition (Bus.
15 & Prof. Code §§ 17200, *et seq.*), and associated penalties, whether civil or statutory
16 in nature, interest, attorneys' fees and costs, or any other associated damages, and
17 all other alleged violations of the Labor Code and Business and Professions Code
18 section 17200, *et seq.* Except as set forth in Section 6.3 of this Agreement,
19 Participating Class Members do not release any other claims, including claims for
20 vested benefits, wrongful termination, violation of the Fair Employment and
21 Housing Act, unemployment insurance, disability, social security, workers'
22 compensation, or claims based on facts occurring outside the Class Period.

23 J. The PAGA Release. Effective on the date when Defendant fully funds the entire
24 Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the
25 Individual Class Payments, Plaintiff and Class Members release and forever discharge, for the
26 duration of the Class Period, all claims for civil penalties that could have been sought by the
27 Labor Commissioner under the PAGA based on the factual allegations and statutes asserted or
28 that could have been asserted in the Action, the Operative Complaint and Plaintiff's PAGA
Notice. The Release of PAGA Claims also includes a release from the state of California (to the
extent Plaintiff is permitted to provide such a release for the state of California for the Class
period.)

21 4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

22 A. Individual Class Payments. The Administrator will calculate Individual Class
23 Payments by (a) dividing the Net Settlement Amount by the total number of Workweek worked
24 by all Participating Class Members, and (b) multiplying the result by the number of Workweek
worked by each individual Participating Class Member.

25 B. Individual PAGA Payments. The Administrator will calculate Individual PAGA
26 Payments by (a) dividing \$6,250.00 by the total number of Workweeks worked by all Class
27 Members and (b) multiplying the result by the number of Class Period Workweeks worked by
28 each individual Class Member.

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

6 You need to support your challenge by submitting copies of pay stubs or other records.
7 The Administrator will accept Defendant's calculation of Workweeks based on Defendant's
8 records as accurate unless you send copies of records containing contrary information. You
9 should send copies rather than originals because the documents will not be returned to you. The
Administrator will resolve Workweek challenges based on your submission and on input from
Class Counsel and Defendant's Counsel. The Administrator's decision is final. You can't appeal
or otherwise challenge its final decision.

10 5. HOW WILL I GET PAID?

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

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

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

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

20 Email, fax, or mail a written and signed letter with your name, present address, email or
21 telephone number and the last four digits of your social security number, and a simple statement
22 that you do not want to participate in the Settlement. You may use the enclosed Election Not To
23 Participate In Settlement form for this purpose. The Administrator will exclude you based on any
24 writing communicating your request be excluded. Be sure to personally sign your request,
25 identify the Action as *Joel Gutierrez Alarcon vs. Fairway Landscape & Irrigation, Inc.*, Case No.
26 CVRI2204068, and include your identifying information (full name, address, telephone number,
approximate dates of employment, and social security number for verification purposes). You
must make the request yourself. If someone else makes the request for you, it will not be valid.
You should send your Request for Exclusion to the Administrator by email, fax, or send by regular
U.S. mail. **The Administrator must be sent your request to be excluded by <<RESPONSE**

DEADLINE>>, or it will be invalid. Section 9 of the Notice has the Administrator's contact information. If you are a Class Member, you will still receive an Individual PAGA Payment.

7. HOW DO I OBJECT TO THE SETTLEMENT?

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

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is <<RESPONSE DEADLINE>>.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action, *Joel Gutierrez Alarcon vs. Fairway Landscape & Irrigation, Inc.*, case no. CVRI2204068, and include your name, current address, email or telephone number, and approximate dates of employment for Defendant and sign the objection. Section 9 of this Notice has the Administrator's contact information. You may use the enclosed Objection form for this purpose. You should send your objection to the Administrator by email, fax, or send by regular U.S. mail.

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

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on <<FINAL APPROVAL HEARING DATE>> at <<FINAL APPROVAL HEARING TIME>> in Department 1 of the Riverside Superior Court, located at Riverside Historic Courthouse, 4050 Main Street, Riverside, CA 92501. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually by <<CourtConnect/CourtCall/MicrosoftTeams>>

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

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

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendant and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to the Administrator's website at <<CLERK OF COURT'S PHONE NUMBER>>. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.<<COURT'S WEBSITE>>.aspx>) and entering the Case Number for the Action, Case No. CVRI2204068. You can also make an appointment to personally review court documents in the Clerk's Office at the Riverside Historic Courthouse by calling <<CLERK OF COURT'S PHONE NUMBER>>.

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

Class Counsel:

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

Administrator:

Name of Company:	Phoenix Class Action Administration Solutions
Email Address:	_____
Mailing Address:	_____
Telephone:	_____
Fax Number:	_____

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

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

1 (https://www.sco.ca.gov/search_upd.html) for instructions on how to retrieve the funds. You can
2 contact the Unclaimedx Property Fund at (800) 992-4647.

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

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

Gutierrez Alarcon v. Fairway Landscape & Irrigation, Inc.
Superior Court of the State of California, County of Riverside
Case No. CVRI2204068

ELECTION NOT TO PARTICIPATE IN SETTLEMENT FORM

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

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

Gutierrez Alarcon v. Fairway Landscape & Irrigation, Inc. Class Action Administrator
c/o _____

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

(Typed or _____ Printed Name)

(_____
(Address)

(City, State, _____ Zip Code)

(Telephone Number, _____ Including Area Code)

(_____
(Identification Number)

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

Dated: _____. _____
(Signature)

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EXHIBIT C

1 **WORKWEEK DISPUTE FORM**

2 Superior Court of The State of California
3 For The County of Riverside

4 *Joel Gutierrez Alarcon v. Fairway Landscape & Irrigation, Inc.*, Case No. CVRI2204068

5 Indicate Name/Address Changes, if any:

6 <<Name>>

7 <<Address>>

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

9 XX – XX –

10 TO ALL PERSONS CURRENTLY OR FORMERLY EMPLOYED BY DEFENDANT IN
11 CALIFORNIA, AS NON-EXEMPT, HOURLY-PAID EMPLOYEES DURING THE CLASS
12 PERIOD DEFINED AS SEPTEMBER 28, 2021 TO OCTOBER 11, 2024 (THE “CLASS
13 MEMBERS”):

14 The amount of your estimated Settlement Award is based upon the number of Eligible
15 Workweeks you worked between September 28, 2021 and October 11, 2024. “Individual Class
16 Workweeks” are defined as any Workweek in which you worked at least one (1) day as a non-
17 exempt, hourly-paid of Fairway Landscape & Irrigation, Inc. (“Defendant”) in California during
18 the calendar week. The number of Class Workweeks applicable to your claim is set forth below.

19 **YOUR ELIGIBLE WORKWEEKS**

20 Defendant’s records indicate that you worked <<number of Workweeks>> Workweeks between
21 September 28, 2021 and October 11, 2024.

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

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

If you wish to dispute the number of Workweeks credited to you, you must complete and return
this form by indicating what you believe is incorrect on the blank lines below and return it on or
before <<RESPONSE DEADLINE>> to the Administrator by email, fax, or regular U.S. Mail
with proof of the submission date (such as a postmark or delivery service date stamp). You may
use this Workweeks Dispute form for this purpose. You must also send any documents or other
information that you contend supports your belief that the information set forth above is incorrect.
The Administrator will resolve any dispute based upon Defendant’s records and any information

1 you provide. Please be advised that the information on this Workweeks Dispute Form is
2 presumed to be correct unless the documents you submit are company records from Defendant.

5 **UNLESS YOU ARE FILING A DISPUTE REGARDING THE NUMBER OF**
6 **WORKWEEKS, RECEIPT OF A SETTLEMENT PAYMENT, OR YOUR**
7 **EMPLOYMENT STATUS, YOU DO NOT NEED TO TAKE ANY ACTION**

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EXHIBIT D

1 **OBJECTION FORM**

2 ***Joel Gutierrez Alarcon v. Fairway Landscape & Irrigation, Inc.***
3 **Superior Court of the State California, County of Riverside**
4 **Case No. CVRI2204068**

5 Please verify and/or complete any missing identifying information:

6 CPT ID: <<CPT ID>>

7 <<Name>>

8 <<Address1>>

<<Address2>>

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

CORRECT NAME AND ADDRESS HERE:

Telephone Number: (_____) _____ - _____

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

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

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

26 [] I OBJECT to the *Joel Gutierrez Alarcon v. Fairway Landscape & Irrigation, Inc.*
27 Settlement on the following grounds (if additional space necessary, please include additional
28 sheets of paper):

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

Executed on _____, 2024

(Signature)

<<Name>>

(Printed Name)

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

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

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

Joel Gutierrez Alarcon v. **Fairway Landscape & Irrigation, Inc.**

Administrator

[ADDRESS]

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EXHIBIT E

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

JOEL GUTIERREZ ALARCON, on behalf of
himself and all others similarly situated, and as
an “Class Member” on behalf of other “Class
Members” under the Labor Code Private
Attorneys General Act of 2004,

Plaintiff(s),

vs.

FAIRWAY LANDSCAPE & IRRIGATION,
INC., a California corporation; and DOES 1–50,
inclusive,

Defendant(s).

Case No. CVRI2204068

[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT

Action filed: September 22, 2022
Dept: 1, The Honorable Harold
W. Hopp

The Motion of Plaintiff Joel Gutierrez Alarcon (hereafter referred to as “Plaintiff”) for
Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court,
The Honorable Harold W. Hopp presiding. The Court having considered the Motion, the Class
Action and PAGA Settlement Agreement and Class Notice (“Settlement” or “Settlement

Agreement”), and supporting papers, HEREBY ORDERS THE FOLLOWING:

1. The Court grants preliminary approval of the Settlement and the Settlement Class based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary Approval. All terms herein shall have the same meaning as defined in the Settlement. 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. The Court will make a determination at the hearing on the motion for final approval of class action settlement (the “Final Approval Hearing”) as to whether the Settlement is fair, adequate and reasonable to the Settlement Class.

2. For purposes of this Preliminary Approval Order, the “Settlement Class” means all persons currently or formerly employed by Defendant in California, as non-exempt or hourly-paid employees during the Class Period. It shall be an opt-out class. The “Class Period” shall mean the period of time from September 28, 2021, through October 11, 2024.

3. Defendant’s best estimate for the number of workweeks through July 22, 2024 is approximately 10,245 Workweeks. In the event the number of Workweeks through the Class Period increases by more than 10%, or more than 11,270 Workweeks worked, then Defendant shall, at its option, either (a) increase the Gross Settlement Amount proportionally by the Workweeks in excess of the 10%; or (b) cap the Class Period as of the date the number of Workweeks reaches but does not exceed 10%. Under option (a) an increase by more than 10% shall mean should the number of Workweeks increase by more than 10% through the Class Period, this will increase the Gross Settlement Amount proportionally over the 10% increase. For example, if the number of Workweeks increase by 11% through the Class Period, and Defendant elects option (a) set forth above, then the Gross Settlement Amount shall increase

1 by 1%.

2 4. “Effective Date” means the date when all of the following events have occurred:
3 (1) the Settlement Agreement has been executed by all Parties, Class Counsel, and Defendant’s
4 Counsel; (2) the Court has given preliminary approval to the Settlement; (3) the Class Notice has
5 been mailed to the Class Members, providing them with an opportunity to object to the terms of
6 the Class Settlement or opt out of the Class Settlement; (4) the Court has had a Final Approval
7 Hearing and entered a Final Approval Order and Judgment; (5) sixty-five calendar days have
8 passed since the Court entered a Final Approval Order and Judgment; and (6) in the event there
9 are written objections to the Class Settlement filed prior to the Final Approval Hearing which are
10 not later withdrawn or denied, the later of the following events: five business days after the period
11 for filing any appeal, writ, or other appellate proceeding opposing the Court’s Final Approval
12 Order and Judgment has elapsed without any appeal, writ, or other appellate proceeding having
13 been filed, or, if any appeal, writ, or other appellate proceeding opposing the Court’s Final
14 Approval Order and Judgment has been filed, five business days after any appeal, writ, or other
15 appellate proceedings opposing the Court’s Final Approval Order and Judgment has finally and
16 conclusively been dismissed with no right to pursue further remedies or relief.

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

20 6. Not later than 15 days after the Court grants Preliminary Approval of the
21 Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form
22 of a Microsoft Excel spreadsheet. To protect Class Members’ privacy rights, the Administrator
23 must maintain the Class Data in confidence, use the Class Data only for purposes of the Settlement
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1 and for no other purpose, and restrict access to the Class Data to Administrator employees who
2 need access to the Class Data to effect and perform under the Settlement Agreement. Defendant
3 has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data
4 omitted class member identifying information and to provide corrected or updated Class Data as
5 soon as reasonably feasible. Without any extension of the deadline by which Defendant must send
6 the Class Data to the Administrator, the Parties and their counsel will expeditiously use best
7 efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted
8 Class Data.
9

10 7. No later than three (3) business days after receipt of the Class Data, the
11 Administrator shall notify Class Counsel that the list has been received and state the number of
12 Class Members, And Workweeks in the Class Data.
13

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

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

5 10. Class Counsel's contact information is David Glenn Spivak, Esq., The Spivak Law
6 Firm, 8605 Santa Monica Bl, PMB 42554, West Hollywood, CA 90069. Defense Counsel's
7 contact information is Kari E. Gibson, Esq., Fisher & Phillips LLP, 2050 Main Street, Suite 1000,
8 Irvine, CA, 92614.

9 11. The deadlines for Class Members' written objections, Challenges to Workweeks
10 (disputes), and Requests for Exclusion will be extended an additional 14 days beyond the 45 days
11 otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The
12 Administrator will inform the Class Member of the extended deadline with the re-mailed Notice
13 Packet.

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

22 13. Requests for Exclusion. Class Members who wish to exclude themselves (opt-out
23 of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written
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1 Request for Exclusion not later than 45 days after the Administrator mails the Notice Packet (plus
2 an additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for
3 Exclusion is a letter from a Class Member or his/her representative that reasonably communicates
4 the Class Member's election to be excluded from the Settlement, must be signed and include the
5 Class Member's name, address and email address or telephone number and last four digits of the
6 Class Member's social security number. To be valid, a Request for Exclusion must be timely
7 faxed, emailed, or postmarked by the Response Deadline. An Election Not to Participate in
8 Settlement form, attached as Exhibit B, may be used for this purpose but is not required.
9

10 14. A Request for Exclusion will not be valid if it is not timely submitted (*e.g.*,
11 postmarked on or before the Response Deadline), not signed by the Class Member, and/or does
12 not contain the name and address of the Class Member. Class Members who fail to submit valid
13 and timely Exclusion Forms will automatically be included in the Settlement and will become
14 Participating Class Members upon the expiration of the Response Deadline. Each Participating
15 Class Member shall be bound by all terms of the Settlement and any Final Judgment entered in
16 this Action if the Settlement is finally approved by the Court and becomes Effective, including
17 the Participating Class Members' Releases under Paragraphs 6.2 and 6.3 of the Settlement
18 Agreement and shall receive an Individual Class Payment regardless of whether the Participating
19 Class Member has objected to the Settlement. If there is a question about the authenticity of a
20 signed Exclusion Form, the Administrator may demand additional proof of the Class Member's
21 identity. The Administrator's determination of authenticity shall be final and not appealable or
22 otherwise susceptible to challenge.
23

24 15. Every Class Member who submits a valid and timely Request for Exclusion is a
25 Non-Participating Class Member and shall not receive an Individual Class Payment or have the
26 right to object to the class action components of the Settlement. Nothing in the Settlement
27 Agreement will constitute or be construed as a waiver of any defense that Defendant or the
28 Released Parties have or could assert against anyone who timely submits an Exclusion Form.
There is no statutory or other right for any Class Member to opt out or otherwise exclude himself

1 or herself from the PAGA portion of the Settlement, which releases the PAGA claims. A Class
2 Member who submits a valid and timely request for exclusion shall still receive his or her share
3 of the Individual PAGA Payment and shall release the PAGA claims as set forth in Paragraph 6.3
4 of the Settlement Agreement.

5 16. Challenges to Calculation of Workweeks. Each Class Member shall have 45 days
6 after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members
7 whose Notice Packet is re-mailed) to challenge the number of Class Workweeks (if any) allocated
8 to the Class Member in the Class Notice. This is also known as a dispute. A Workweek Dispute
9 form, attached as Exhibit C, may be used for this purpose but is not required. The Class Member
10 may challenge the allocation by communicating with the Administrator via fax, email or mail.
11 The Administrator must encourage the challenging Class Member to submit supporting
12 documentation. In the absence of any contrary documentation, the Administrator is entitled to
13 presume that the Workweeks contained in the Class Notice are correct so long as they are
14 consistent with the Class Data. The Administrator's determination of each Class Member's
15 allocation of Workweeks shall be final and not appealable or otherwise susceptible to challenge.
16 The Administrator shall promptly provide copies of all challenges to calculation of Workweeks
17 to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

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

22 18. Participating Class Members may send written objections to the Administrator, by
23 fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire
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1 an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A
2 Participating Class Member who elects to send a written objection to the Administrator must do
3 so not later than 45 days after the Administrator's mailing of the Notice Packet (plus an additional
4 14 days for Class Members whose Notice Packet was re-mailed). An The Objection form attached
5 as Exhibit D may be used for this purpose but is not required.

6
7 19. Non-Participating Class Members have no right to object to any of the class action
8 components of the Settlement.

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

19
20 21. The Court approves, as to form and content, the Class Notice in substantially the
21 form attached as Exhibit A to this Order, the Election Not to Participate in Settlement form in
22 substantially the form attached as Exhibit B to this Order, the Workweeks Dispute form in
23 substantially the form attached as Exhibit C to this Order, and the Objection form in substantially
24 the form attached as Exhibit D to this Order.

25
26 22. The Court approves, for settlement purposes only, David Glenn Spivak of The
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1 Spivak Law Firm and Louis M. Benowitz of Benowitz Law Corporation as Class Counsel.

2 23. The Court approves, for settlement purposes only, Joel Gutierrez Alarcon as the
3 Class Representative.

4 24. The Court approves Phoenix Class Action Administration Solutions as the
5 Administrator.

6 25. The Court preliminarily approves Class Counsel's request for attorneys' fees and
7 costs subject to final review by the Court.

8 26. The Court preliminarily approves the estimated Administrator costs payable to the
9 Administrator subject to final review by the Court.

10 27. The Court preliminarily approves Plaintiff's Class Representative Service
11 Payment subject to final review by the Court.

12 28. A Final Approval Hearing shall be held on ____ at ____.m. in Department 1 of the
13 Superior Court for the State of California, County of Riverside, located at the Riverside Historic
14 Courthouse, 4050 Main Street, Riverside, CA 92501 to consider the fairness, adequacy and
15 reasonableness of the proposed Settlement preliminarily approved by this Preliminary Approval
16 Order, and to consider the application of Class Counsel for attorneys' fees and costs and the Class
17 Representative Service Payment to the Class Representative. The notice of motion and all briefs
18 and materials in support of the motion for final approval of class action settlement and motion for
19 attorneys' fees and litigation costs shall be served and filed with this Court on or before ____.
20 Plaintiff's counsel must give notice to any objecting party of any continuance of the hearing of
21 the motion for final approval.

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

4 30. The Court expressly reserves the right to adjourn or continue the Final Approval
5 Hearing from time to time without further notice to members of the Class. The Plaintiff shall give
6 prompt notice of any continuance to Settlement Class Members who object to the Settlement.
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8 **IT IS SO ORDERED.**
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11 **DATE**

11 **THE HONORABLE HAROLD W.**
12 **HOPP**
13 **SUPERIOR COURT JUDGE**
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EXHIBIT F

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

JOEL GUTIERREZ ALARCON, on behalf of
himself and all others similarly situated, and as
an “Class Member” on behalf of other “Class
Members” under the Labor Code Private
Attorneys General Act of 2004,

Plaintiff(s),

vs.

FAIRWAY LANDSCAPE & IRRIGATION,
INC., a California corporation; and DOES 1–50,
inclusive,

Defendant(s).

Case No. CVRI2204068

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

Action filed: September 22, 2022
Dept: 1, The Honorable Harold W.
Hopp

20 This matter came on for hearing on ____ at ____m. in Department 1 of the above-captioned
21 court on Plaintiff’s Motion for Final Approval of a Class Action Settlement pursuant to California
22 Rules of Court, Rule 3.769, as set forth in the Joint Stipulation of Class Action Settlement and
23 Release of Claims (the “Settlement”) filed herewith which provides for a Gross Settlement
24 Amount (“GSA”) of up to \$250,000.00 in compromise of all disputed claims on behalf of all
25 persons currently or formerly employed by Defendant in California, as non-exempt or hourly-
26 paid employees during the Class Period defined as September 28, 2021 to October 11, 2024 (the
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1 “Class Members”). It shall be an opt-out class. September 28, 2021 to October 11, 2024 is the
2 Class Period. All capitalized terms used herein shall have the same meaning as defined in the
3 Settlement.

4 In accordance with the Court’s prior Order Granting Preliminary Approval of Class
5 Action Settlement, Class Members have been given notice of the terms of the Settlement and the
6 opportunity to submit a claim, request exclusion, comment upon or object to it or to any of its
7 terms. Having received and considered the Settlement, the supporting papers filed by the Parties,
8 and the evidence and argument received by the Court in conjunction with the motions for
9 preliminary and final approval of the Settlement, the Court grants final approval of the Settlement
10 and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE FOLLOWING
11 DETERMINATIONS¹:
12

13 1. The Court has jurisdiction over the subject matter of the Action and over all Parties
14 to the Action, including all Class Members. Pursuant to this Court’s Order Granting Preliminary
15 Approval of Class Action Settlement of ___, the Notice Packet was sent to each Class Member
16 by First Class U.S. mail. The Notice Packet informed Class Members of the terms of the
17 Settlement, their right to receive their proportional share of the Settlement, their right to request
18 exclusion, their right to comment upon or object to the Settlement, and their right to appear in
19 person or by counsel at the final approval hearing and be heard regarding final approval of the
20 Settlement. Adequate periods of time were provided by each of these procedures. No member of
21 the Settlement Class presented written objections to the proposed Settlement as part of this notice
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25 _____
26 ¹ A true and correct copy of the Court’s ruling on the Motion for Final Approval of Class Action
27 Settlement entered on [REDACTED] is attached hereto as **Exhibit A** and incorporated by reference. A true
28 and correct copy of the Court’s Minute Order dated [REDACTED] is attached hereto as **Exhibit B** and
incorporated by reference.

1 process, stated an intention to appear, or actually appeared at the final approval hearing.

2 2. For purposes of this Final Order and Judgment, the Class Members are all persons
3 currently or formerly employed by Defendant in California, as non-exempt or hourly-paid
4 employees during the Class Period.

5 3. The Court finds and determines that the notice procedure afforded adequate
6 protections to Class Members and provides the basis for the Court to make an informed decision
7 regarding final approval of the Settlement based on the responses of Class Members. The Court
8 finds and determines that the notice provided in this case was the best notice practicable, which
9 satisfied the requirements of law and due process as to all persons entitled to such notice.
10

11 **Release by Plaintiff and Class Members.** The Parties agree that it is their intent that the
12 resolution set forth in this Settlement will release and discharge the Released Claims by way of
13 any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action
14 of any kind by each and all of the Settlement Class Members (including participation to any extent
15 in any representative or collective action) against the Released Parties. This release will not take
16 effect until Defendant has paid the Gross Settlement Amount in full per this Settlement
17 Agreement.
18

19 **PAGA Release.** Plaintiff and Class Member release and forever discharge for the duration
20 of the Class Period, all claims for civil penalties that could have been sought by the Labor
21 Commissioner under the PAGA, based on the factual allegations and statutes asserted or that
22 could have been asserted in the Action, the Operative Complaint and Plaintiff's PAGA Notice.
23 The Release of PAGA Claims also includes a release from the state of California (to the extent
24 Plaintiff is permitted to provide such a release for the state of California for the Class period
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1 **“Released Claims”** shall mean all claims based on the factual allegations and statutes
2 asserted or that could have been asserted in the Action or Operative Complaint.

3 **“Released Parties”** shall mean Defendant, and its current or former officers, directors,
4 employees and agents.

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

16 3. The Court finds and determines that (a) the Settlement Shares to be paid to
17 Participating Class Members and (b) the LWDA payment as civil penalties under the California
18 Labor Code Private Attorneys General Act of 2004, as amended, California Labor Code sections
19 2699 *et seq.*, as provided for by the Settlement are fair and reasonable. The Court hereby grants
20 final approval to, and orders the payment of, those amounts be made to the Participating Class
21 Members and to the California Labor & Workforce Development Agency (“LWDA”), in
22 accordance with the terms of the Settlement.

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

2 a. Class Counsel fees & costs of \$83,333.00 in attorneys' fees and \$17,500.00
3 in litigation costs to Class Counsel;

4 b. \$5,000.00 as a Class Representative Service Payment award payable to
5 Plaintiff Joel Gutierrez Alarcon for his service as a Class Representative;

6 c. \$7,500.00 in costs of the Administrator payable to Phoenix Class Action
7 Administration Solutions for its services as the Administrator; and

8 d. Payment of \$18,750.00 (75% of the (\$25,000.00 PAGA penalty) to the
9 LWDA.
10

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

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

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

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

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

21 12. Nothing in this Final Order and Judgment shall preclude any action to enforce the
22 Parties' obligations under the Settlement or hereunder, including the requirement that Defendant
23 deposit funds for distribution by the Administrator to Participating Class Members in accordance
24 with the Settlement.
25

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

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

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

6 16. The Settlement is not an admission by Defendant nor is this Final Order and
7 Judgment a finding of the validity of any claims in the Action or of any wrongdoing by Defendant.
8 Furthermore, the Settlement is not a concession by Defendant and shall not be used as an
9 admission of any fault, omission, or wrongdoing by Defendant. Neither this Final Order and
10 Judgment, the Settlement, any document referred to herein, any exhibit to any document referred
11 to herein, any action taken to carry out the Settlement, nor any negotiations or proceedings related
12 to the Settlement are to be construed as, or deemed to be evidence of, or an admission or
13 concession with regard to, the denials or defenses of Defendant, and shall not be offered in
14 evidence in any proceeding against the Parties hereto in any Court, administrative agency, or other
15 tribunal for any purpose whatsoever other than to enforce the provisions of this Final Order and
16 Judgment. This Final Order and Judgment, the Settlement and exhibits thereto, and any other
17 papers and records on file in the Action may be filed in this Court or in any other litigation as
18 evidence of the settlement by Defendant to support a defense of res judicata, collateral estoppel,
19 release, or other theory of claim or issue preclusion or similar defense as to the Released Claims.
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23 17. This document shall constitute a Judgment for purposes of California Rule of
24 Court 3.769(h).

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

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DATE

**THE HONORABLE HAROLD W.
HOPP
SUPERIOR COURT JUDGE**

EXHIBIT 2



THE SPIVAK LAW FIRM
EMPLOYEE RIGHTS

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

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

September 19, 2022

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

Re: Joel Gutierrez Alarcon / Fairway Landscape

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Joel Gutierrez Alarcon (hereafter “Gutierrez Alarcon” or “Complainant”) provides notice that Fairway Landscape & Irrigation, Inc., a California corporation, and related entities (collectively “the Fairway Landscape Employers” or “the Employers”) violated his rights and those of all other individuals the Fairway Landscape Employers have employed or otherwise contracted with in California as hourly and non-exempt, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 2802, and related Labor Code statutes. On behalf of himself and all other Aggrieved Employees, Gutierrez Alarcon hereby provides this notice to the Labor & Workforce Development Agency and the Fairway Landscape Employers and their agents and representatives.

At all relevant times, the Fairway Landscape Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Gutierrez Alarcon and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 16-2001 (hereafter “the Wage Order”) section 2, subdivision (H) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately February 28, 2018, the Fairway Landscape Employers began to employ Gutierrez Alarcon in Riverside in the position of hourly, non-exempt gardener and landscaper. The Fairway Landscape Employers continuously employed him in that capacity until on or about March 25, 2022 when his employment ended.

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

The Fairway Landscape Employers failed to compensate Gutierrez Alarcon and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Fairway Landscape Employers required Gutierrez Alarcon and the Aggrieved Employees to arrive for work over one hour before their scheduled start time and to spend this time off the clock and without pay. The Fairway Landscape Employers also required Gutierrez Alarcon and the Aggrieved Employees to wait several minutes off the clock and without pay to clock in for work. The Fairway Landscape Employers required Gutierrez Alarcon and the Aggrieved Employees to attend work meetings off the clock and without pay. Additionally, The Fairway Landscape Employers required Gutierrez Alarcon and the Aggrieved Employees to remain at work over one hour after their scheduled stop time and to spend this time off the clock and without pay. The Fairway Landscape Employers also required Gutierrez Alarcon and the Aggrieved Employees to spend their meal periods, pre-shift time, and post-shift time traveling from one worksite to another off the clock and without pay. The Fairway Landscape Employers also disallowed Gutierrez Alarcon and the Aggrieved Employees to leave their assigned worksite for meal periods.

The Fairway Landscape Employers failed to compensate Gutierrez Alarcon 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. Time spent in the aforementioned unpaid work activities, combined with time spent on the clock, resulted in Gutierrez Alarcon and the Aggrieved Employees working overtime hours. However, The Fairway Landscape Employers did not pay

Gutierrez Alarcon and the Aggrieved Employees overtime premium pay for such hours worked.

At all relevant times, the Fairway Landscape Employers failed to provide Gutierrez Alarcon and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Fairway Landscape Employers required Gutierrez Alarcon and the Aggrieved Employees to delay their meal periods for more than five hours into their work shift so meal periods would be taken with other workers. The Fairway Landscape Employers also required Gutierrez Alarcon and the Aggrieved Employees to spend their meal periods traveling from one worksite to another off the clock and without pay. The Fairway Landscape Employers also interrupted the meal periods of Gutierrez Alarcon and the Aggrieved Employees, including directives to unload the trucks. The Fairway Landscape Employers also disallowed Gutierrez Alarcon and the Aggrieved Employees to leave their assigned worksite for meal periods. The Fairway Landscape Employers also failed to pay premium wages for days on which they failed to provide Gutierrez Alarcon and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Fairway Landscape Employers failed to authorize and permit Gutierrez Alarcon 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 Fairway Landscape Employers required Gutierrez Alarcon and the Aggrieved Employees to delay their rest periods for more than four hours into their work shift to complete work or forego them altogether if work was incomplete. The Fairway Landscape Employers also interrupted the rest periods of Gutierrez Alarcon and the Aggrieved Employees. The Fairway Landscape Employers also disallowed Gutierrez Alarcon and the Aggrieved Employees to leave their assigned worksite for rest periods. The Fairway Landscape Employers also failed to pay premium wages for days on which they failed to authorize and permit Gutierrez Alarcon and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Fairway Landscape Employers required Gutierrez Alarcon and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Fairway Landscape Employers required Gutierrez Alarcon and all of the other Aggrieved Employees to supply mobile phones, scissors, uniforms, protective gear and PPE and comparable items to perform their job duties.

However, the Fairway Landscape Employers did not provide these items and did not reimburse Gutierrez Alarcon and the other Aggrieved Employees for these items.

At all relevant times, the Fairway Landscape Employers failed to issue to Gutierrez Alarcon 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 Fairway Landscape Employers knowingly and intentionally failed to state on the wage statements they issued to Gutierrez Alarcon and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, and other required information.

The Fairway Landscape Employers also failed to timely pay Gutierrez Alarcon and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Fairway Landscape Employers failed to provide Gutierrez Alarcon and all of the other Aggrieved Employees with toilet facilities, potable water, soap, or other suitable cleaning agent and single use towels for handwashing.

The Fairway Landscape Employers failed to maintain accurate employee records of Gutierrez Alarcon and all of the other Aggrieved Employees.

For the reasons stated herein, Gutierrez Alarcon 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 Fairway Landscape Employers failed to pay Gutierrez Alarcon 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 Fairway Landscape Employers failed to provide Gutierrez Alarcon and all of the other Aggrieved Employees all meal periods in compliance with California law;

- (c) The Fairway Landscape Employers failed to authorize and permit Gutierrez Alarcon and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Fairway Landscape Employers failed to compensate Gutierrez Alarcon and all of the other Aggrieved Employees at one hour's pay for each day in which the Fairway Landscape Employers failed to provide them with one or more meal periods as required by law;
- (e) The Fairway Landscape Employers failed to compensate Gutierrez Alarcon and all of the other Aggrieved Employees at one hour's pay for each day in which the Fairway Landscape Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Fairway Landscape Employers failed to indemnify Gutierrez Alarcon and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (g) The Fairway Landscape Employers knowingly and intentionally failed to provide Gutierrez Alarcon and all of the other Aggrieved Employees with accurate wage statements;
- (h) The Fairway Landscape Employers willfully failed to timely pay Gutierrez Alarcon and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Fairway Landscape Employers and when their employment ended;
- (i) The Fairway Landscape Employers failed to provide Gutierrez Alarcon and all of the other Aggrieved Employees with toilet facilities, potable water, soap, or other suitable cleaning agent and single use towels for handwashing; and
- (j) The Fairway Landscape Employers failed to maintain accurate employment records pertaining to Gutierrez Alarcon and all of the other Aggrieved Employees.

Accordingly, Gutierrez Alarcon now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Fairway Landscape Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to

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

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

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

Wage Order, § 2(C). The Wage Order defines "Drilling occupations" to mean,

all job classifications associated with the exploration or extraction of oil, gas, or water resources work, including but not limited to the installation, establishment, reworking, maintenance or repair of wells and pumps by boring, drilling,

excavating, casting, cementing and cleaning for the extraction or conveyance of fluids such as water, steam, gases, or petroleum.

Wage Order, § 2(E). The Wage Order defines "logging occupations" to mean,

any work for which a timber operator's license is required pursuant to California Public Resources Code Sections 4571-4586, including the cutting or removal or both of timber or other solid wood forest products, including Christmas trees, from timberlands for commercial purposes, together with all the work that is incidental thereto, including but not limited to construction and maintenance of roads, fuel breaks, fire breaks, stream crossings, landings, skid trails, beds for the falling of trees, and fire hazard abatement.

Wage Order, § 2(K). The Wage Order defines "mining occupations" to mean,

miners and other associated and related occupations (not covered by Labor Code Sections 750 et seq.) required to engage in excavation or operations above or below ground including work in mines, quarries, or open pits, used for the purposes of exploration or extraction of nonmetallic minerals and ores, coal, and building materials such as stone, gravel, and rock, or other materials intended for manufacture or sale, whether paid on a time, piece rate, commission, or other basis.

Wage Order, § 2(L).

At all relevant times during the applicable limitations period, the Fairway Landscape Employers, Gutierrez Alarcon, and all of the Aggrieved Employees were covered by the Wage Order because Gutierrez Alarcon and all of the Aggrieved Employees worked for the Fairway Landscape Employers in construction occupations. Accordingly, Gutierrez Alarcon and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

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

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

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

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

In relevant part, Labor Code section 1194 states:

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

In relevant part, Labor Code section 510 states:

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

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

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

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

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

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

The Fairway Landscape Employers required Gutierrez Alarcon and the Aggrieved Employees to arrive for work over one hour before their scheduled start time and to spend this time off the clock and without pay. The Fairway Landscape Employers also required Gutierrez Alarcon and the Aggrieved Employees to wait several minutes off the clock and without pay to clock in for work. The Fairway Landscape Employers required Gutierrez Alarcon and the Aggrieved Employees to attend work meetings off the clock and without pay. Additionally, The Fairway Landscape Employers required Gutierrez Alarcon and the Aggrieved Employees to remain at work over one hour after their scheduled stop time and to spend this time off the clock and without pay. The Fairway Landscape Employers also required Gutierrez Alarcon and the Aggrieved Employees to spend their meal periods, pre-shift time, and post-shift time traveling from one worksite to another off the clock and without pay. The Fairway Landscape Employers also disallowed Gutierrez Alarcon and the Aggrieved Employees to leave their assigned worksite for meal periods.

Time spent in the aforementioned unpaid work activities, combined with time spent on the clock, resulted in Gutierrez Alarcon and the Aggrieved Employees working overtime hours. However, The Fairway Landscape Employers did not pay Gutierrez Alarcon and the Aggrieved Employees overtime premium pay for such hours worked.

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

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

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

Unpaid Travel Time

Under Section 5 of the Wage Order,

All employer-mandated travel that occurs after the first location where the employee's presence is required by the employer shall be compensated at the employee's regular rate of pay or, if applicable, the premium rate that may be required by the provisions of Labor Code Section 510 and Section 3, Hours and Days of Work, above.

At all relevant times, the Fairway Landscape Employers required Gutierrez Alarcon and all of the other Aggrieved Employees to travel from the Fairway Landscape Employers' offices to a worksite the Fairway Landscape Employers designated. Additionally, the Fairway Landscape Employers required Gutierrez Alarcon and all of the other Aggrieved Employees to travel from worksites and other locations to the Fairway Landscape Employers' offices. However, the Fairway Landscape Employers did not pay Gutierrez Alarcon and all of the other Aggrieved Employees for such travel time at amounts that were at least as much as their regular rates of pay for work they performed at the worksites the Fairway Landscape Employers designated.

This is a violation of the Wage Order and also the Labor Code (§ 1198). Accordingly, Gutierrez Alarcon seeks civil penalties from the Fairway Landscape Employers on behalf of himself and all of the Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200

for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

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

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

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

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

In relevant part, Labor Code section 512 states:

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

In relevant part, section 10 of the Wage Order states:

Meal Periods:

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

by mutual consent of the employer and the employee. (See Labor Code Section 512.)

- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. (See Labor Code Section 512.)
- (C) ...
- (D) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to and complies with Labor Code Section 512.
- (E) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

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

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

At all relevant times, the Fairway Landscape Employers failed to provide Gutierrez Alarcon and all of the other Aggrieved Employees with all timely meal periods. The Fairway Landscape Employers denied Gutierrez Alarcon and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Fairway Landscape Employers required Gutierrez Alarcon and the Aggrieved Employees to delay their meal periods for more than five hours into their work shift so meal periods would be taken with other workers. The Fairway Landscape Employers also required Gutierrez Alarcon and the Aggrieved Employees to spend their meal periods traveling from one worksite to another off the clock and without pay. The Fairway Landscape Employers also interrupted the meal periods of Gutierrez Alarcon and the Aggrieved Employees, including directives to unload the trucks. The Fairway Landscape Employers also disallowed Gutierrez Alarcon and the Aggrieved Employees to leave their assigned worksite for meal periods. Furthermore, the Fairway Landscape Employers failed to pay premium wages for days on which they failed to provide Gutierrez Alarcon and all of the other Aggrieved Employees with timely meal periods. Accordingly, Gutierrez Alarcon now seeks civil penalties for these Labor Code violations that the Fairway Landscape 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(J) of the Wage Order states,

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

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

Section 11 of the Wage Order provides, in relevant part:

Rest Periods:

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

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

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

In addition, Labor Code section 226.7 states:

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

as hours worked, for which there shall be no deduction from wages.
This subdivision is declaratory of existing law.

The Fairway Landscape Employers failed to authorize and permit Gutierrez Alarcon 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 Fairway Landscape Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Fairway Landscape Employers required Gutierrez Alarcon and the Aggrieved Employees to delay their rest periods for more than four hours into their work shift to complete work or forego them altogether if work was incomplete. The Fairway Landscape Employers also interrupted the rest periods of Gutierrez Alarcon and the Aggrieved Employees. The Fairway Landscape Employers also disallowed Gutierrez Alarcon and the Aggrieved Employees to leave their assigned worksite for rest periods. Moreover, the Fairway Landscape Employers failed to pay Gutierrez Alarcon and all of the other Aggrieved Employees premium wages on workdays the Fairway Landscape Employers failed to provide Gutierrez Alarcon and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Gutierrez Alarcon now seeks civil penalties for these Labor Code violations that the Fairway Landscape 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)).

Pre-employment medical and physical examination fees
(Lab. Code § 222.5)

Labor Code § 222.5 states

No person shall withhold or deduct from the compensation of any employee, or require any prospective employee or applicant for employment to pay, any fee for, or cost of, any pre-employment medical or physical examination taken as a condition of employment, nor shall any person withhold or deduct from the compensation of any employee, or require any employee to pay any fee for, or costs of, medical or physical examinations required by any law or regulation of federal, state or local governments or agencies thereof.

At all relevant times, the Fairway Landscape Employers required Gutierrez Alarcon and all of the other Aggrieved Employees to obtain preemployment medical or physical examinations as a condition of employment. Accordingly, Gutierrez Alarcon seeks civil penalties for these Labor Code violations that the Fairway Landscape 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 222.5, 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 222.5, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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

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

Additionally, the Wage Order states,

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

...

- (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the particular trade or craft in conformity with Labor Code Section 2802.

Wage Order, §§ 9(A) and (B).

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

As described above, the Fairway Landscape Employers required Gutierrez Alarcon and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Fairway Landscape Employers required Gutierrez Alarcon and all of the other Aggrieved Employees to supply mobile phones, uniforms, protective gear and PPE and similar items to perform their job duties. However, the Fairway Landscape Employers did not provide these items and did not reimburse Gutierrez Alarcon and the other Aggrieved Employees for these items. scissors Additionally, the Fairway Landscape Employers did not provide tools to Gutierrez Alarcon and the other Aggrieved Employees it required them to use to perform their work, nor did they reimburse them for such tools, including scissors, gloves, drills, drill bits, screwdrivers, wire stripper pliers and similar items. Accordingly, Gutierrez Alarcon seeks civil penalties for these Labor Code violations that the Fairway Landscape 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 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and

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

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

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

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

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

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

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

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

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

At all relevant times during the applicable limitations period, the Fairway Landscape 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 Fairway Landscape Employers failed to state in the wage statements they issued to Gutierrez Alarcon 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 Fairway Landscape Employers knowingly and intentionally failed to state on the wage statements they issued to Gutierrez Alarcon and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, and other required

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

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

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

The Fairway Landscape Employers failed to compensate Gutierrez Alarcon and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, and other earnings at the intervals stated above. As a result, the Fairway Landscape Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Gutierrez Alarcon now seeks civil penalties for the Labor Code violations that the Fairway Landscape 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, 202, and 203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 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 Fairway Landscape Employers failed to pay Gutierrez Alarcon 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 Gutierrez Alarcon, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, and similar forms of compensation. Additionally, the Fairway Landscape Employers failed to issue to Gutierrez Alarcon and all of the other Aggrieved Employees whose employment ended their final paychecks. By failing to pay Gutierrez Alarcon and all of the other Aggrieved Employees as set forth above at the end of employment, the Fairway Landscape Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Gutierrez Alarcon seeks civil penalties from the Fairway Landscape 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 Provide Toilet Facilities, Potable Water, Cleansing Agents
(Lab. Code §§ 1198 and 2350)

Labor Code § 2350 states,

Every factory, workshop, mercantile or other establishment in which one or more persons are employed, shall be kept clean and free from the effluvia arising from any drain or other nuisance, and shall be provided, within reasonable access, with a sufficient number of toilet facilities for the use of the employees. When there are five or more employees who are not all of the same gender, a sufficient number of separate toilet facilities shall be provided for the use of each sex, which shall be plainly so designated.

Section 10(C) of the Wage Order states, “in all places of employment the employer shall provide an adequate supply of potable water, soap, or other suitable cleaning agent and single use towels for handwashing.”

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

Throughout the relevant time period, the Fairway Landscape Employers failed to provide any toilet facilities for use by Gutierrez Alarcon and all of the other Aggrieved

Employees within reasonable access. Additionally, the Fairway Landscape Employers failed to provide potable water, soap, or other suitable cleansing agent and single use towels for handwashing for use by Gutierrez Alarcon and all of the other Aggrieved Employees. Accordingly, on behalf of himself and aggrieved employees, Gutierrez Alarcon demands that the Fairway Landscape Employers cure the violations of Labor Code § 2350 and provide sufficient toilets to all aggrieved employees. If within 33 days of this notice, the Fairway Landscape Employers fail to notify my office in writing by certified mail that they have cured the violations of Labor Code § 2350 and the Wage Order mentioned above, Gutierrez Alarcon, on behalf of himself and all of the other Aggrieved Employees, will commence a civil action and seek civil penalties from the Fairway Landscape Employers as follows:

1. \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of California Labor Code § 2350, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

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

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

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records

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

Labor Code section 1174.5 states:

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

Section 6 of Wage Order states,

- (A) Every employer who has control over wages, hours, or working conditions shall keep accurate information with respect to each employee, including the following:
 - (1) The employee's full name, home address, occupation, and social security number. The employee's date of birth, if under 18 years of age, and designation as a minor. Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
 - (2) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

- (3) Total hours worked during the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request. When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.
- (C) All required records shall be in the English language and in ink or other indelible form, dated properly, showing month, day and year. The employer who has control over wages, hours, or working conditions shall also keep said records on file at the place of employment or at a central location for at least three years. An employee's records shall be available for inspection by the employee upon reasonable request.

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

The Fairway Landscape Employers failed to compensate Gutierrez Alarcon and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, and all rest break premium wages earned. As a result, the Fairway Landscape Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Gutierrez Alarcon and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Gutierrez Alarcon 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)).

LWDA / The Fairway Landscape Employers
Re: Joel Gutierrez Alarcon
September 19, 2022
Page 28 of 28

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Joel Gutierrez Alarcon 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 G. Spivak Esq.
david@spivaklaw.com

cc: Mr. Joel Gutierrez Alarcon

Mr. Louis M. Benowitz Esq.
Benowitz Law Corporation
8605 Santa Monica Blvd., PMB 97638
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Fairway Landscape & Irrigation, Inc.
c/o Agent for service of process
Ms. Alicia O. Martinez
Fairway Landscape & Irrigation, Inc.
4223 Alamo Street
Riverside CA 92501

EXHIBIT 3



Sample size calculator

What margin of error can you accept?

5% is a common choice

32.4 %

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

123

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	4.26%	0.00%	0.00%	Your sample size would need to be	7	9	15

Save effort, save time. **Conduct your survey online with Vovici.**

More information

If 50% of all the people in a population of 20000 people drink coffee in the morning, and if you were repeat the survey of 377 people ("Did you drink coffee this morning?") many times, then 95% of the time, your survey would find that between 45% and 55% of the people in your sample answered "Yes".

The remaining 5% of the time, or for 1 in 20 survey questions, you would expect the survey response to more than the margin of error away from the true answer.

When you survey a sample of the population, you don't know that you've found the correct answer, but you do know that there's a 95% chance that you're within the margin of error of the correct answer.

Try changing your sample size and watch what happens to the *alternate scenarios*. That tells you what happens if you don't use the recommended sample size, and how M.O.E and confidence level (that 95%) are related.

To learn more if you're a beginner, read **Basic Statistics: A Modern Approach** and **The Cartoon Guide to Statistics**. Otherwise, look at the **more advanced books**.

In terms of the numbers you selected above, the sample size n and margin of error E are given by

$$x = Z(c/100)^2 r(100-r)$$

$$n = N x / ((N-1)E^2 + x)$$

$$E = \text{Sqrt}[(N - n)x / n(N-1)]$$

where N is the population size, r is the fraction of responses that you are interested in, and $Z(c/100)$ is the **critical value** for the confidence level c .

If you'd like to see how we perform the calculation, view the page source. This calculation is based on the **Normal distribution**, and assumes you have more than about 30 samples.

About **Response distribution**: If you ask a random sample of 10 people if they like donuts, and 9 of them say, "Yes", then the prediction that you make about the general population is different than it would be if 5 had said, "Yes", and 5 had said, "No". Setting the response distribution to 50% is the most conservative assumption. So just leave it at 50% unless you know what you're doing. The sample size calculator computes the critical value for the normal distribution. Wikipedia has good articles on statistics.

How do you like this web page? ☐ Good as-is ☐ Could be even better

Print

Done

EXHIBIT 4

05-30-2013 | 05:13 PM | Author: [Robin Shea](#)

Employees: Better Think Twice Before Suing Your Employer (Four Reasons Why)



Earlier, I busted on "my own side" by giving [four reasons why employers shouldn't be so quick to fire their employees](#). To be fair, this week I'll talk about the other side -- four reasons why employees shouldn't be too quick to sue their employers.

DISCLAIMER: I am a defense lawyer. That means that, in any kind of workplace legal dispute, I am on the employer's side, not the employee's side. Always. Even though many of my best friends are employees and plaintiffs' lawyers. The following is not legal advice.

So, you don't have to believe what I'm about to say. But I make this post in good faith, based on my experience and observations in many years of employment litigation.

Are you still here? Cool! Here we go.

1. Even if you got the shaft at work, it is unlikely that you were treated illegally. The law does not require employers to treat their employees like "family," or to be nice, or even to be particularly fair. In fact, employers can usually be downright jerks as long as they are equally jerky to everybody. They can be arbitrary and play favorites as long as they're not making distinctions based on "protected" categories, like race or sex.

If you read this blog very often, you know that I am a strong advocate of treating employees respectfully, fairly, and with dignity. So is everybody in Human Resources who's worth a darn. But we feel that way because it's the right thing to do, not because it's the law.

The American legal system would collapse in a heap if people could sue every time their feelings were hurt. Our system is designed to prevent only the worst kinds of behavior -- you know, like murder, armed robbery, and driving 70 in a 55. It's supposed to keep us from being at each others' throats. That's it. Anything more is left to our respective senses of common decency. (Scary, I know!)

If you sue your employer, it won't be enough for you to prove that your employer made the wrong decision, or even that your employer was a no-goodnik. If you don't have a valid *legal* claim against your employer, then you will ultimately lose your case. One big reason to think twice before you sue.

2. Litigation is long, drawn-out, stressful, and painful. The only people who really enjoy litigation are lawyers. No one else could possibly be that sick. And, here's a secret: not even lawyers are that crazy about litigation. Judges (who are usually lawyers) are always after the parties to try to settle, which would end the case before the judge has to hear it. Lawyers are usually the same way -- they are rarely averse to settlement, although they'll fight to the death if that's what the client wants. Why do you think most courts nowadays have mandatory mediation? If even lawyers don't necessarily like litigation, just think about how much you will hate it.

"Well," you retort, "if lawsuits are that bad, then my employer will pay any amount to get rid of it, right? So it's still worth it to sue."

Well, no. Or, at least, not necessarily. You see, your employer gets sued a lot. This is what they call a "cost of doing business" in the United States. It is true that your lawsuit will be stressful and disruptive for your company. But it will be a lot more stressful and disruptive for you, who are not used to the court system or dealing with lawyers, and you don't even know whether it's a trap when the employer's lawyer says hello to you and offers to shake hands.

The distraction and stress of a lawsuit may also make it more difficult for you to do well in your new job. And having to continually dwell on an unpleasant experience (as you'll have to do while your lawsuit lasts) is difficult and stressful.

3. You may find out that your co-workers are not on your side. You feel very strongly that your employer did you wrong. You find a lawyer willing to take your case. You sue, and start taking depositions of all of your co-workers, who were your BFFs when you worked there. Well. It turns out that your BFFs weren't such BFFs after all. They say, "I liked Maudie, but I felt that she was out of line, and in my opinion she was treated fairly." And then you have the co-worker who saw you when you were not at your best, and she testifies about all the things you said to her in confidence when you were having a rotten day. Which are embarrassing. And which do not help your case. On the record. In a verbatim transcript, for cryin' out loud.

What happened to these people?

Most plaintiffs' lawyers will tell you that the co-workers are afraid of retaliation by the company if they don't side with the company and diss you. I am sure that happens sometimes, but I don't think it explains the majority of these situations. What I see most of the time are two phenomena:

***Most people consider a lawsuit an "act of war."** They probably *were* on your side when you all worked together and went out for mai tais and kvetched about what was going on at the office. But that was just gossip, harmless venting. Nobody thought you were really going to sue! And now, thanks to you, they're being dragged in front of lawyers and court reporters and judges and juries, and they're ticked off. And maybe what they said to you in confidence about the boss is coming out -- while the boss is sitting across the table with a stern-looking lawyer in a pinstripe suit. *AWKWARD!* No wonder they've turned on you.

***Some employees really, sincerely do believe the company was in the right.** Is the boss perfect? Of course not. But he's an overall decent guy who tries to be fair and treat employees right. And maybe you shouldn't have been so stubborn/absent from work/insubordinate/lazy yourself.

Recall No. 2, above. Finding out that your co-workers don't support you is one of the "painful" parts.

4. You may be opening up your own life to scrutiny. This is another "painful" part. In order to get more money, and because you really *were* very upset when you were fired, your lawyer includes a claim for emotional distress in your lawsuit. Next thing you know, the company has asked for your medical and psychiatric records dating back 10 years. And maybe you saw a shrink a few times and have been diagnosed as bipolar. Along with a few physical conditions that are not appropriate to mention in a family blog. Surely you don't have to share that information with the company's lawyers! Do you?

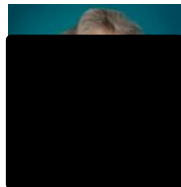
YOU ALMOST CERTAINLY DO. If you claim emotional distress (you don't have to, but you may not get as much money if you don't), most courts say you have put your own emotional condition at issue and the employer is entitled to find out how much of your (just as an example) bipolar disorder was caused by your termination and how much you had all along (in which case the company isn't responsible for it).

Your employer may also be able to dig into your past employment record, including that time you got fired from a previous job after you tested positive for angel dust, your criminal background, your five previous marriages, and your history of filing lawsuits. Perhaps you have nothing to hide. But a lot of people (most?) have a few skeletons that they'd just as soon not have the rest of the world know about.

What you probably *don't* have to worry about

Now, note what I have not mentioned: (1) That your employer will fire you for filing the lawsuit (assuming you did it while still employed); or (2) that your employer will blacklist you, and you'll never work again if you sue. The reason that I did not mention these is that they very rarely happen. Retaliation -- either during employment or afterward -- for filing a lawsuit in good faith against an employer is usually illegal, and almost all employers know that. If it happens and you can prove it, you might have a pretty good case. But don't bet on being able to do that.

Of course, I'm not saying you should never file a lawsuit against an employer, but it should almost always be a last resort. It's better to try resolving your dispute through the company's grievance procedure or open-door policy, or by going to Human Resources. If you're terminated, you may be better off negotiating a nice separation package and shaking the dust from your feet. If all of those fail, and if you've taken a good, critical look at your own performance and behavior, and still feel strongly that you were mistreated, then by all means consult with a lawyer who represents **employees** in workplace disputes. But keep in mind these hidden costs of litigation that you'll face, no matter how strong your case may be.



Visit the [Employment and Labor Law Insider](#) for additional insights from [Robin Shea](#), a partner with the national labor and employment law firm Constangy, Brooks & Smith, LLP.

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Tags: [employee lawsuits](#)

EXHIBIT 5

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
287 Fans

2

My question to myself lately has been :

Are we teaching our college age young adults - Profits over People ? Money Talks and BS walks ? Your nothing unless you financially rape your environment and destroy your economic enemies ?

Is this what we're teaching them? Because they are snugly fitting in nicely to the Money Rules All mode of capitalism.

Why can't we start a business without any intent to reflect a profit beyond paying employees a living wage building a community and moving the business into the next year with strength. Profits would not be a priority and people would be valued. The prosperity alone would jolt this countries GNP.

What shocks me are the massive amount of business leaders and upper level managers I know personally who go to church and pretend to be a respected member of the faithful community followers of faith after having offshored 20,000 employees so they can garner a bonus and a shot at CEO even though they have a salary of upper

6 figures for years.

At church they hug people, neighbors, other leaders talk about their childrens future.
How they found God.

I almost want to vomit typing this.

11 JAN 2012 5:02 AM

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DHC

SUPER USER · 56 Fans

1

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 argument 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 6

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

Case title:	Joel Gutierrez Alarcon v. Fairway Landscape & Irrigation, Inc.
Case no.:	CVRI2204068
Court:	Riverside
Judge:	The Honorable Harold W. Hopp, Dept. 10
Page subject:	Data

Important Dates

Unfair Competition, Bus.&Prof. § 17200 ("UCL") period begins:	Sunday, September 19, 2021
Lab.Code § 203 (waiting time penalties) period begins:	Sunday, September 19, 2021
Lab.Code § 2699 (civil penalties) period begins:	Sunday, September 19, 2021
Lab.Code § 226 (pay stub penalties) period begins:	Wednesday, September 22, 2021
LWDA Notice:	Monday, September 19, 2022
Lawsuit:	Thursday, September 22, 2022
Sample begin:	Wednesday, January 3, 2018
Sample end:	Wednesday, June 12, 2024
Sample calendar days:	2,352
Mediation:	Monday, July 22, 2024
Anticipated Settlement Period end date:	Tuesday, November 19, 2024
Settlement Period to Sample Period:	49.19%

Classes / Groups sizes

UCL Class Members:	123
UCL Workweeks:	10,245
UCL Wage Statements:	10,245
UCL Workdays:	49,996
UCL Calendar days:	1,037
UCL Months:	2,358

Waiting Time Penalties Class Members:	123
---------------------------------------	-----

PAGA Aggrieved Employees:	123
PAGA Wage Statements:	10,245

Wage Statement Class Members:	123
Wage Statement Class Wage Statements:	10,245

Averages

Average Hourly Rate:	\$	19.00
Average Overtime Rate:	\$	28.50
Average Doubletime Rate:	\$	38.00
Average Work Hours Per Day:		8.90
Average Work Hours Per Week:		43.42
Average Workdays Per Week:		4.88
Workdays to Calendar Days (%):		69.71%
Paycycle:	weekly (52 paychecks/year)	
Paychecks Per Year:		52

Confidential Settlement Communication

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

Case title:	Joel Gutierrez Alarcon v. Fairway Landscape & Irrigation, Inc.
Case no.:	CVRI2204068
Court:	Riverside
Judge:	The Honorable Harold W. Hopp, Dept. 10
Page subject:	Unpaid wages
Authority:	Lab.Code §§ 510, 1194, 1194.2, and 1198

Average Hourly Rate:	\$	19.00
Unpaid hours per work day:		1.00
Unpaid hours per pay week:		4.88
Actionable workweeks:		10,245
Interest:		10%

Unpaid wages:	\$	1,044,908.04
Liquidated damages:	\$	1,044,908.04

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

Case title:	Joel Gutierrez Alarcon v. Fairway Landscape & Irrigation, Inc.
Case no.:	CVRI2204068
Court:	Riverside
Judge:	The Honorable Harold W. Hopp, Dept. 10
Page subject:	Unprovided Meal Periods
Authority:	Lab.Code §§ 226.7, 512, and 1198
Average Hourly Rate:	\$ 19.00
Actionable workdays:	49,996
>>Percentage qualifying for meal periods:	99.40%
Violation rate (%)	24.70%
Meal period premium wages:	\$ 234,629.35

Confidential Settlement Communication

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

Case title:	Joel Gutierrez Alarcon v. Fairway Landscape & Irrigation, Inc.		
Case no.:	CVRI2204068		
Court:	Riverside		
Judge:	The Honorable Harold W. Hopp, Dept. 10		
Page subject:	Unprovided Rest Periods		
Authority:		907.86	Lab.Code §§ 226.7 and 1198
	\$	47.78	
Average Hourly Rate:		\$	19.00
Actionable workdays:			49,996
>>Percentage qualifying for rest periods:			100.00%
Violation rate (%)			100.00%
Rest period premium wages:		\$	949,916.40

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

Case title:	Joel Gutierrez Alarcon v. Fairway Landscape & Irrigation, Inc.
Case no.:	CVRI2204068
Court:	Riverside
Judge:	The Honorable Harold W. Hopp, Dept. 10
Page subject:	Unreimbursed expenses
Authority:	Lab.Code § 2802

Telecom

UCL Months:		2,358
Average Monthly Telecom bill:	\$	60.00
Percentage attributable to work:		75%
Interest rate:		10%
Unreimbursed Telecom costs:	\$	116,715.19

Tools

	scissors, box cutters, electric cutters, uniforms, protective gear and PPE, gloves, knee pads, hard hat, drills, drill bits, screwdrivers, and wire stripper pliers.	
Unprovided tools:		
Cost of tools:	\$	1,000.00
UCL Class Members:		123
Interest rate:		10%
Unreimbursed tools and supplies:	\$	135,300.00
Unreimbursed expenses:	\$	252,015.19

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Case title:	Joel Gutierrez Alarcon v. Fairway Landscape & Irrigation, Inc.
Case no.:	CVRI2204068
Court:	Riverside
Judge:	The Honorable Harold W. Hopp, Dept. 10
Page subject:	Itemized Wage Statements
Authority:	Lab.Code § 226

Wage Statement Class Members:		123
Wage Statement Class Wage Statements:		10,245
Initial penalty:	\$	50.00
Subsequent penalty:	\$	100.00
Statutory wage statement penalties:	\$	1,018,350.00

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

Case title:	Joel Gutierrez Alarcon v. Fairway Landscape & Irrigation, Inc.
Case no.:	CVRI2204068
Court:	Riverside
Judge:	The Honorable Harold W. Hopp, Dept. 10
Page subject:	Waiting Time / Final Wages
Authority:	Lab.Code § 203

Waiting Time Penalties Class Members:		123
Days waiting:		30
Average Hourly Rate:	\$	19.00
Average Overtime Rate:	\$	28.50
Average Doubletime Rate:	\$	38.00
Average Work Hours Per Day:		8.90
Regular Hours Per Day:		8.00
Overtime Hours Per Day:		0.90
Doubletime Hours Per Day:		-
Waiting time penalties:	\$	655,528.50

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Case title: Joel Gutierrez Alarcon v. Fairway Landscape & Irrigation, Inc.
Case no.: CVRI2204068
Court: Riverside
Judge: The Honorable Harold W. Hopp, Dept. 10
Page subject: **PAGA Civil Penalties**
Authority: Lab.Code §§ 2698, *et seq.*

Labor Code violation	Labor Code Civil		Pay periods	Total
	Penalty Statute	Initial penalty		
Minimum wages (Lab.Code § 1197):	Lab.Code § 1197	\$ 100.00	10,245 \$	1,024,500.00
Overtime wages (Lab.Code § 510):	Lab.Code § 558	\$ 50.00	10,245 \$	512,250.00
Meal periods Lab.Code § 512):	Lab.Code § 558	\$ 50.00	10,245 \$	512,250.00
Rest periods (Lab.Code § 1198):	Lab.Code § 2699	\$ 100.00	10,245 \$	1,024,500.00
Business expenses (Lab.Code § 2802):	Lab.Code § 2699	\$ 100.00	10,245 \$	1,024,500.00
Improper pay stubs (Lab.Code § 226):	Lab.Code § 226.3	\$ 100.00	10,245 \$	1,024,500.00
Untimely wages (Lab.Code §§ 201-204):	Lab.Code § 2699	\$ 100.00	10,245 \$	1,024,500.00
Total:			\$	6,147,000.00

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

Case title:	Joel Gutierrez Alarcon v. Fairway Landscape & Irrigation, Inc.
Case no.:	CVRI2204068
Court:	Riverside
Judge:	The Honorable Harold W. Hopp, Dept. 10
Page subject:	Totals
Authority:	Various

Restitution

Unpaid wages:	\$	1,044,908.04
Liquidated damages:	\$	1,044,908.04
Meal period premium wages:	\$	234,629.35
Rest period premium wages:	\$	949,916.40
Unreimbursed expenses:	\$	252,015.19
Restitution subtotal:	\$	3,526,377.02

Penalties

Statutory wage statement penalties:	\$	1,018,350.00
Waiting time penalties:	\$	655,528.50
Minimum wages (Lab.Code § 1197):civil penalties:	\$	1,024,500.00
Overtime wages (Lab.Code § 510):civil penalties:	\$	512,250.00
Meal periods Lab.Code § 512):civil penalties:	\$	512,250.00
Rest periods (Lab.Code § 1198):civil penalties:	\$	1,024,500.00
Business expenses (Lab.Code § 2802):civil penalties:	\$	1,024,500.00
Improper pay stubs (Lab.Code § 226):civil penalties:	\$	1,024,500.00
Untimely wages (Lab.Code §§ 201-204):civil penalties:	\$	1,024,500.00
Penalties subtotal:	\$	7,820,878.50

Grand total:	\$	11,347,255.52
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EXHIBIT 7

Case title: Joel Gutierrez Alarcon v. Fairway Landscape & Irrigation, Inc.
Case no.: CVRI2204068
Court: Riverside
Judge: The Honorable Harold W. Hopp, Dept. 10
Page subject: **Class and PAGA Settlement Division**

Gross Settlement Amount (GSA)	\$	250,000.00	Percentage of GSA
Class Counsel Fees Payment	\$	83,333.00	33.33%
Class Counsel Litigation Expenses Payment	\$	17,500.00	7.00%
Administration Expenses Payment	\$	7,500.00	3.00%
Class Representative Service Payment	\$	5,000.00	2.00%
PAGA Penalties	\$	25,000.00	10.00%
>> LWDA PAGA Payment Percentage		75%	
>> LWDA PAGA Payment	\$	18,750.00	7.50%
>> Individual PAGA Payments Percentage		25%	
>> Individual PAGA Payments	\$	6,250.00	2.50%
Net Settlement Amount	\$	111,667.00	44.67%
Floor		100%	
Minimum Payout	\$	250,000.00	100.00%
Class Members		123	
Average Individual Class Payment	\$	907.86	
Average hourly rate of pay	\$	19.00	
Hours of pay per average Individual Class Payment		47.78	
Workweeks		10,245	
Workweek Value	\$	10.90	
Class Period Begin Date		Tuesday, September 28, 2021	
Class Period End Date		Friday, October 11, 2024	
Workweeks per year		52	
Maximum Workweeks in Class Period		157.99	
Minimum Workweeks in Class Period		1.00	
Maximum Individual Class Payment (high)	\$	1,722.09	
Minimum Individual Class Payment (low)	\$	10.90	
Plaintiff's first date of employment		Wednesday, February 28, 2018	
Plaintiff's last date of employment		Thursday, April 7, 2022	
Plaintiff's first date of employment in Class Period		Tuesday, September 28, 2021	
Plaintiff's last date of employment in Class Period		Thursday, April 7, 2022	
Number of Plaintiff's Workweeks in Class Period		27	
Plaintiff's Individual Class Payment	\$	296.59	
Aggrieved Employees		123	
Average Individual PAGA Payment	\$	50.81	
Aggrieved Employee Paychecks		10,245	
Aggrieved Employee Paycheck value	\$	0.61	
PAGA Period Begin Date		Sunday, September 19, 2021	
PAGA Period End Date		Friday, October 11, 2024	
Paychecks per year		52	
Maximum Aggrieved Employee Paychecks in PAGA Period		159.28	
Minimum Aggrieved Employee Paychecks in PAGA Period		1.00	
Maximum Individual PAGA Payment (high)		97.17	
Minimum Individual PAGA Payment (low)	\$	0.61	
Plaintiff's first date of employment		Wednesday, February 28, 2018	
Plaintiff's last date of employment		Thursday, April 7, 2022	
Plaintiff's first date of employment in PAGA Period		Sunday, September 19, 2021	
Plaintiff's last date of employment in PAGA Period		Thursday, April 7, 2022	
Number of Plaintiff's Paychecks in PAGA Period		28	
Plaintiff's Individual PAGA Payment	\$	17.38	

EXHIBIT 8



CASE ASSUMPTIONS

Class Members	123
Opt Out Rate	1%
Opt Outs Received	4
Total Class Claimants	119
Subtotal Admin Only	\$7,760.38

Flat Fee Total \$7,000.00

For 123 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Language Translation, Printing & Mailing Included

August 29, 2024

Case: Gutierrez v. Fairway, Opt-Out & PAGA Administration

Phoenix Contact: Michael E. Moore

Contact Number: 949.331.0131

Email: mike@phoenixclassaction.com

Requesting Attorney: Nazie Elena Baharloo

Firm: The Spivak Law Firm

Contact Number: (213) 802-7491

Email: nazie@spivaklaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly.

Estimate is based on **123** Class Members. Class data **Must** be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 day

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*	\$100.00	1	\$100.00
Call Center & Long Distance	\$2.00	17	\$34.44
NCOA (USPS)	\$24.60	1	\$24.60
Total			\$559.04

* 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	123	\$12.30
Notice Packet & Opt-Out Form	\$1.50	123	\$184.50
Estimated Postage (up to 2 oz.)*	\$0.87	123	\$107.01
Static Website	\$200.00	1	\$200.00
Check Cashing Reminder Postcard	\$0.60	0	\$0.00
Postage Included			
Total			\$1,703.81

* 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	2		\$110.00
Skip Tracing Undeliverables	\$1.00	18		\$18.45
Remail Notice Packets	\$1.45	15		\$22.40
Estimated Postage	\$0.87	15		\$13.44
Programming Undeliverables	\$50.00	2		\$100.00
			Total	\$264.29

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Database	\$150.00	1		\$150.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	4		\$220.00
Deficiency & Dispute Letters	\$10.00	4		\$40.00
Case Manager	\$85.00	2		\$170.00
			Total	\$780.00

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		\$675.00
Mail Class Checks *	\$0.90	119		\$107.10
Estimated Postage	\$0.64	119		\$76.16
			Total	\$1,453.26

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing & Instructions for downloading 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)	\$2.00	25		\$49.98
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 & Escheating to the State of CA Included)	\$1,300.00	1		\$1,300.00
Check to Cy-Pres	\$150.00	1		Included
Total				\$2,999.98

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$7,760.38

EXHIBIT 9

Case Name: GUTIERREZ v. FAIRWAY

Wednesday, August 28, 2024

Requesting Attorneys Name:
E-Mail:
ILYM Contact:
E-Mail:
Contact Number:

Nazie Elena Baharloo
nazie@spivaklaw.com
Lisa Mullins
Lisa@ilymgroup.com
714.878.8836

Estimate For Administrative Solutions: Class & PAGA

KEY ASSUMPTIONS	
Total Number of Class Members	123
Estimated Percentage of Remails	15%
Certified Spanish Translation	Yes
ILYM Group Static Website	Yes
Case Duration (Years)	1

Summary Estimate: ILYM Group Fees & Expenses

Case Startup:	\$325.00
Project Management & Noticing:	\$2,880.00
Notification & Mailing:	\$405.23
Distribution (Includes EIN, Bank Acct * /QSF Setup):	\$2,894.77
Case Conclusion:	\$345.00
Total ILYM Fees & Expenses:	\$6,850.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: GUTIERREZ v. FAIRWAY

Wednesday, August 28, 2024

Requesting Attorneys Name: Nazie Elena Baharloo

Activity	Rate Type	Unit Cost	Volume	Amount
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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 & NOTICING				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	3	\$360.00
Staff Hours for Processing Returned Mail	Hourly	\$70.00	2	\$140.00
Staff Hours for Processing Opt-Outs, Disputes & Objection(s)	Hourly	\$70.00	2	\$140.00
Report Processing	Hourly	\$70.00	2	\$140.00
Certified Spanish Translation	Flat Fee	\$1,250.00	1	\$1,250.00
ILYM Group Static Website	Flat Fee	\$750.00	1	\$750.00
NCOA	Flat Rate	\$45.00	1	\$45.00
Toll-Free Telephone Support	Flat Fee	\$55.00	1	\$55.00
Weekly Reports	Flat Rate	\$750.00	1	Waived

Subtotal \$2,880.00

NOTIFICATION/MAILING				
Fulfillment of Notice, English & Spanish	Per Piece	\$1.50	123	\$184.50
USPS First Class Postage	Per Piece	\$0.70	123	\$86.10
Re-Mails (Forward/Skip trace Undeliverables)	Per Piece	\$2.00	12	\$24.60
Storage, Photocopies, Deliveries	Flat Fee	\$110.03	1	\$110.03

Subtotal \$405.23

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: GUTIERREZ v. FAIRWAY

Wednesday, August 28, 2024

Requesting Attorneys Name: Nazie Elena Baharloo

Activity	Rate Type	Unit Cost	Volume	Amount
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, Stub & Release - Print & Mail (W-2/1099)	Per Check	\$1.00	123	\$123.00
USPS First Class Postage	Per Piece	\$0.60	123	\$73.80
Re-Mails (Forward/Skip trace Undeliverables up to 10%)	Per Piece	\$1.50	6	\$9.23
Reminder Postcard for Uncashed Checks	Per Piece	\$0.90	43	\$38.75
Preparation of Taxes	Hourly	\$120.00	5	\$600.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

**Additional Bank fees may apply*

Subtotal \$2,894.77

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

Subtotal \$345.00

Total ILYM Fees & Expenses: \$6,850.00

EXHIBIT 10

Estimate Number:	20250214-PJI-04	Prepared By:	Patrick J. Ivie
Estimate Date:	2/14/2025	Telephone Number (mobile):	310.995.6455
Estimate Expiration Date:	5/15/2025	Email:	pivie@simpluris.com

	<u>Primary Contact</u>		<u>Opposing Counsel Contact</u>
Attorney:	Lizzett Cortez	Attorney:	
Firm:	The Spivak Law Firm	Firm:	
Email:	lizzett@spivaklaw.com	Email:	

Case Name: *Gutierrez v. Fairway Landscape & Irrigation, Inc. Class and PAGA Settlement*

Assumptions

In addition to the assumptions enumerated below, this estimate assumes that

- (1) Simpluris will receive data in a single, complete file; (2) there will be no substantial change to class size or in response rate;
- (3) administration costs will be paid from the QSF, and (4) Simpluris will submit revisions to this estimate to account for any material changes to scope.

Anticipated Class Size:	123	Undeliverable Rate:	10%
Claims Rate:	N/A	Mail Skip Trace Success Rate:	85%
Opt-out Rate:	1%	Call Rate:	4%
Language(s) for Communication	EN/SP	Average Call Length:	4 Minutes
Reminder Mailing:	Postcard	Fund Distribution:	Simpluris
Unclaimed Funds:	Escheat	Number of Distributions:	1
State(s):	CA	Tax Year(s):	1
Length of Administration:	9 Months		

Case Setup

- Undertake postings on Simpluris website of key documents as ordered by the Court (e.g. orders and the Settlement Agreement)
- Data compilation: develop case-specific response tracking

Category	Unit Value	# of Units	Total
Project Manager - Case Setup	\$110.00	1	\$110.00
Case Document Web Postings	\$225.00	1	\$225.00
Database Manager - Initial Data Analysis	\$125.00	1	\$125.00
Total:			\$460.00

Notice and Communications

- Spanish Translation of the Notice
- 14-page Notice Packet: Opt-Out Form, Dispute Form & Objection Form, sent by First Class US Mail, in English and Spanish
- Single Postcard Reminder Mailing

Category	Unit Value	# of Units	Total
Spanish Translations - assuming 7,000 words	\$0.25	7,000	\$1,750.00
Notice Packet - assuming 28 images	\$6.00	123	\$738.00
Postage	\$0.72	123	\$88.56
NCOA/CASS/LACS	\$0.14	123	\$17.22
Undeliverable Processing and Skip Trace	\$0.32	13	\$4.16
Remail Notice (assuming 85% skip trace success)	\$7.00	11	\$77.35
Remail Postage	\$0.72	11	\$7.96
Single Postcard Reminder Mailing	\$0.18	123	\$22.14
Postage	\$0.55	123	\$67.65
Mailing Supervisor	\$55.00	2	\$110.00
Total:			\$2,883.04

Contact Center

- Establish case-specific toll-free number and 24/7 IVR
- Assuming 4-minute calls

Category	Unit Value	# of Units	Total
Call Center Set Up	\$350.00	1	\$350.00
Toll Free Monthly Maintenance	\$95.00	9 Months	\$855.00
IVR (includes toll-free number charges)	\$15.00	1	\$15.00
Subtotal			\$1,220.00

Administration

- Process incoming class and counsel communications, opt-outs, disputes, and objections

Category	Unit Value	# of Units	Total
Database Manager	\$125.00	1	\$125.00
Project Manager	\$110.00	1	\$110.00
Dispute Processing	\$1.75	6	\$10.76
Opt-out Processing	\$1.75	2	\$3.50
Reporting to Counsel (hours)	\$100.00	2	\$200.00
Total:			\$449.26

Award Disbursement

- Establish 26 CFR § 1.468B-1 compliant Qualified Settlement Fund ("QSF")
- Disburse award payments and tax documents
- Uncashed checks to escheat to State of California in the name of the aggrieved employee
- Conduct regular and annual IRS-mandated QSF reporting and reconciliation (one per calendar year)
- Complete all required filings with state and federal tax authorities

Category	Unit Value	# of Units	Total
Disbursement Data Preparation	\$125.00	2	\$250.00
Disbursement Manager - Data Validation	\$90.00	1	\$90.00
Setup Banking Account/QSF	\$675.00	1	\$675.00
QSF Monthly Reconciliation and Maintenance	\$125.00	9	\$1,125.00
Print & Mail Distribution Check and Tax Docs	\$0.60	123	\$73.80
Postage	\$0.72	123	\$88.56
Process Returned Checks (assuming 5%)	\$0.20	7	\$1.40
Skip Trace Search Undeliverable Checks	\$0.12	7	\$0.84
Remail Checks (includes postage)	\$1.70	7	\$11.90
Escheat Uncashed Checks	\$500.00	1	\$500.00
QSF Reporting and Final Declaration	\$500.00	1	\$500.00
QSF Annual Tax Reporting and Reconciliation	\$850.00	1	\$850.00
Distribution Manager	\$90.00	1	\$90.00
Total:			\$4,256.50

Case Completion

- Final audit and review
- Send final declaration and reporting to counsel

Category	Unit Value	# of Units	Total
Data Manager-Final Reporting	\$125.00	1	\$125.00
Clerical-Clean Up Any Misc.	\$45.00	1	\$45.00
Project Manager-Wrap-up Final Issues	\$110.00	1	\$110.00
Total:			\$280.00

Total Estimated Cost of Administration:	\$9,549
Less Client Courtesy Discount:	-\$2,549
Discounted Total:	\$7,000

EXHIBIT 11

2013 WL 766535
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.
Court of Appeal,
Second District, Division 2, California.

Pearline ZALEWA et al., Plaintiffs and Respondents,
v.
TEMPO RESEARCH CORPORATION et al., Defendants and Appellants.

B238142 | Filed March 1, 2013

APPEAL from a judgment of the Superior Court of Los Angeles County. [Charles F. Palmer](#), Judge. Reversed and remanded. (Los Angeles County Super. Ct. No. BC319156)

Attorneys and Law Firms

Dickstein Shapiro, [Arthur Silbergeld](#), [Christine de Bretteville](#) for Defendants and Appellants.

Altshuler Berzon, [Michael Rubin](#), [Eileen B. Goldsmith](#); Law Offices of Joseph D. Tuchmayer, [Joseph D. Tuchmayer](#); Law Offices of Todd Arron, [Todd S. Arron](#) for Plaintiffs and Respondents.

Opinion

[BOREN](#), P.J.

***1** We remanded this employment case to the trial court to determine (1) if attorney fees are authorized by statute following our reversal of the judgment in favor of plaintiffs, and (2) if fees are authorized, are they warranted by the facts of the case. On remand, both sides submitted demands for attorney fees to the trial court. The court awarded fees to plaintiff former employees as the “**prevailing** party” under [Labor Code section 218.5](#).¹

We reverse. Plaintiffs were not the **prevailing** party: they lost the case because their demands for bonuses were unfounded. Given that plaintiffs had no right to bonuses after they were laid off, defendants’ payment of money to some former employees during the litigation was a gift that cannot be viewed—as a matter of law—as a “catalyst” warranting an award of attorney fees to plaintiffs.

FACTS²

Plaintiffs are former employees of defendant Rifocs, a fiber optics company. In 1999, Rifocs merged with codefendant Textron. The merged entity was subsequently acquired by codefendant Tempo Research Corporation. The 1999 merger agreement contained a bonus clause. The bonus was intended to reward key employees for past performance and give them an incentive to remain with the company after the merger. Plaintiff employees were not third party beneficiaries of the merger agreement, which expressly forbids them from suing to enforce its terms.

To qualify for a bonus, plaintiffs had to be employed by the corporation at the end of the calendar year from 2000 through 2003. Plaintiffs received bonuses pursuant to the merger agreement beginning in December 2000. Plaintiff Laws received a bonus of \$10,000 for 2000–2001 and Zalewa received a bonus of \$75,000 for 2000–2002.

In 2001, defendants began employee layoffs because the market for fiber optics cooled. Defendants’ employment roster declined from 125 employees in April 2001 to seven employees in 2003. After being laid off, plaintiffs received no further

bonuses; however, they were entitled to—and received—severance pay. They signed releases agreeing not to sue on any claim arising from their employment with defendants.

In 2004, plaintiffs filed suit alleging Labor Code violations, unfair business practices, breach of contract, conversion, promissory estoppel, bad faith, and private attorney general (PAGA) penalties. In July 2005, defendants offered payments to laid-off employees, though not to the plaintiffs. After defendants made the payments, plaintiffs amended their complaint to allege a class action and assert a new claim for a “residual bonus.” A class was certified in 2007.

A bench trial was conducted in 2008. The court found that plaintiffs are entitled to recover a direct bonus, but no residual bonus. Because the bonus was unpaid wages, plaintiffs were awarded prejudgment interest and attorney fees under § 218.5. The court denied penalties to plaintiffs, finding that it would be unjust because defendants voluntarily tendered almost all of the outstanding direct bonus amounts to class members. The court awarded 11 employees \$0 because they were paid *more* money by defendants than they were owed. The remaining eight former employees were awarded sums ranging from \$455 to \$35,719. The court awarded plaintiffs’ counsel attorney fees of \$881,715. The court rejected plaintiffs’ claim under PAGA for lack of standing, because plaintiffs left defendants’ employ before PAGA took effect in 2004.

*2 Plaintiffs appealed the judgment because they felt entitled to residual bonuses and waiting time penalties, among other things. Defendants cross-appealed, challenging the trial court’s award of a direct bonus, its invalidation of the releases signed by plaintiffs, and the court’s award of attorney fees.

This Court reversed the judgment in favor of plaintiffs.

First, the trial court improperly invalidated the releases signed by plaintiffs after finding that defendants reasonably and in good faith believed that they did not owe plaintiffs a bonus. In a bona fide dispute over wages, defendants can legitimately offer plaintiffs money in return for their release of all claims. There was no evidence that the releases were coerced or improperly obtained. We wrote that plaintiffs “could, and did, accept payments that exceeded their earned severance, in return for releasing all claims, when there was a bona fide dispute over the wages owing. This is proper, even if the payment made by defendants was less than the bonus amounts claimed by the employees.”

Second, the trial court erred by finding that plaintiffs are entitled to a direct bonus. Although plaintiffs benefit from the bonus clause, the merger agreement prohibits them from suing to enforce its terms. Further, plaintiffs did not rely on any written or oral promises from defendants that they would receive a bonus even if they were laid off from their jobs due to depressed economic conditions. Because plaintiffs are not entitled to a bonus after they were laid off, they are not entitled to waiting time penalties, other Labor Code penalties, or prejudgment interest.

Finally, we reversed the trial court’s award of \$881,715 in attorney fees. We remanded the case to the trial court to determine whether an award of attorney fees is authorized by statute and warranted by the facts. Notably, we did *not* specify that either plaintiffs or defendants might be entitled to fees.³

On remand, the parties filed cross-motions for attorney fees. Plaintiffs requested an award of \$307,146 as the **prevailing** party pursuant to § 218.5, reasoning that this litigation was the catalyst for defendants’ July 2005 payments. Plaintiffs did not request attorney fees for litigation occurring after the 2005 payments, because the claims that went to trial were found by this Court to lack merit.

Defendants countered with a request for \$2,210,360 in costs and attorney fees incurred at trial and on appeal. Defendants argued that they are the **prevailing** parties: the appeal showed that they had no obligation to pay anything to plaintiffs. Like plaintiffs, defendants relied upon § 218.5 as authority for their right to recover attorney fees. In opposition to plaintiffs’ request for fees, defendants observed that their 2005 payments were made to nonparties, not to plaintiffs, and plaintiffs are not the **prevailing** parties because they did not recover any relief against defendants at trial. In defendants’ view, the “catalyst” theory is inapposite because no public interest was vindicated by plaintiffs’ lawsuit.

THE TRIAL COURT’S RULING

*3 The trial court denied defendants' motion for attorney fees. Citing § 218.5, the court granted plaintiffs' motion for fees, finding that plaintiffs are the prevailing parties, even if they did not obtain a favorable judgment in the litigation. The court reasoned that plaintiffs' lawsuit was a catalyst, provoking defendants to make the 2005 payments to some former employees. Plaintiffs initially won their lawsuit in the trial court and other employees recovered their bonuses from defendants in administrative proceedings; these factors demonstrated that the lawsuit was not frivolous, groundless or unreasonable. Finally, plaintiffs made demands for their bonus before the action was filed but were rebuffed, demonstrating that the litigation was necessary. Plaintiffs' attorneys were awarded a total of \$346,947.

DISCUSSION

1. Appeal and Review

The appeal arises from a postjudgment order awarding attorney fees and costs. (Code Civ. Proc., § 904.1, subd. (a)(2); *Raff v. Raff* (1964) 61 Cal.2d 514, 519; *Breckler v. Thaler* (1978) 87 Cal.App.3d 189, 193.) An attorney fee award generally is reviewed for an abuse of discretion; however, when the parties dispute whether the trial court was legally authorized to make an award because "the criteria for making an award" were unmet, this calls for statutory construction and presents a question of law. (*Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1213–1214; *Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169, 1175.) Specifically, we are asked whether § 218.5 permits, under a catalyst theory, an award of attorney fees to plaintiffs who did not prevail on any of the claims made in their lawsuit. Review is de novo, because the issue is whether there is a legal basis for awarding attorney fees. (*Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 1426; *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 149.)

2. Overview of § 218.5

Section 218.5 reads, in relevant part, "In any action brought for the nonpayment of wages ... the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action." The statute is a reciprocal fee recovery provision that works in favor of either employees or employers, whichever is the prevailing party in a lawsuit claiming unpaid wages. (*Earley v. Superior Court, supra*, 79 Cal.App.4th at p. 1427.) In employee class action suits, class representatives assume a fiduciary responsibility on behalf of absent parties and are potentially responsible for defense fees if their case fails. (*Id.* at pp. 1434–1436.) An unpaid bonus is treated as a claim for unpaid wages. (*Hunter v. Ryan* (1930) 109 Cal.App. 736, 738.)

3. The Catalyst Theory

The catalyst theory arises from the private attorney general doctrine codified in Code of Civil Procedure section 1021.5.⁴ It allows courts to award attorney fees to a "successful party" in an action that results in "the enforcement of an important right affecting the public interest" if there is (a) a significant benefit conferred on the general public or a large class of persons, (b) the financial burden of private enforcement makes the award appropriate, and (c) the fees should not be paid out of any recovery. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565 (*Graham*).)

*4 The doctrine " " "rests upon the recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible." " " (*Graham, supra*, 34 Cal.4th at p. 565.) It does not apply when a lawsuit's "primary effect was the vindication of [plaintiff's] personal right and economic interest." (*Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 637.)

"Under the catalyst theory, attorney fees may be awarded even when litigation does not result in a judicial resolution if the defendant changes its behavior substantially because of, and in the manner sought by, the litigation.... In order to be eligible for attorney fees[,] a plaintiff must not only be a catalyst to defendant's changed behavior, but the lawsuit must have some merit [] and the plaintiff must have engaged in a reasonable attempt to settle its dispute with the defendant prior to

litigation.” (*Graham, supra*, 34 Cal.4th at pp. 560–561.)

“ ‘A plaintiff will be considered a “successful party” where an important right is vindicated “by activating defendants to modify their behavior.” ’ ” (*Graham, supra*, 34 Cal.4th at p. 567.) Plaintiff need not secure a favorable final judgment to succeed: the case may be won on a preliminary issue; or by convincing a public agency to implement state law; or by reaching a settlement with a corporation in a shareholder derivative suit. (*Id.* at pp. 565–567, citing cases.) In *Graham*, the plaintiffs sued Chrysler for making false statements about the towing capacity of its trucks, inspiring the company to offer to repurchase or replace the trucks. The lawsuit caused Chrysler to change its behavior, “implicated an issue of public safety, and [] benefited thousands of consumers and potentially thousands more by acting as a deterrent to discourage lax responses to known safety hazards.” (*Id.* at pp. 577–578.)

4. Plaintiffs’ Right to Recover Attorney Fees

Plaintiffs originally brought suit in 2004 “on behalf of themselves and the general public.” They requested attorney fees pursuant to § 218.5. While the case was pending, but before plaintiffs amended their complaint to include class allegations, defendants paid money to some of the laid-off employees, but not to plaintiffs. Plaintiffs proceeded to trial, where they won their unpaid bonus money. The victory was short-lived, as defendants had a successful appeal.

To determine the prevailing party under § 218.5, we import the definition used in the Code of Civil Procedure (*On-Line Power, Inc. v. Mazur* (2007) 149 Cal.App.4th 1079, 1085–1087), which defines a prevailing party as “the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant.” (*Code Civ. Proc.*, § 1032, subd. (a)(4).) Plaintiffs did not have a net monetary recovery against defendants. In fact, they recovered nothing. Under the plain language of § 218.5, plaintiffs were not the prevailing party because all of their claims against defendant were denied.

While no court has yet applied the catalyst theory to a case arising from § 218.5, plaintiffs argue that the theory should apply, based on defendants’ July 2005 payments to some former employees. It is unclear whether the permissive fee shifting described in the catalyst theory applies to a statute like § 218.5, which mandates an award of attorney fees to the “prevailing party.” Assuming the catalyst theory applies to Labor Code cases, its application does not assist plaintiffs in their quest for attorney fees.

*5 The opinion in the prior appeal shows that plaintiffs had no right to collect a bonus after they were laid off from their jobs with defendants. By extension, the laid-off, nonparty employees who received payments from defendants in July 2005 also had no right to collect a bonus. Had the employees not accepted the 2005 payments, they would have received nothing in the litigation. In the eyes of the law, defendants’ 2005 payments were a gift, not a contractual or statutory obligation to remit unpaid wages.

When deciding whether to award attorney fees, the court reviews the facts “not only to determine the lawsuit’s catalytic effect but also its merits. Attorney fees should not be awarded for a lawsuit that lacks merit.” (*Graham, supra*, 34 Cal.4th at p. 576.) Plaintiffs cannot be a “successful party” if a reviewing court flatly rejects their case on the merits. (*Marine Forests Society v. California Coastal Com.* (2008) 160 Cal.App.4th 867, 877.) Although plaintiffs’ lawsuit provoked the 2005 payments, the lawsuit itself lacked merit, because plaintiffs demanded bonuses and penalties that they were not entitled to collect.

A lawsuit that provokes a defendant to make a gift is not a ground for awarding attorney fees: no significant benefit is conferred on the public or a large class of persons by such a lawsuit (*Graham, supra*, 34 Cal.4th at p. 578), and defendants engaged in no detrimental behavior that needed to be changed. As discussed in our prior opinion, defendants had the right to behave the way they did, laying off employees they could not afford to keep and denying bonuses to employees who were not on the payroll at year’s end. (Compare *Tipton–Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 607–610 [city instituted remedial practices in its police department after plaintiff sued for race and sex discrimination, justifying application of the “catalyst” theory of fee recovery]; *Harbor v. Deukmejian* (1987) 43 Cal.3d 1078, 1103 [catalyst theory applied when plaintiffs successfully challenged the governor’s constitutional veto authority, which conferred a significant benefit on the general public]; *Hogar Dulce Hogar v. Community Development Com. of City of Escondido* (2007) 157 Cal.App.4th 1358,

1368 [plaintiffs successfully obtained an amendment to a tax sharing agreement and a \$1.35 million reimbursement to a city housing fund, giving rise to catalyst fees].)

In sum, this lawsuit was instigated by a handful of employees who felt entitled to collect a bonus for years after they stopped working. By no stretch of imagination did this lawsuit aim to vindicate an important right affecting the public interest; nor did it confer a significant benefit on the general public or a large class of persons; nor did it cure detrimental behavior by defendants, who did not engage in improper conduct. This was not a lawsuit “ ‘that genuinely provide[d] a public benefit.’ ” (*Vasquez v. State of California* (2008) 45 Cal.4th 243, 255.) The catalyst theory does not apply here.

5. Defendants’ Right to Recover Attorney Fees

Section 218.5 is a reciprocal attorney fees statute that requires an award of fees to the “prevailing party” so long as one of the parties demands those fees upon the initiation of the action. Here, plaintiffs demanded fees pursuant to § 218.5 when they filed suit. Defendants were the prevailing parties on appeal, which resolved the entire lawsuit in their favor. (Code Civ. Proc., § 1032, subd. (a)(4) [prevailing party is the defendant if neither plaintiff nor defendant obtains any relief, and the defendant when the plaintiff recovers no relief against that defendant].) Plaintiffs did not prevail on any claims.

*6 Plaintiffs contend that their claims for fees under § 218.5 were inextricably intertwined with their PAGA claim, making it impossible to award attorney fees to defendants as the prevailing party under § 218.5. As the trial court found, plaintiffs had no standing to bring a PAGA claim because PAGA did not exist when plaintiffs were terminated from their employment with defendants. In any event, § 218.5 lists only one remotely pertinent exception: “This section does not apply to any action for which attorney’s fees are recoverable under Section 1194.”⁵ Plaintiffs did not proceed under section 1194, a one-way fee shifting statute authorizing attorney fees to employees who prevail on their minimum wage or overtime compensation claims.

Section 218.5 contains no equitable exemption allowing the courts to give a pass to employees who invoke its provisions then lose their case, causing the employer to become the prevailing party in the litigation. Defendants are the prevailing party under § 218.5, and are entitled to recover reasonable attorney fees they incurred in this litigation, including the two appeals.⁶

DISPOSITION

The postjudgment order awarding attorney fees and costs to plaintiffs is reversed. The case is remanded to the trial court to determine a reasonable award of attorney fees and costs for defendants. Defendants are entitled to recover their costs on appeal, as the prevailing party.

We concur:

ASHMANN–GERST, J.

FERNS, J.*

Footnotes

¹ Labor Code section 218.5 will be referred to in this opinion as § 218.5.

² The facts are largely derived from our opinion in *Zalewa v. Tempo Research Corporation* (Sept. 27, 2010) B210429 (nonpub. opn., as modified Oct. 27, 2010).

³ Plaintiffs misinformed the trial court that the case was remanded to resolve “whether and in what amount plaintiffs are entitled to

reasonable fees for having achieved [a] substantial result for so many of the affected employees.” (Italics added.) The opinion does not give a nod to plaintiffs’ claim for fees.

- 4 The statute reads, in relevant part, “Upon motion, a court may award attorneys’ fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement ... are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any.”
- 5 [Section 218.5](#) contains several express exceptions: it does not apply to an action brought by the Labor Commissioner; it does not apply to a surety issuing a bond pursuant to the Business and Professions Code; and it does not apply to an action to enforce a mechanics lien under the Civil Code. The statute does not mention PAGA.
- 6 The issue of attorney fees following reversal of the judgment first arose in plaintiffs’ petition for rehearing, when it was procedurally inopportune to resolve a new issue, hence the remand. We never intended to confuse the trial court by remanding for further proceedings on the issue of attorney fees.
- * Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).

EXHIBIT 12

2011 WL 5979937
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
Only the Westlaw citation is currently available.

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.

Court of Appeal, First District, Division 5, California.

Maria Tun CUN, Plaintiff and Appellant,
v.
CAFE TIRAMISU LLC, Defendant and Respondent.

No. A131241. | (San Francisco County Super. Ct. No. CGC-09-484879). | Nov. 30, 2011.

Attorneys and Law Firms

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[Wesley Jerome Fastiff](#), [Michael Gayland Pedhirney](#), Littler Mendelson, San Francisco, CA, for Defendant and Respondent.

Opinion

[NEEDHAM](#), J.

***1** Maria Tun Cun appeals from an order awarding attorney fees to respondent Café Tiramisu LLC, pursuant to [Labor Code section 218.5](#), after the court granted respondent's motion for summary judgment. Appellant contends: (1) [Labor Code section 218.5](#) did not apply, because the action she brought for unpaid wages was really for unpaid overtime, for which an award of attorney fees is available only to successful plaintiffs under [Labor Code section 1194](#); (2) the court should have apportioned the attorney fees between appellant's unpaid wages claim and her constructive termination claim, for which no attorney's fee award is available; and (3) the court improperly awarded amounts for attorney services rendered in defense of claims other than those asserted by appellant. We will affirm the order.

I. FACTS AND PROCEDURAL HISTORY

In February 2009, appellant Maria Tun Cun, along with Vicente Tapia Gonzalez and Evangelina Tun Cun, filed a complaint against respondent Café Tiramisu LLC.¹

Maria asserted three causes of action. In a cause of action for recovery of unpaid wages, she alleged that she was employed by Café Tiramisu between February 9, 2005 until her termination on March 21, 2007, she was "owed wages" and was "owed for accrued paid time off," and she was entitled to a statutory penalty for unpaid wages under [Labor Code section 203](#) and reasonable attorney fees and costs pursuant to [Labor Code section 218.5](#). In a cause of action for constructive termination in violation of public policy, Maria alleged that Café Tiramisu's "conduct in refusing to pay plaintiffs wages owed created an intolerable working condition, necessitating plaintiffs to leave employment." In her cause of action for unfair business practices, she alleged that Café Tiramisu violated [Business and Professions Code section 17200](#) by committing these same acts.

In her prayer for relief, Maria sought, among other things, damages and "reasonable attorney's fees, pursuant to [Labor Code Section 218.5](#)." Nowhere in the complaint did Maria allege that Café Tiramisu owed her for unpaid overtime.

A first amended complaint, filed in April 2010, retained Maria's allegations and causes of action. Like the original complaint, it did not allege entitlement to unpaid overtime.

Café Tiramisu filed a motion for summary judgment or, in the alternative, summary adjudication. In September 2010, the court granted the motion, finding that Maria could not **prevail** on any of her causes of action as a matter of law because, before the lawsuit, the parties had entered into settlement agreements by which Maria released all of her employment-related claims.

Judgment was entered against Maria on September 21, 2010. The judgment noted that Café Tiramisu, as the **prevailing** party, was eligible to recover its reasonable attorney fees and costs.²

Café Tiramisu filed a motion for attorney fees on November 18, 2010, contending it was the **prevailing** party and entitled to recover its fees and costs under [Labor Code section 218.5](#). Café Tiramisu requested \$36,612.50 in fees, supporting its request with a declaration from one of its attorneys and invoices for the fees incurred.

*2 Maria opposed the motion. She contended that Café Tiramisu was not entitled to recover attorney fees under [Labor Code section 218.5](#), which authorizes recovery by the **prevailing** party, because her action was for overtime wages governed by [Labor Code section 1194](#), which authorizes recovery only by successful plaintiffs. She further contended that Café Tiramisu could not recover for the portion of attorney fees incurred in connection with her claim for wrongful termination. Café Tiramisu's reply brief addressed these arguments.

By written order filed on or about January 5, 2011, the court granted the motion and awarded Café Tiramisu attorney fees in the full amount of \$36,612.50. This appeal followed.

II. DISCUSSION

As mentioned, Maria contends the court erred because: (1) [Labor Code section 218.5](#) was inapplicable because her claim for unpaid wages was really a claim for unpaid overtime; (2) the court failed to apportion the attorney fees spent on the claim for unpaid wages as opposed to her claim for wrongful termination; and (3) Café Tiramisu should not recover for fees incurred in defending against claims by others. We address each contention in turn.

A. Recovery of Attorney Fees Under [Labor Code Section 218.5](#)

Café Tiramisu sought recovery for its attorney fees, and the trial court awarded them, pursuant to [Labor Code section 218.5](#).³ [Section 218.5](#) provides in pertinent part: "In any action brought for the *nonpayment of wages*, fringe benefits, or health and welfare or pension fund contributions, the court *shall* award reasonable attorney's fees and costs to the **prevailing** party if any party to the action requests attorney's fees and costs upon the initiation of the action." (Italics added.)

Each requirement of [section 218.5](#) was met. First, Maria brought an action for the nonpayment of wages. In her original and amended complaints, Maria claimed that she was "owed wages" and, in addition, had accrued and was owed "paid time off pursuant to [Labor Code \[sections\] 226.7 and 227.3](#)." [Section 226.7](#) refers to pay for time worked during mandated meal periods, and [section 227.3](#) refers to vested vacation pay; both are considered "wages." (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1114 [time worked during mandatory meal periods]; *Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal.3d 774, 784 [vested vacation pay].)

Second, Café Tiramisu was the **prevailing** party. Its summary judgment was granted, and judgment was entered in its favor, with Maria taking nothing by her amended complaint. ([Code Civ. Proc. § 1032, subd. \(a\)\(4\)](#).)

Third, Maria expressly requested attorney fees and costs pursuant to [section 218.5](#) upon the initiation of her action, in both the original and amended complaints. Accordingly, Café Tiramisu was entitled to recover its reasonable attorney fees under

section 218.5.

Maria's sole argument to the contrary is that her cause of action for unpaid wages was really a claim for unpaid *overtime*, such that section 1194, rather than section 218.5, should govern. Section 1194, subdivision (a) provides for one-way fee shifting to a successful plaintiff only: "Notwithstanding any agreement to work for a lesser wage, any *employee* receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee *is entitled to recover* in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, *reasonable attorney's fees*, and costs of suit." (Italics added.)

*3 Because section 1194 authorizes an award of attorney fees only to a successful plaintiff, and not to the **prevailing** party, Maria contends that the trial court erred and Café Tiramisu was not entitled to an award of attorney fees. Indeed, section 218.5 provides: "This section does not apply to any action for which attorney's fees are recoverable under Section 1194." The question Maria presents, therefore, is whether her claim for unpaid wages was really a claim for overtime compensation.

Maria's effort to recast her complaint as one seeking recovery for unpaid overtime is unpersuasive. Neither her original complaint nor the amended complaint mentions "overtime," "overtime wages," or section 1194. It refers instead to "wages," paid time off (also wages), and section 218.5.

Ignoring this, Maria argues that the claim she eventually tried to *prove* was that she was not paid wages at the overtime rate. In particular, in opposition to respondent's summary judgment motion, she contended that she repeatedly worked overtime hours, presented payroll records evincing overtime hours, and purportedly asserted that it was her exhaustion from overtime hours that led to her constructive termination.⁴

Maria's argument is unconvincing. The fact that she was eventually unable to support her broadly-alleged claim for unpaid wages except with evidence of unpaid overtime does not mean that her "action" was really for overtime compensation. (See §§ 218.5, 1194.) Nor does it convert the action she brought into a different action she had never specifically alleged. To hold otherwise would reward a plaintiff for not having any evidence to support her claims as pled, and penalize a defendant who incurs attorney fees in defending against the claims *as they were pled*. Thus, while Maria may have tried to prove her cause of action for unpaid wages with evidence of unpaid overtime, the court did not err in concluding that the "action" Maria actually "brought" was for nonpayment of wages within the meaning of section 218.5, not for nonpayment of overtime within the meaning of section 1194.

Maria further argues that this court, by its August 2011 decision in appeal number A129899 from the grant of summary judgment, characterized her claim as one for overtime wages. Her argument has no merit. In the first place, our August 2011 opinion in appeal number A129899 was not before the trial court when it granted the attorney fees motion in January 2011, and Maria does not explain how the trial court could have erred in January based on our characterization of her claim in August. Furthermore, any characterization of Maria's cause of action in appeal number A129899 would not be germane to this case, because it did not involve the issue we address now. At issue in appeal number A129899 was whether the settlement release was enforceable; we were not called upon in that case, as we are in this case, to decide whether her cause of action for unpaid wages was really a cause of action for unpaid overtime. Lastly, contrary to Maria's representations, we did *not* characterize Maria's claim as one for overtime wages. Rather, we stated: "On April 2, 2010, a First Amended Complaint (Complaint) was filed; appellant alleged causes of action for recovery of *unpaid wages*, constructive termination and unfair business practices." (Italics added.) While we acknowledged that Maria ended up claiming damages for unpaid overtime in her summary judgment motion, we also noted that her underlying complaint to the Department of Labor contended that she was "entitled to additional unpaid wages, *including* for unpaid overtime," but not exclusively for unpaid overtime. (Italics added.) In short, for all of these reasons, our opinion in appeal number A129899 does not establish that the trial court erred in deciding respondent's motion for attorney fees.

*4 Maria also refers us to *Earley v. Superior Court* (2000) 79 Cal.App.4th 1420 (*Earley*). There, petitioners had brought a class action to recover unpaid overtime compensation. (*Id.* at p. 1423.) They objected to an order requiring petitioners to notify absent class members that they might be liable for attorney fees and costs if their claim was unsuccessful. (*Id.* at pp. 1423–1424.) To decide the appeal, the appellate court had to determine, among other things, if section 1194 alone governed whether attorney fees could be awarded in the defendant's favor, or if section 218.5 also applied, such that the two statutes could be read together to allow the **prevailing** party to recover attorney fees. (*Earley*, at p. 1426.) The court ruled that only

section 1194 applied to the petitioner's cause of action for unpaid overtime, in light of legislative history, the distinct legislative source of the right to overtime compensation, and the fact that the Legislature specifically provided that only plaintiffs should recover attorney fees in overtime cases. (*Earley*, at pp. 1429–1431.) The court concluded: “The only reasonable interpretation which would avoid nullification of section 1194 would be one which bars employers from relying on section 218.5 to recover fees in any action for *minimum* wages or *overtime* compensation. Section 218.5 would still be available for an action brought to recover nonpayment of contractually agreed-upon or bargained-for ‘wages, fringe benefits, or health and welfare or pension fund contributions.’ [Footnote omitted.]” (*Earley*, at p. 1430.)

Maria's reliance on *Earley* is unavailing. There, the plaintiffs expressly *alleged* a claim for unpaid overtime. (*Earley, supra*, 79 Cal.App.4th at p. 1424.) Here, Maria did not bring a claim specifically for unpaid overtime, but a broader claim for unpaid wages, which did not refer to overtime but instead to other types of wages. In other words, while *Earley* decided that only section 1194 applies to an action alleged explicitly and solely to recover unpaid overtime, Maria did not *allege* such an action to recover unpaid overtime.⁵

B. Apportionment Among Causes of Action

Maria argues that the trial court erred in failing to apportion the attorney fees between the first cause of action for unpaid wages and her cause of action for wrongful termination. We disagree.

In general, where attorney fees are recoverable for one cause of action but not another, a court need not apportion attorney fees between the causes of action if there is an issue common to the causes of action or the issues are so interrelated that it would be impossible to separate them. (See, e.g., *Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 129–130; *Erickson v. R.E.M. Concepts, Inc.* (2005) 126 Cal.App.4th 1073, 1083–1086; *Akins v. Enterprise Rent-A-Car Co.* (2000) 79 Cal.App.4th 1127, 1133.)

Here, Maria expressly based her wrongful termination claim on her allegation that her resignation from Café Tiramisu was due to its “refusal to pay [her] wages owed.” As such, the issue of whether Café Tiramisu owed Maria wages was common to both the unpaid wages claim and the constructive termination claim. Furthermore, Maria's unfair business practice claim was based on the acts underlying her other claims. Thus, from the outset, all of Maria's causes of action required resolution of one common issue: whether Café Tiramisu owed Maria “wages.”

*5 Moreover, the successful defense to *all* of Maria's causes of action was the same: Maria was not entitled to pursue any of the claims, or obtain any recovery by her lawsuit, because of the settlement agreement in which she released all of her employment-related claims. For this reason as well, the court did not err in deciding not to apportion fees among the causes of action.

C. Apportionment as to Other Plaintiffs

Maria further argues that the trial court awarded fees for work Café Tiramisu's attorneys performed in defending against the claims of the other plaintiffs. She asserts the trial court awarded attorney fees for the “deposition of Spinoso and Scopetta which necessarily involved all three plaintiff's cases.” She also states: “respondent's attorneys time records does not distinguish between deposition time for Mr. Scopetta and Spinosso [sic] spent on the claim of Tapia–Gonzalez which was settled and Evangelina Tun Cun [record citation] which respondent sought attorney fees by a separate Motion and which appeal is pending before this court.”

As Café Tiramisu points out, however, Maria did not raise this argument in the trial court. Although she argued that the court should apportion the time spent on the wrongful termination claim, she did not raise any issue concerning time purportedly spent on other cases or with respect to other plaintiffs. The issue is therefore waived. (See *North Coast Business Park v. Nielsen Construction Co.* (1993) 17 Cal.App.4th 22, 28–29.)

Maria fails to establish error.

III. DISPOSITION

The order is affirmed.

We concur: [SIMONS](#), Acting P.J., and [BRUINIERS](#), J.

Footnotes

- ¹ The appeal of Evangelina Tun Cun is pending in appeal number A131240. Because Evangelina Tun Cun and Maria Tun Cun have the same last names, we will refer to them by their first names for purposes of clarity, without disrespect.
- ² Maria appealed from the summary judgment (appeal number A129899), contending that the settlement agreements were void under [Labor Code section 206.5](#). In August 2011, we affirmed the judgment.
- ³ Except where otherwise indicated, all statutory references hereafter are to the Labor Code.
- ⁴ Maria's opposition to the motion for attorney fees quoted an excerpt from her opposition to the summary judgment motion as follows: " 'Maria Tun Cun's pay stubs for several periods immediately before she was constructively terminated show she worked as many as 140 hours in a bimonthly pay period.... It is mathematically impossible to work more than 96 hours in a bimonthly pay period without working overtime hours (i.e. more than 40 hours in any week).' "
- ⁵ It might be argued that Maria's first "cause of action" covered both a claim for unpaid overtime *and* a claim for other unpaid wages, and an attorney fees award cannot include amounts incurred in defense of the unpaid overtime claim. Maria does not make an apportionment argument on this ground, so we need not and do not decide this issue.

EXHIBIT 13

2003 WL 352422
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
Only the Westlaw citation is currently available.

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.

Court of Appeal, Fourth District, Division 1, California.

Cecilia CSASZI, Plaintiff and Appellant,

v.

SHARP HEALTHCARE, Defendant and Respondent.

No. D038558. | (Super.Ct.No. 740594). | Feb. 18, 2003.

Former employee brought action against former employer, claiming employer was liable for unlawful discrimination and unpaid wages pertaining to on-call time. The Superior Court, San Diego County, No. 740594, [S. Charles Wickersham, J.](#), granted employer's motion for summary adjudication with respect to discrimination claims, and, following a bench trial, entered judgment for employer on wage claim. Employee appealed. The Court of Appeal, [Haller, J.](#), held that: (1) employee's motion to reconsider summary adjudication order based on new or different facts was untimely; (2) employee failed to set forth any new or different facts, and thus motion to reconsider summary adjudication order was properly denied; (3) employee did not qualify for mandatory relief from summary adjudication order allegedly entered as a result of attorney's neglect or mistake; (4) attorney who failed to file an opposition to employer's summary adjudication motion engaged in positive misconduct, justifying relief from summary adjudication order; (5) employer was not required to compensate employee for time spent on-call but not actually answering calls at same rate established for time she spent on-call and actually answering calls; and (6) statute authorizing award of attorney fees only to successful plaintiff in actions seeking to recover unpaid overtime did not prohibit award of attorney fees to employer.

Affirmed in part and reversed in part.

APPEAL from a judgment of the Superior Court of San Diego County, [S. Charles Wickersham](#), Judge. Affirmed in part and reversed in part.

Opinion

[HALLER, J.](#)

***1** Cecilia Csaszi sued her former employer, Sharp Healthcare¹ (Sharp), claiming Sharp was liable for unlawful discrimination and unpaid wages pertaining to on-call time. The court granted summary adjudication on all claims except for the unpaid wages cause of action. After a court trial on this claim, the court found Csaszi did not prove she was owed any wages, and entered final judgment in Sharp's favor on all of Csaszi's causes of action. The court denied Csaszi's motions seeking relief from the summary adjudication ruling. ([Code Civ. Proc., §§ 473, 1008.](#)) Csaszi appeals.

We affirm the portions of the judgment finding in Sharp's favor on Csaszi's claim for unpaid wages and awarding Sharp attorney fees for prevailing on this claim. ([Lab.Code, § 218.5.](#)) We reverse the portion of the judgment entered on the summary adjudication of Csaszi's employment discrimination causes of action. The trial court shall vacate its order granting summary adjudication on these causes of action, permit the parties to file opposition and reply briefs, and then consider Sharp's summary adjudication motion on its merits.

FACTUAL AND PROCEDURAL SUMMARY

In March 1996, Sharp hired Csaszi as a utilization review/quality assurance nurse responsible for evaluating patients for discharge at Tri-City Medical Center. Two and one-half years later, Csaszi's supervisors readjusted the workloads of Csaszi and a co-worker. Csaszi was unhappy about the change in her assignment, and complained about what she believed was unfair treatment. In March 1999, Csaszi was given several written notices regarding perceived problems with her performance and the need to improve to avoid being terminated. Two months later, in May 1999, Sharp terminated Csaszi, stating she had failed to properly perform her job assignments and acted in an improper manner toward other health care employees.

In December 1999, Csaszi filed a complaint against Sharp, alleging (1) employment discrimination claims (wrongful termination in violation of public policy, unlawful discrimination and retaliation in violation of the Fair Employment and Housing Act (FEHA), and wrongful demotion in retaliation for complaining about racial discrimination); and (2) a claim for the failure to properly pay "on-call" wages in violation of [Labor Code section 201](#).

Sharp moved for summary adjudication on Csaszi's discrimination claims on the grounds that Csaszi could not establish she was performing her job in a satisfactory manner, Sharp had legitimate, nondiscriminatory reasons for terminating Csaszi, and Csaszi had no evidence that Sharp's stated reasons were a pretext for unlawful discrimination. Csaszi's attorney, Michael W. Loker, did not file an opposition to that motion, even though (as detailed below) Loker told Csaszi that he *had* filed an opposition.

On November 22, 2000, the court granted Sharp's summary adjudication motion, ruling that Sharp met its burden to establish a legitimate reason for Csaszi's termination and Csaszi failed to present any evidence that the proffered reason for the termination was untrue or pretextual.

*2 On the date scheduled for trial on her remaining claim, Csaszi appeared with attorney Loker, and informed the trial court that she wished to terminate Loker. The trial court granted the request and, over Sharp's objections, granted Csaszi's request for a 90-day trial continuance.

On December 14, 2000, Csaszi, represented by new counsel William Evans, filed a [Code of Civil Procedure section 1008](#) motion ([section 1008](#)), requesting the court to reconsider its summary adjudication ruling. The court denied the motion, finding the motion was not timely (it was filed more than 10 days after the summary adjudication order was entered) and Csaszi "fail[ed] to set forth any 'new or different facts, circumstances, or law' that would affect the outcome of" the summary adjudication motion.

On March 9, 2001, a court trial began on Csaszi's remaining claim for unpaid wages relating to her on-call time. After considering all the evidence (which will be detailed below), the court found Csaszi failed to meet her burden to show she was entitled to unpaid wages for her on-call time.

The next month, on April 6, 2001, Csaszi moved for relief from the summary adjudication order under [Code of Civil Procedure section 473](#) ([section 473](#)). In support, Csaszi submitted her declaration, the declaration of her former attorney (Loker), and proposed responsive papers to Sharp's summary adjudication motion. The court denied the [section 473](#) motion, stating Csaszi "made no showing that a judgment, dismissal, order, or other proceeding has been taken against her as a result of her or her attorney's mistake, inadvertence, surprise, or excusable neglect, as is required by the section."

Sharp then moved for its attorney fees as the prevailing party on the FEHA and unpaid wage claims. The court initially granted the motion on both grounds, but after oral argument, concluded that Csaszi's "discrimination case was not totally groundless" and therefore awarded only those fees pertaining to the unpaid wage claim (\$20,269) based on [Labor Code section 218.5](#).

On appeal, Csaszi challenges the denial of her motions to vacate the summary adjudication and the court's rulings pertaining to the unpaid wage claim.

DISCUSSION

I. Motion for Reconsideration

Csaszi first contends the court abused its discretion in denying her motion to reconsider the summary adjudication order under [section 1008](#), which permits a court to revoke a previous order based on new or different facts and an adequate justification for the failure to previously produce those facts. The contention is unavailing.

^[1] First, the motion was untimely. [Section 1008](#) requires that a reconsideration motion be brought “within 10 days after service upon the party of written notice of entry of the order...” (See *Advanced Building Maintenance v. State Comp. Ins. Fund* (1996) 49 Cal.App.4th 1388, 1392, 57 Cal.Rptr.2d 310.) Sharp served written notice of entry of the order on November 22, 2000, and Csaszi filed her reconsideration motion 22 days later, on December 14, 2000.

*3 ^[2] Additionally, the trial court properly denied the motion on the basis that Csaszi “fail[ed] to set forth any ‘new or different facts, circumstances, or law’ that would affect the outcome of” the summary adjudication motion. Csaszi did not proffer any new facts or law relevant to the summary adjudication ruling. Instead, she focused exclusively on explaining the circumstances of her prior attorney’s failure to adequately represent her. These circumstances do not constitute the type of “new or different facts” that permit a reconsideration of the trial court’s order under [section 1008](#).

II. Section 473 Ruling

Csaszi alternatively contends the trial court erred in denying her [section 473](#) motion seeking to vacate the summary adjudication order because of her attorney’s neglect.

A. Relevant Facts

In moving for relief under [section 473](#), Csaszi requested the trial court to vacate the summary adjudication order because the motion was granted without the benefit of her opposition papers and the failure to file an opposition was caused by her attorney’s misconduct. In support, she submitted her own declaration and copies of facsimiles (faxes) received from attorney Loker, which set forth the following facts:

Csaszi retained Loker in September 1999. Loker thereafter filed the complaint and, in April 2000, “began discovery requests.” In May 2000, Loker notified Csaszi he had attended a case management conference, and the trial date was scheduled for October 20, 2000. During the next two months, Csaszi made numerous attempts to contact Loker, but Loker did not return any of Csaszi’s telephone calls or respond to her written correspondence. In August 2000, Csaszi’s husband went to the superior court and discovered that Sharp had obtained a continuance of the trial to December 1, 2000.

On September 7, 2000, Loker called Csaszi and told her Sharp wanted to take her deposition. Csaszi expressed her concern about being unable to contact Loker, but Loker did not explain why he failed to respond to her calls and letters, and said only that he now intended to “move” on Csaszi’s case. Csaszi thereafter met with Loker on two separate days to prepare for her deposition. Sharp deposed Csaszi on three different dates, and each time Loker was present to represent her.

On October 12, Sharp filed its summary adjudication motion, but Loker did not tell Csaszi of this filing. Loker thereafter scheduled depositions of three Sharp employees, but these depositions were postponed for unspecified reasons and later rescheduled to October 30. On October 26, Csaszi met with Loker to review her deposition transcript, and she also gave Loker \$1,000 to pay for the three upcoming Sharp employee depositions. On that date, Loker also informed Csaszi about Sharp’s summary adjudication motion for the first time. Loker told her he would be filing an opposition to the summary judgment motion, but did not tell her the opposition was due on October 26.

*4 On October 30, Csaszi met with Loker to determine why the Sharp employees’ depositions were cancelled that morning. During that meeting Loker did not tell Csaszi that he had filed an ex parte application to continue the hearing on the summary judgment motion.

Ten days later, on November 9, Loker faxed Csaszi a note stating that he was in the library and that he would:

“[F] ile our response in opposition to the summary judgment today and argument is on [November] 17th, for which you will be present. Contrary to my message yesterday, I do not need your signature at this time, but I do need to see you Saturday, and I need you to drop off today the filing fee for the opposition to the Summary Judgment, payable to the Clerk of the Superior Court, in the amount of \$116. Also, the copies of your deposition are payable at this time, because I am using them in our opposition, in the amount of \$615.46, which should be by separate check, made payable to this office.... Therefore, though I need not, and cannot meet today (*because of the fact that I am in the law library today all day working on the opposition*), please drop off two drafts for the filing fee and deposition copy fee, in the amounts noted respectively. Also please leave a time in which we may meet Saturday, if you are not otherwise occupied. *I am optimistic.*” (Italics added.)

Csaszi thereafter wrote the requested checks, but Loker was not in his office when she delivered them. Csaszi telephoned Loker on a daily basis for the next eight days, but was unable to reach him and Loker did not respond to these calls. In the early morning of November 17 (the date scheduled for oral argument on the summary adjudication motion), Csaszi received a fax from Loker stating:

“The court announced yesterday that it will review the briefs submitted and rule telephonically on 22 Dec. (on the summary judgment). *I will fax you our opposition if you haven’t received.* Therefore there are no hearings today. P.S. *There was no charge for filing the opposition, a rule change.* You may ‘void’ that check, which I will destroy. Tx.” (Italics added.)

In fact, Loker never filed an opposition. Further, the applicable rules have never required a party opposing a summary judgment to pay a fee. (See Super. Ct. San Diego County, Fee Schedule & Forms List .)

In response to this fax, Csaszi repeatedly attempted to contact Loker, but was unable to reach him. Csaszi then directly contacted the superior court, and learned from the court that a trial call on her remaining claim was scheduled for December 1, 2000. The morning of December 1, Loker faxed Csaszi a note stating there was no hearing and that he intended to meet with her during the weekend to discuss the overtime pay claim. Csaszi nonetheless attended the trial call, and at the hearing, the court said that Loker was scheduled to call the court at 9:30 a.m. Csaszi confirmed that Loker was still her attorney.

*5 That weekend, Csaszi met with Loker and discussed the unpaid wage claim, but Loker refused to discuss the court’s summary adjudication ruling. The next day, Csaszi appeared at court with a written statement stating that she wanted to obtain new counsel, and the court granted the motion.

In support of her [section 473](#) motion, Csaszi also submitted Loker’s declaration which stated in relevant part: “I did not prepare an opposition to Defendant Sharp’s motion for summary adjudication on the discrimination claims. I did not feel that Csaszi would prevail on the discrimination claims and I felt that to oppose Sharp’s motion might impair her credibility on the remaining issues dealing with the overtime claim and that she would incur additional costs in opposing the discrimination part of the case. However, I was apparently unable to adequately convey my feelings regarding her chances of prevailing on these issues to her. I thought I had convinced her of my recommendations prior to the scheduled opposition to Sharp’s summary adjudication motion. She did inform me that she wanted to proceed with her discrimination claims at the December 4, 2000, hearing. [¶] There was no fault attributable to Plaintiff in any failure to make a timely filing of the opposition to Defendant’s Motion For Summary Adjudication.”

B. Legal Analysis

Under [section 473](#), a party may potentially seek two types of relief for orders entered as a result of an attorney’s neglect or mistake: one that is mandatory and one that is discretionary. (*Metropolitan Service Corp. v. Casa de Palms, Ltd.* (1995) 31 Cal.App.4th 1481, 1486, 37 Cal.Rptr.2d 575 (*Metropolitan Service*).)

First, under the mandatory provision, a court “shall” grant relief whenever an application for relief meets the six-month statutory time period *and* the motion is “accompanied by an attorney’s sworn affidavit attesting to his or her mistake,

inadvertence, surprise, or neglect” (§ 473; see *In re Marriage of Hock & Gordon-Hock* (2000) 80 Cal.App.4th 1438, 1442, 96 Cal.Rptr.2d 546.) “The purpose of this law is to relieve the innocent client of the burden of the attorney’s fault, to impose the burden on the erring attorney, and to avoid precipitating more litigation in the form of malpractice suits.” (*Metropolitan Service, supra*, 31 Cal.App.4th at p. 1487, 37 Cal.Rptr.2d 575.)

^[3] This mandatory relief provision is inapplicable here because Loker, Csaszi’s former attorney, did not “attest[] to [a] mistake, inadvertence, surprise, or neglect....” Instead, in his affidavit, attorney Loker said he did not file an opposition because he made the tactical decision not to oppose the motion. This assertion does not satisfy the statute’s requirement that the attorney admit a “mistake, inadvertence, surprise, or neglect.” (§ 473, see *Metropolitan Service, supra*, 31 Cal.App.4th at p. 1487, 37 Cal.Rptr.2d 575 [mandatory relief provisions apply “if the attorney *admits* neglect”], italics added.)²

^[4] But even if a party cannot satisfy section 473’s mandatory relief requirements, the party may obtain relief under the statute’s discretionary provisions. Specifically, a court “may” grant relief if the moving party shows an order was taken against him or her because of the attorney’s *excusable neglect*. (§ 473; see *Metropolitan Service, supra*, 31 Cal.App.4th at pp. 1486-1487, 37 Cal.Rptr.2d 575.) Generally, conduct falling below the professional standard of care is considered inexcusable and therefore discretionary relief cannot be granted based on such conduct. (See *Carroll v. Abbott Laboratories, Inc.* (1982) 32 Cal.3d 892, 895, 187 Cal.Rptr. 592, 654 P.2d 775 (*Carroll*); *Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 682, 68 Cal.Rptr.2d 228.) Csaszi asserts Loker’s conduct in failing to oppose the summary judgment was the result of professional incompetence. Therefore Loker’s conduct was not “excusable” under section 473.

*6 However, an exception to the rule requiring a showing of excusable neglect applies if the party establishes the attorney’s neglect was of an extreme degree amounting to “‘positive misconduct.’” (*Carroll, supra*, 32 Cal.3d at pp. 898-899, 187 Cal.Rptr. 592, 654 P.2d 775; see *Fleming v. Gallegos* (1994) 23 Cal.App.4th 68, 72-73, 28 Cal.Rptr.2d 350.) “‘Positive misconduct is found where there is a total failure on the part of counsel to represent his client.’” (*People v. One Parcel of Land* (1991) 235 Cal.App.3d 579, 584, 286 Cal.Rptr. 739; *Aldrich v. San Fernando Valley Lumber Co.* (1985) 170 Cal.App.3d 725, 738-739, 216 Cal.Rptr. 300.) The attorney’s conduct is said to obliterate the existence of the attorney-client relationship and therefore cannot be imputed to the client. (*Carroll, supra*, 32 Cal.3d at p. 898, 187 Cal.Rptr. 592, 654 P.2d 775 [“‘[a]n attorney’s authority to bind his client does not permit him to impair or destroy the client’s cause of action or defense,’” quoting *Orange Empire Nat. Bank v. Kirk* (1968) 259 Cal.App.2d 347, 353].)

Carroll held an attorney who “grossly mishandled” a document production did not engage in “‘positive misconduct’” because he otherwise acted on behalf of his client in the litigation including attending his client’s deposition, propounding and timely responding to interrogatories, propounding requests for admissions, settling with one of the defendants, and timely filing a section 473 motion. (*Carroll, supra*, 32 Cal.3d at pp. 899-900, 187 Cal.Rptr. 592, 654 P.2d 775.) *Carroll* contrasted these circumstances with the situations in *Daley v. County of Butte* (1964) 227 Cal.App.2d 380, 38 Cal.Rptr. 693 and *Orange Empire Nat. Bank v. Kirk, supra*, 259 Cal.App.2d 347, 66 Cal.Rptr. 240, where the courts found attorney misconduct had effectively deprived a party of representation. (*Carroll, supra*, 32 Cal.3d at pp. 899-900, 187 Cal.Rptr. 592, 654 P.2d 775.) In *Daley*, the plaintiff’s attorney abandoned his client by failing to communicate with the plaintiff, serve necessary parties, and appear at critical hearings. (*Daley v. County of Butte, supra*, 227 Cal.App.2d at pp. 391-392, 38 Cal.Rptr. 693.) In *Orange Empire*, the defendant’s attorney failed to assert a defense, appear at the trial, or file relief from a default judgment within the statutory period. (*Orange Empire Nat. Bank v. Kirk, supra*, 259 Cal.App.2d at p. 354, 66 Cal.Rptr. 240.)

We conclude the circumstances here fall within the *Daley-Orange Empire* line of cases. Although Loker filed the complaint and was initially involved in some limited discovery, Loker completely abandoned Csaszi at a critical time by failing to file an opposition to the summary adjudication motion. Further, by falsely telling Csaszi that he was filing, *and had filed*, an opposition to the summary adjudication motion, Loker did more than abandon his client—he affirmatively precluded Csaszi from protecting herself and seeking other counsel to file an opposition or seeking timely section 1008 relief. Loker additionally continued to affirmatively harm Csaszi’s interests when he asserted in his declaration in support of her section 473 motion that his decision not to file the summary judgment motion was a tactical decision, an assertion that is flatly contradicted by his own words reflected on the faxes sent to his client. This false assertion prevented Csaszi from obtaining mandatory relief under the statute.

*7 In light of Loker’s misrepresentations to Csaszi and his submission of a declaration that contradicts his written correspondence to his client, Loker’s activities amounted to positive misconduct justifying relief under section 473. In so

concluding, we are unpersuaded by Sharp's reliance on a list of the various contacts between Loker and Csaszi during the relevant times. If anything, Loker's sporadic contacts with Csaszi made the situation worse by misleading Csaszi into believing he was taking care of her interests. (See *Fleming v. Gallegos*, *supra*, 23 Cal.App.4th at p. 73, 28 Cal.Rptr.2d 350 [trial court erred by failing to find attorney abandonment where plaintiff's "attorneys displayed an unwillingness to either prosecute her lawsuit or to cease representing her"].) Further, these contacts do not show a lack of abandonment, instead they reveal merely that Loker remained Csaszi's attorney of record. *Carroll* does not require that an attorney-client relationship be formally severed before positive misconduct may be proven.

Although a [section 473](#) motion lies within the sound discretion of the trial court, " 'the trial court's discretion is not unlimited and must be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice.' [Citation.] The law strongly favors trial and disposition on the merits. Therefore any doubts in applying [section 473](#) must be resolved in favor of the party seeking relief. When the moving party promptly seeks relief and there is no prejudice to the opposing party, very slight evidence is required to justify relief. We will more carefully scrutinize an order denying relief than one which permits a trial on the merits." (*Mink v. Superior Court* (1992) 2 Cal.App.4th 1338, 1343, 4 Cal.Rptr.2d 195; see *Stafford v. Mach* (1998) 64 Cal.App.4th 1174, 1180-1181, 75 Cal.Rptr.2d 809.) Applying these principles here, we conclude the trial court abused its discretion in failing to vacate the summary adjudication based on Csaszi's showing that her counsel engaged in "positive misconduct."

¹⁵¹ We note that Sharp does not argue, nor does the law permit, this court to sustain the trial court's denial of the [section 473](#) motion on the alternate ground that Csaszi's proposed opposition to the summary adjudication motion does not raise a triable issue of fact. In considering the propriety of a court's ruling on a [section 473](#) motion, an appellate court is limited to the question whether the court abused its discretion in granting or denying the motion, and may not reach the substantive issue as to whether the position proffered by the party seeking relief has merit. (*Uriarte v. United States Pipe & Foundry Co.* (1996) 51 Cal.App.4th 780, 786-787, 59 Cal.Rptr.2d 332; see 8 Witkin, Cal. Procedure (4th ed. 1997) Attack on Judgment in Trial Court, § 184 at p. 692, 59 Cal.Rptr.2d 332.)³

Finally, we reject Sharp's argument that the trial court properly denied the [section 473](#) motion because the motion constituted an "end-run" around [section 1008](#) governing reconsideration motions. Because Csaszi satisfied the requirements of a [section 473](#) motion, the fact that the motion was not timely under [section 1008](#) does not defeat the grounds for granting the motion under [section 473](#).

III. Unpaid Wage Claim

*8 Csaszi next contends the court erred in failing to find in her favor on the unpaid wage claim, which was tried before the court sitting without a jury.

The evidence at trial showed that Csaszi was assigned to on-call shifts during which she was given a pager and was responsible for answering telephone calls pertaining to patients discharged outside of regular business hours. Sharp paid its on-call employees \$2.50 per hour for time spent on-call but not actually working, i.e., being available for a call. For time spent actually answering a call (known as "call-back time"), Sharp paid its employees one and one-half times the employee's regular hourly rate of pay, regardless whether this time reflected overtime work. Csaszi was paid \$2.50 for each hour that she reported she was on-call, and would have been paid her overtime rate if she had reported any time answering calls.

The essential basis of Csaszi's unpaid wages claim at trial was that Sharp was required to pay her time and one-half for her on-call time (when she was not actually answering calls) instead of \$2.50 because this time was devoted primarily to her employer's interests. In support, Csaszi relied on federal law providing that an employee should be fully compensated for on-call time if the time is spent " 'primarily for the benefit of the employer and his business.' " (*Armour & Co. v. Wantock* (1944) 323 U.S. 126, 132, 65 S.Ct. 165, 89 L.Ed. 118.)

To show that her on-call time was spent primarily for Sharp's benefit, Csaszi testified that when she was on-call she was unable to attend to her personal activities and she was paged "very frequently." She said that during her entire on-call period, she would sit in a room with a telephone, facsimile machine and documents needed to perform her job duties. Csaszi claimed she could not shop, cook, sleep, travel, interact with her family or otherwise engage in any personal activities. Csaszi sought \$40,380, calculated as the total number of on-call hours multiplied by the time and one-half rate subtracted by the amount she

was paid per hour (\$2.50). Csaszi had no record of the time she actually responded to calls, explaining that she never identified this time on her timesheets because she did not understand how to do so.⁴

In contrast to this evidence, Sharp presented the testimony of its human resource director who said that employees were instructed on the manner in which they should report call-back time and that the employees did not need to limit their activities while waiting for a call. Sharp employees corroborated this testimony. These employees testified that while on-call, they wore pagers and attended to various personal activities, including cooking, shopping, attending church services, and entertaining. The pagers given to the employees had a range of at least 250 miles, and therefore the employees were free to travel throughout Southern California. Csaszi's co-workers testified they received varying numbers of calls while on-call, which averaged two to four per week, and that they knew how to claim this call-back time on their timesheets. The employees were required to respond to a pager within a 15- or 20-minute period. The employees were always paid time and one-half for the time they were actually answering a call.

***9** After considering the evidence, the court stated: "The issue to be decided is whether the requirements of being on-call as a discharge planner precluded [Csaszi] from using the time effectively for her own purposes, thus entitling her to back wages. [Citations.] [¶] The Court finds that although [Csaszi] may have subjectively believed that she needed to avoid engaging in personal activities while on-call, the evidence shows that the job duties of being on-call did not require her to do so. The fact that Ms. Csaszi elected not to engage in personal activities while on-call may be laudable, but it does not transform the on-call time to working time compensable under statute. Both the written policies of the employer as well as the actions of the employees indicate that the express and implied agreement was that employees would be paid \$2.50 for time spent on-call but not actually working and one and one-half times their regular hours rate for time spent actually working while on-call. [¶] Based on the above-stated findings and the fact that [Csaszi] did not offer any evidence specifying the dates or hours she actually worked while on-call, the Court finds that [Csaszi] has failed to meet her burden to show that she is entitled to back wages...."

^[6] We find no error. Although there is no California law directly on point, federal law sets forth appropriate standards for determining Csaszi's claim to additional wages for on-call time. Under this law, an employee must be fully compensated for on-call time spent primarily for the employer's benefit, and the question whether the time is spent primarily for the employer depends on numerous factors and a consideration of these factors in the context of the particular circumstances of the case. (See *Armour & Co. v. Wantock*, *supra*, 323 U.S. at p. 133; *Berry v. County of Sonoma* (9th Cir.1994) 30 F.3d 1174, 1183.) Although no single factor is dispositive, the predominant considerations are the agreement of the parties and the degree to which the employee is free to engage in personal activities. (*Owens v. Local No. 169, Assn. of Western Pulp & Paper Workers* (9th Cir.1992) 971 F.2d 347, 350-354.) The court must balance the factors permitting personal pursuits against the factors restricting personal pursuits to determine whether the employee is "so restricted that he is effectively engaged to wait." (*Berry v. County of Sonoma*, *supra*, 30 F.3d at p. 1183.)

Applying these principles, the trial court found Sharp's evidence credible, and concluded that the time Csaszi spent on-call was not time that was required to be spent predominately for the employer's benefit. Substantial evidence supports the court's factual conclusion. The court, as the finder of fact, was entitled to reject Csaszi's contrary evidence.

In nonetheless challenging the court's factual conclusions, Csaszi contends that Sharp's agreement to pay \$2.50 during on-call hours "amounted to an admission that [Sharp] maintained control over the employees" and therefore the trial court was required to find as a matter of law that Sharp was under a mandatory obligation to pay the same pay rate that it applied for call-back work.

***10** This argument is unsupported factually and legally.

First, the fact that Sharp paid employees \$2.50 per hour to be available to respond to phone calls was not an admission that the time spent was primarily for Sharp's benefit. Instead, Sharp's human resources director specifically testified that employees were paid for being on-call as "an incentive for carrying the pager and being available on call." She explained the pay was "additional compensation that was paid to carry the pager, to be available during a specific time should additional work be needed by that individual." She emphasized that during this waiting time, the "time is not controlled [by Sharp]" and that employee "is free to move around, engage in personal activities."

Csaszi's position is also legally unsupported. Csaszi relies solely on *Paniagua v. City of Galveston, Texas* (5th Cir.1993) 995 F.2d 1310 and *Berry v. County of Sonoma, supra*, 30 F.3d at p. 1178. In *Paniagua*, the court specifically rejected the identical argument asserted here-that an employer's agreement to compensate employees for the inconvenience of being on call "automatically render[s] the time spent on standby 'working time'...." (995 F.2d at p. 1317.) In *Berry*, the court noted that an employer's agreement to provide "at least some type of compensation for on-call waiting time may suggest the parties characterize waiting time as work ...," but the court made clear that this was merely one of many factors in the overall analysis. (*Berry v. County of Sonoma, supra*, 30 F.3d at p. 1181 .)

The trial court here expressly noted the evidence showing that Sharp paid \$2.50 for on-call waiting time, but stated that based on the totality of the circumstances, this payment was merely compensation for the inconvenience of carrying a pager and did not reflect that the time spent by on-call employees was for the employer's benefit. Substantial evidence supported the trial court's conclusion.

Csaszi failed to establish that the trial court erred in reaching its factual conclusions with respect to the unpaid wage claim or that the court erred in applying these factual findings to the applicable legal principles.

IV. Attorney Fees

^[7] The trial court awarded \$20,269 in attorney fees to Sharp under [Labor Code section 218.5](#), which provides in relevant part: "In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action."⁵

Csaszi contends the court erred in awarding fees under this section because the applicable statute is [section 1194](#), which contains a "one-way" fee provision, permitting attorney fees only for a prevailing employee and not for a prevailing employer. [Section 1194](#), subdivision (a) states: "[n]otwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance ..., including interest thereon, reasonable attorney's fees, and costs of suit."

***11** Both [sections 218.5](#) and [1194](#) potentially apply to an action seeking overtime wages, but establish different attorney fees rules. In *Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 95 Cal.Rptr.2d 57, the court noted the potential conflict between the code sections, and concluded the Legislature intended that [section 1194](#) alone applies to recovery of attorney fees for overtime compensation claims, even though such claims could be construed as seeking payment of wages under [section 218.5](#). In a well-reasoned decision, the court explained that the only reasonable interpretation of the Legislature's one-way fee shifting rule in [section 1194](#) "would be one which bars employers from relying on [section 218.5](#) to recover fees in any action for *minimum* wages or *overtime* compensation. [Section 218.5](#) would still be available for an action brought to recover nonpayment of contractually agreed-upon or bargained for 'wages....' [¶] Such a harmonization of these two sections is fully justified. An employee's right to wages and overtime compensation clearly have different sources. Straight-time wages ... are a matter of private contract between the employer and employee. Entitlement to overtime compensation, on the other hand, is mandated by statute and is based on an important public policy.... 'California courts have long recognized [that] wage and hour laws "concern not only health and welfare of the workers themselves, but also the public health and general welfare." ... [¶] There can be no doubt that the one-way fee-shifting rule in [section 1194](#) was meant to 'encourage injured parties to seek redress-and thus simultaneously enforce [the minimum wage and overtime laws]-in situations where they otherwise would not find it economical to sue.' [Citation.] To allow employers to invoke [section 218.5](#) in an overtime case would defeat that legislative intent and create a chilling effect on workers who have had their *statutory* rights violated. Such a result would undermine statutorily-established public policy. That policy can only be properly enforced by a recognition that [section 1194](#) alone applies to overtime compensation claims." (*Earley v. Superior Court, supra*, 79 Cal.App.4th at p. 1430, 95 Cal.Rptr.2d 57.)

We agree with the *Earley* court that when an employee seeks overtime wages, the attorney fees rules are exclusively set forth in [section 1194](#). However, that principle is inapplicable here because Csaszi never alleged, or sought to prove at trial, that Sharp failed to pay her for overtime work. Instead, Csaszi brought her claim to enforce Sharp's alleged agreement that it would pay time and one-half for time spent working outside of the hospital's physical environment and that on-call time constituted "working" under established legal principles. The claim at issue concerned solely a matter of private contract

between the employer and employee, i.e., that Sharp had agreed to pay a certain wage for time answering calls, and that because her time spent waiting for those calls primarily benefited Sharp, Sharp was required to compensate her at this same established wage rate. Because Csaszi never claimed or presented evidence that she was working overtime without overtime pay, the case does not come within the ambit of [section 1194](#). Thus, the court properly concluded that attorney fees were mandatory to the prevailing employer under [section 218.5](#).

*12 Csaszi alternatively argues that even if [section 218.5](#) is the correct statute to apply, the code section does not permit a defendant to recover attorney fees because the fees must be requested at “the initiation of the action.” (§ 218.5.) Csaszi, however, ignores the beginning part of this sentence which provides for reasonable attorney fees “if *any* party to the action requests attorney’s fees and costs upon the initiation of the action .” (§ 218.5, italics added.) Read in context, this statutory language does not limit an attorney fees award to a plaintiff, and instead merely requires that the prevailing party show it had sought attorney fees at the beginning of the litigation. Here, Sharp stated in its answer that it was seeking to be “awarded its costs of suit and attorney fees incurred therein....” That statement is sufficient to satisfy [section 218.5](#)’s requirement that attorney fees be requested at the “initiation of the action.”

DISPOSITION

We affirm the portions of the judgment finding in Sharp’s favor on Csaszi’s claim for unpaid wages and awarding attorney fees to Sharp for prevailing on this claim. We reverse the portion of the judgment dismissing Csaszi’s first, second, third and fifth causes of action based on the summary adjudication. The court is ordered to vacate its order granting summary adjudication on these causes of action, permit Csaszi to file an opposition, and consider Sharp’s motion on the merits.

The parties to bear their own costs on appeal.

WE CONCUR: [KREMER](#), P.J., and [BENKE](#), J.

Footnotes

¹ Although it appears that the correct name of Csaszi’s former employer is Sharp Mission Park, the defendant is named in the caption of Csaszi’s complaint as Sharp Healthcare. Our review of the record on appeal does not reveal an amendment to the complaint correcting the defendant’s name.

² Because Csaszi did not submit an attorney fault declaration satisfying the mandatory relief provision requirements, we do not reach the issue raised by the parties in their supplemental briefs whether [section 473](#)’s mandatory provision applies to provide relief for summary adjudication orders, an issue that has been the subject of different conclusions by the appellate courts. (Compare [English v. Ikon Business Solutions, Inc.](#) (2001) 94 Cal.App.4th 130, 114 Cal.Rptr.2d 93 with [Avila v. Chua](#) (1997) 57 Cal.App.4th 860, 67 Cal.Rptr.2d 373.)

³ We recognize that this rule may lead to an empty victory for Csaszi if she is unable to come forward with any real evidence that she was discriminated against based on her race. However, the standard of review on a [section 473](#) motion does not permit this court to reach the merits of the underlying claim. Moreover, the policy of providing a party with a hearing on the merits of his or her claim in the trial court outweighs any possible judicial economy objectives that would be served if we were to consider the merits of the discrimination claim based solely on Csaszi’s proposed opposition filings contained in the appellate record.

⁴ Although it appears that Csaszi was not paid the time and one-half for all of her call-back time, at trial she never claimed any unpaid wages for such time, presumably because she never recorded this *call-back* time on her timesheets except for one occasion. Thus, this appeal concerns only the question whether Csaszi was owed any wages for her *on-call* time.

⁵ All further statutory references are to the Labor Code.

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EXHIBIT 14

2009 WL 4718721
Only the Westlaw citation is currently available.
United States District Court,
E.D. California.

Boanerges VILLALOBOS, et al., Plaintiffs,
v.
James GUERTIN, et al., Defendants.

No. CIV. S-07-2778 LKK/GGH. | Dec. 3, 2009.

Attorneys and Law Firms

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Kimberley Ann Worley, [Stephen R. Holden](#), Holden Law Group, Auburn, CA, for Defendant.

Opinion

ORDER

[LAWRENCE K. KARLTON](#), Senior District Judge.

***1** On August 19, 2009, the court granted defendants' motion for judgment on the pleadings, dismissing four of plaintiffs' causes of action for failure to state a claim, and dismissing the fifth and sole remaining cause of action for lack of subject matter jurisdictions. Defendants have submitted a bill of costs and separately moved for attorneys' fees, both of which have been opposed by plaintiffs. The court resolves the matter on the papers and after oral argument. For the reasons stated below, defendants' motion for fees and costs is granted in part.

I. BACKGROUND

Defendants Heidi and James Guertin allegedly operate a business under the name Norcal Plastering. Plaintiffs, four individuals formerly employed by Norcal, filed suit purporting to represent themselves and others similarly situated. The complaint stated five causes of action, for violations of (1) [California Labor Code section 1194](#), (2) the Fair Labor Standards Act, (3) [California Labor Code section 226.7](#), (4) [California Labor Code section 203](#), and (5) [California Business and Professions Code section 17203](#).

On August 19, 2009, the court held that plaintiffs' allegations were insufficient to support the second through fifth claims. The Fair Labor Standards Act claim failed because plaintiffs had not alleged facts sufficient to support the inference that Norcal Plastering or plaintiffs themselves engaged in interstate commerce, a predicate for liability under the act. Order at 8–11. The Third, Fourth, and Fifth claims failed because the allegations therein pertained to entities not party to this suit. *Id.* at 11–12. The court denied plaintiff's request for leave to amend to correct these deficiencies, explaining that plaintiffs had notice of these deficiencies before the scheduling order was entered, but that plaintiffs had taken no action to correct them until discovery in the case had closed. The court dismissed these claims, and declined to retain supplemental jurisdiction over plaintiffs' sole remaining claim. Judgment on the pleadings under [Fed.R.Civ.P. 12\(c\)](#) was entered for defendants on August 19, 2009.

Defendants filed a bill of costs and motion for attorneys fees. Plaintiffs oppose both, arguing that defendants were not

“prevailing parties” because, as plaintiffs understood this court’s August 19, 2009 order, the state law claims had been dismissed without prejudice, and plaintiffs were free to refile the federal claim in federal court. Plaintiffs alternatively argue that even if defendants prevailed, they are not entitled to a fee award under the court’s inherent power or under any statute.

II. DISCUSSION

A. Defendants Are A Prevailing Party

Under all of the fee shifting authorizations at issue in this case, fees and costs are only available to prevailing parties. Under California law, “a defendant in whose favor a dismissal is entered” is a prevailing party. [Cal.Code Civ. P. § 1032\(a\)\(4\)](#). Under federal law, a party has not prevailed unless it “experienced an alteration in the legal relationship” with the other parties. [Avery v. First Resolution Management Corp.](#), 568 F.3d 1018, 1024 (9th Cir.2009). Plaintiffs argue that the court’s order permits plaintiffs to refile each of their claims, and that as a result, no such change has occurred. *Id.*, [Oscar v. Alaska Dep’t of Educ. & Early Dev.](#), 541 F.3d 978, 982 (9th Cir.2008).

*2 Plaintiffs misunderstand the nature of the prior order and its effect under California and federal law. [Fed.R.Civ.P. 41\(b\)](#) provides that “[u]nless the dismissal order states otherwise ... any dismissal not under [Rule 41]—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.” Thus, although the dismissal order did not specifically state that it was “on the merits” or “with prejudice,” dismissal of the second through fifth claims was precisely such an adjudication. [Stewart v. United States Bancorp](#), 297 F.3d 953, 956 (9th Cir.2002). Plaintiffs’ contention that a dismissal for failure to allege the elements of a cause of action is not a substantive dismissal is without merit. *Id.*

Plaintiffs’ first claim, which was dismissed for lack of subject matter jurisdiction, was not adjudicated on the merits. [Avery](#), 568 F.3d at 1024. The fact that plaintiff may refile this one claim does not defeat defendants’ claim to prevailing party status as to the others.

B. Particular Fee Shifting Provisions

Defendants argue that they are entitled to fees under [28 U.S.C. section 1927](#), under [Cal. Lab.Code section 218.5](#), and under the court’s inherent authority. The court discusses each in turn.

1. [28 U.S.C. § 1927](#)

“Any attorney ... who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys’ fees reasonably incurred because of such conduct.” [28 U.S.C. § 1927](#). Here, defendants have not identified any act by which plaintiffs multiplied the proceedings. Filing of the initial complaint cannot itself violate this section. “Because the section authorizes sanctions only for the ‘multipli[cation of] proceedings,’ it applies only to unnecessary filings and tactics once a lawsuit has begun.” [Moore v. Keegan Mgmt. Co. \(In re Keegan Mgmt. Co., Sec. Litig.\)](#), 78 F.3d 431, 435 (9th Cir.1996). Nor did plaintiffs’ counsel’s response to depositions noticed by defendants “multipl[y] the proceedings.”

Rather than identify affirmative acts, defendants argue that plaintiffs’ counsel multiplied proceedings by failing to withdraw and dismiss the case after the close of discovery. The only authority provided for this interpretation of [section 1927](#) is a case from the Southern District of Florida. See [Murray v. Playmaker Servs., LLC](#), 548 F.Supp.2d 1378, 1383 (S.D.Fla.2008). The court respectfully disagrees, and thereby declines to conclude that an attorney multiplies proceedings simply by failing to voluntarily dismiss an existing lawsuit.

2. The Court's Inherent Powers

The court has an inherent authority to order payment of fees as a sanction “when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons, delaying or disrupting litigation, or has taken actions in the litigation for an improper purpose.” *Fink v. Gomez*, 239 F.3d 989, 992 (9th Cir.2001) (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45–46 and n. 10, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991)); see also *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 767, 100 S.Ct. 2455, 65 L.Ed.2d 488 (1980). In this case, defendants argue that plaintiffs have done a poor job of litigating this case, and that this demonstrates that they filed their a purported class action for the allegedly improper purpose of pressuring defendants to settle, rather than for any belief as to the action's merits. This argument is unsupported. Although, as noted in the order granting defendants' motion for judgment on the pleadings, plaintiffs did little in the litigation of this case, this does not demonstrate bad faith or other grounds for sanction under the court's inherent authority.

*3 Defendants also argue that plaintiffs have demonstrated bad faith by filing a complaint in state court that re-alleges the four the state-law claims previously filed in this court. Whether that filing is in bad faith is an issue for the state court.

3. Cal. Lab.Code § 218.5

Lastly, defendants argue that the court should award fees under [California Labor Code section 218.5](#). This statute provides that “in any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party.” [Cal. Lab.Code § 218.5](#). The Ninth Circuit has held that this provision may be applied in suits filed in federal court. *Winterrowd v. Am. Gen. Annuity Ins. Co.*, 556 F.3d 815 (9th Cir.2009) (affirming award of fees to a prevailing plaintiff); see also *Diamond v. John Martin Co.*, 753 F.2d 1465, 1467 (9th Cir.1985) (“federal courts in diversity actions apply state law with regard to the allowance (or disallowance) of attorneys' fees.”). The court concludes that this section applies to one of plaintiffs' claims, that an award of fees is mandatory and not limited to cases in which plaintiffs acted wrongfully, and that defendants prevailed for purposes of this statute.

First, [section 218.5](#) does not apply to all wage claims. The statute contains an exemption, specifying that “[t]his section does not apply to any action for which attorney's fees are recoverable under [\[California Labor Code\] Section 1194](#).”¹ [Section 1194](#) governs actions alleging failure to pay minimum wages or overtime. Of the claims brought in this suit, plaintiffs concede that their claim for failure to pay for missed meal periods is a claim “for nonpayment of wages” under [section 218.5](#).² See *Murphy v. Kenneth Cole Production, Inc.*, 40 Cal.4th 1094, 1115, 56 Cal.Rptr.3d 880, 155 P.3d 284 (2007) (characterizing money owed for missed meal periods as wages rather than a penalty). Plaintiffs argue that their claims for waiting time penalties and for restitution of unpaid overtime do not fall within [section 218.5](#), and defendants do not dispute this argument.

Second, plaintiffs request that the court apply federal cases interpreting fee shifting under Title VII of the Civil Rights Act to the California Labor Code. Under Title VII, a court awards fees to a prevailing defendant only when the plaintiff's claim was frivolous, unreasonable, groundless, or brought in bad faith. *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 422, 98 S.Ct. 694, 54 L.Ed.2d 648 (1978). *Christiansburg*'s holding was predicated on the fact that Title VII grants courts discretion to award fees. *Christiansburg*, 434 U.S. at 416; see also 42 U.S.C. § 2000e–5(k) (“the court, in its discretion, may allow the prevailing party, ... a reasonable attorney's fee.”).³ The Court's holding directed the lower courts in their exercise of this discretion. [Section 218.5](#), in contrast, provides that the court “shall” award fees. “As used in the Labor Code, ‘shall’ is mandatory.” *Smith v. Rae–Venter Law Group*, 29 Cal.4th 345, 357, 127 Cal.Rptr.2d 516, 58 P.3d 367 (2002), *superceded on other grounds as stated in* *Eicher v. Advanced Business Integrators, Inc.*, 151 Cal.App.4th 1363, 1384, 61 Cal.Rptr.3d 114 (2007) (citing Cal. Stats.2003, ch. 93, § 1). Under California law, when a statute provides for a mandatory fee award, a court has only discretion to deny the award when it is unclear whether the party prevailed, a circumstance not present here. [Cal.Code. Civ. P. § 1032\(a\)\(4\)](#), *On–Line Power, Inc. v. Mazur*, 149 Cal.App.4th 1079, 1087, 57 Cal.Rptr.3d 698 (2007). It appears that no published California case, nor any federal case, has held that when a claim is of a type encompassed by [section 218.5](#), a party must show anything more than that it prevailed to be entitled to a mandatory award of fees.⁴

*4 Finally, plaintiffs argue that defendants did not prevail on this claim because it was not brought as to them. As noted above, the court dismissed plaintiffs' meal period claim in part because the allegations supporting the claim referred to persons other than defendants. Plaintiffs now argue that in so doing, the court concluded that this claim was not brought as to defendants in this suit, such that defendants were not party to, and therefore did not prevail on, this claim. This argument fails. Although plaintiffs' allegations of particular conduct referred to other persons, plaintiffs' prayer for relief sought from defendants an award of meal time premium payments. Defendants therefore prevailed on this claim.

C. Reasonableness and Scope of The Fees

Although defendants are entitled to an award of fees only in connection with one of plaintiffs' claims, defendants may recover all fees incurred on issues pertinent to this claim regardless of whether those issues were also pertinent to other claims. *Diamond*, 753 F.2d at 1467 (quoting *Reynolds Metals Co. v. Alperson*, 25 Cal.3d 124, 129, 158 Cal.Rptr. 1, 599 P.2d 83 (1979)).

Defendants request \$29,964.00 in fees, for 85.6 hours of work in the case not including the time spent on the motion for a fee award, billed at \$315 per hour.⁵ The court has previously held that \$300 per hour is a reasonable local rate for attorneys with defense counsel's experience, and reduces the hourly rate accordingly.

Defendants have not specified how this time was spent. At least some of this time must have been spent on issues not pertinent to plaintiffs' meal period claim. Notably, a significant fraction of the memorandum submitted in support of defendants' motion for judgment on the pleadings was specific to plaintiffs' Fair Labor Standards Act claim. (Doc. No. 23–1 pages 4–6; Doc. No. 26 pages 4–5). Defendants are not entitled to recover fees expended in connection with this issue. *Diamond*, 753 F.2d at 1467. Defendants' contention that disclosure of the amount of time spent on this issue would breach attorney-client or work-product privileges is meritless. "Where the documentation of hours is inadequate, the district court may reduce the award accordingly." *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) (concerning fee awards under 42 U.S.C. § 1988). Here, the court reduces the number of hours by the maximum amount that the court estimates were likely to have been spent on issues not pertinent to the meal period claim (which in this case means on issues solely pertinent to the FLSA claim). The record indicates that defendant's stated 85.6 hours were spent on preparation and filing of an answer, status report, motion for judgment on the pleadings, and on preparation for and attendance of a status conference, at least two depositions, and the hearing on the motion for judgment on the pleadings. See Declaration of Kimberly A. Worley Setting Forth Memorandum of Costs (Doc. No. 32–2). The court concludes that at most 15 hours of this time were spent on the FLSA issue, and reduces the fee award accordingly.

*5 Thus, defendants are entitled to a fees for 70.6 hours of work at \$300 per hour, or \$21,180. Plaintiff has not objected to defendants' statement of costs (other than to argue that defendants are not a prevailing party). Defendants are therefore further entitled to an award of \$1,525.80 in costs.

D. Who Pays The Fees

Cal. Labor Code section 218.5 provides that fees shall be awarded to the prevailing party, but does not specify where the award shall come from. Nothing in the parties' briefing indicates whether fees awarded under section 218.5 should be paid by plaintiffs' counsel or by plaintiffs themselves. Moreover, had plaintiffs' counsel offered argument on this issue, it would have been against his clients' interests. None of the cases citing section 218.5 have addressed this issue, and the court is not aware of any California law regarding fee awards generally.

It may be that as a general rule, fee awards, rather than sanctions, are to be paid by the party rather than counsel. In this particular case, however, where there is no controlling authority, equity demands that the award be paid by plaintiffs' counsel. As explained more fully in the prior order, dismissal resulted from counsel's failure to properly plead, and counsel's subsequent failure to identify his mistakes or to prosecute this litigation. It may be that defendants would have prevailed absent these failings, but the court has no way to evaluate that possibility. Although plaintiff's counsel's conduct is not sanctionable under federal law, when California law compels an award of fees, the exceptional circumstances of this case compel the court to conclude that this award should lie against plaintiff's counsel.

IV. CONCLUSION

For the reasons stated above, defendants' motion for attorney fees, Doc. No. 35 is GRANTED IN PART.

1. Plaintiff's counsel is ordered to pay \$21,180 in fees and \$1,525.80 in costs to defense counsel.
2. Counsel shall file an affidavit accompanying the payment which states that it is paid personally by counsel, out of personal funds, and is not and will not be billed, directly or indirectly, to the client or in any way made the responsibility of the client as attorneys' fees or costs.

IT IS SO ORDERED.

Footnotes

- ¹ The statute contains several other exceptions not pertinent here. In addition, for [section 218.5](#) to apply, at least one party must have requested fees at the initiation of the action. In this case, both the complaint and the answer request fees.
- ² Plaintiffs refer to this claim as their fourth. However, plaintiffs' meal break claim was enumerated as their third claim. Complaint ¶¶ 28–32.
- ³ *Christiansburg* explicitly juxtaposed Title VII's fee shifting provision, which provided discretion to award fees to any prevailing party, against statutes providing a mandatory award of fees to prevailing plaintiffs, e.g. the Fair Labor Standards Act, [29 U.S.C. § 216\(b\)](#), and against statutes providing discretion to award fees but only as to certain parties, e.g., the Privacy Act, [5 U.S.C. § 552a\(g\)\(2\)\(B\)](#). *Christiansburg*, 434 U.S. 415–16, n. 5, n. 6.
- ⁴ Although not citable as precedent by California courts, an unpublished decision of the California Court of Appeal held that [section 218.5](#) provided for mandatory fee awards to plaintiffs and defendants, despite possible policy concerns akin to those identified in *Christiansburg*. *Torres v. Auto Chlor Sys. of N. Cal.*, 2007 Cal.App. Unpub. LEXIS 7706, 2007 WL 2774706 (Cal.App. 6th Dist. Sept. 25, 2007).
- ⁵ Defense counsel declares that this is her standard rate, as an attorney with fifteen years of experience.

EXHIBIT 15

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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,

Case No.: BC430633

CLASS ACTION

Plaintiffs,

FIRST AMENDED COMPLAINT FOR:

vs.

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

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

Defendants.

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

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

THE
SPIVAK
LAW FIRM

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

4 **INTRODUCTION**

5 1. This action arises out of the allegedly unlawful labor practices of Defendants in
6 California. Through this class and collective action, Plaintiffs seek to represent the below-
7 defined classes and subclasses of persons who Defendants have allegedly committed labor law
8 violations against including, but not limited to, wage underpayments. As a result of the
9 allegedly unlawful labor conduct described herein, Plaintiffs now seek declaratory and
10 injunctive relief, damages, restitution, penalties, and other proper relief on behalf of himself and
11 other similarly situated persons.

12 **PARTIES AND CONDUCT**

13 **A. Plaintiffs and Class Members**

14 2. During the applicable time period, Plaintiff ALINA GHRDILYAN, an
15 individual, was employed in a position that she alleges Defendants have classified as non-
16 exempt from the overtime requirements of the California Labor Code and the applicable wage
17 order(s).

18 3. During the applicable time period, Plaintiff EVGENIA SULTANIAN, an
19 individual, was employed in a position that she alleges Defendants have classified as non-
20 exempt from the overtime requirements of the California Labor Code and the applicable wage
21 order(s).

22 4. At relevant times during the applicable limitations periods, Plaintiffs allege that
23 Defendants have failed to compensate them and Defendants’ other California employees for all
24 of the hours that they have worked, failed to compensate them for all of the overtime hours that
25 they have worked at overtime rates, failed to provide them with all required rest and meal
26 periods, failed to pay them additional required wages for rest and meal periods, improperly
27 denied earned wages that Defendants without authorization deducted from paychecks or
required reimbursement for, failed to indemnify for necessary expenditures, failed to timely pay

1 all final wages owed, caused them to forfeit vested vacation pay, and/or intentionally failed to
2 provide them with accurate written wage statements.

3 **B. Defendants**

4 5. Defendant RJ FINANCIAL, INC. is a corporation organized under the laws of
5 California. It was at all relevant times a “person” under Labor Code § 18.

6 6. Defendant RAMIL ABALKHAD (also known as Randy Abalkhad), an
7 individual residing in the County of Los Angeles, State of California, was at all relevant times
8 the chief executive officer of Defendant RJ FINANCIAL, INC. At all relevant times,
9 ABALKHAD acted on behalf of RJ FINANCIAL, INC. and oversaw RJ FINANCIAL, INC.’s
10 accounting and bookkeeping and all administrative functions, including payroll. The company
11 maintained books and records by staff members under his direction. At all relevant times,
12 ABALKHAD was a “person acting on behalf of an employer” (RJ FINANCIAL, INC. and the
13 Doe Defendants) who caused to be violated the provisions of the Labor Code regulating hours
14 and days of work in orders of the Industrial Welfare Commission as described below under
15 Labor Code § 558. Also, he was at all relevant times a “person” under Labor Code § 18.

16 7. Plaintiffs are ignorant of the true names, capacities, relationships, and extents of
17 participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but
18 are informed and believe and thereon allege that said defendants are legally responsible for the
19 wrongful conduct alleged herein and therefore sue these defendants by such fictitious names.
20 Plaintiffs will amend the complaint to allege the true names and capacities of the DOE
21 defendants when ascertained.

22 8. Plaintiffs are informed and believe and thereon allege that, at all relevant times
23 herein, all defendants were the agents, employees and/or servants, masters or employers of the
24 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
25 and scope of such agency or employment, and with the approval and ratification of each of the
26 other defendants.

27 9. At all relevant times, in perpetrating the acts and omissions alleged herein,
defendants, and each of them, acted pursuant to and in furtherance of a policy and practice of

1 not paying Plaintiffs and other members of the below-described classes in accordance with
2 applicable California labor laws as alleged herein.

3 10. Plaintiffs are informed and believe and thereon allege that each and every one of
4 the acts and omissions alleged herein were performed by, and/or attributable to, all defendants,
5 each acting as agents and/or employees, and/or under the direction and control of each of the
6 other defendants, and that said acts and failures to act were within the course and scope of said
7 agency, employment and/or direction and control.

8 **CLASS ACTION ALLEGATIONS**

9 11. Plaintiffs incorporate paragraphs 1 through 10 of this Complaint as if fully
10 alleged herein.

11 12. Plaintiffs bring this action on behalf of themselves and all others similarly
12 situated as a class action pursuant to California Code of Civil Procedure § 382. Plaintiffs seek to
13 represent the following classes and subclasses of current, future, and/or former employees of
14 Defendants defined below:

15 **Wages Class:** All persons employed by Defendants in California who
16 have not been paid for all hours worked during the period beginning four
17 (4) years prior to the filing of this action and ending on the date that final
18 judgment is entered in this action.

19 **Overtime Class:** All persons employed by Defendants in California who
20 have not been paid at the legally required overtime rates for all hours
21 worked in excess of eight (8) hours in one (1) day and/or forty (40) hours
22 in one (1) week during the period beginning four (4) years prior to the
23 filing of this action and ending on the date that final judgment is entered in
24 this action.

25 **Rest Periods Class:** All persons employed by Defendants in California
26 who were not provided with a net rest period of at least ten (10) minutes
27 per each four (4) hour work period, or major portion thereof, during the
28 period beginning four (4) years prior to the filing of this action and ending
29 on the date that final judgment is entered in this action.

30 **Meal Periods Class:** All persons employed by Defendants in California
31 who were not provided with uninterrupted thirty (30) minute meal periods
32 during each work period of five (5) or more hours during the period
33 beginning four (4) years prior to the filing of this action and ending on the

1 date that final judgment is entered in this action.

2 **Vacation Pay Class:** All persons employed by Defendants in California
3 who earned vested paid vacation days without receiving
4 compensation for each vested paid vacation day during the
5 period beginning four (4) years prior to the filing of this action
6 and ending on the date that final judgment is entered in this
7 action.

8 **Unauthorized Deduction Class:** All persons employed by Defendants in
9 California whose wages were deducted by Defendants without statutory
10 authority or written consent during the period beginning four (4) years
11 prior to the filing of this action and ending on the date that final judgment
12 is entered in this action.

13 **Inaccurate Wage Statement Class:** All persons employed by Defendants
14 in California, including but not limited to members of the **Wages Class,**
15 **Overtime Class, Rest Period Class, Meal Period Class, and/or**
16 **Unauthorized Deduction Class** during the period beginning four (4)
17 years prior to the filing of this action and ending on the date that judgment
18 is entered in this action.

19 **Former Employee Class:** All persons employed by Defendants in
20 California, including, but not limited to, members of the **Wages Class,**
21 **Overtime Class, Rest Period Class, Meal Period Class, Unauthorized**
22 **Deduction Class, and/or Inaccurate Wage Statement Class** whose
23 employment with Defendants ended during the period beginning four (4)
24 years prior to the filing of this action and ending on the date that final
25 judgment is entered in this action, who either: a) were discharged and not
26 paid all wages owed on or before the day of termination; or b) resigned
27 without notice and were not paid all wages owed within 72 hours of
resignation; or c) resigned with 72 hours notice and were not paid all
wages owed on or before the day of quitting.

Indemnification Class: All persons employed by Defendants in
California, including, but not limited to, members of the **Wages Class,**
Overtime Class, Rest Period Class, Meal Period Class, Unauthorized
Deduction Class, and/or Inaccurate Wage Statement Class, who
Defendants failed to indemnify for all necessary expenditures incurred by
such employees in direct consequence of the discharge of their duties
during the period beginning four (4) years prior to the filing of this action
and ending on the date that final judgment is entered in this action.

UCL Class: All persons who are members of the **Wages Class, Rest**
Period Class, Meal Period Class, Overtime Class, Inaccurate Wage
Statement Class, Former Employee Class, Unauthorized Deduction

1 **Class**, and/or **Indemnification Class**, who have been employed by
2 Defendants in California at any time during the period beginning four (4)
3 years prior to the filing of this action and ending on the date that final
4 judgment is entered in this action.

5 **All-Inclusive Class**: All members of the **Wages Class**, **Overtime Class**,
6 **Rest Periods Class**, **Meal Periods Class**, **Inaccurate Wage Statement**
7 **Class**, **Unauthorized Deduction Class**, **Former Employee Class**, and/or
8 **Indemnification Class**.

9 13. This action has been brought and may be maintained as a class action pursuant to
10 California Code of Civil Procedure § 382 because there is a well-defined community of interest
11 among the persons who comprise readily ascertainable class.

12 14. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
13 management of this case as a class action.

14 15. The class members are so numerous that the individual joinder of each individual
15 class member is impractical. While Plaintiffs do not currently know the exact number of class
16 members, Plaintiffs are informed and believe and thereon allege that the actual number of class
17 members exceeds the minimum number required for numerosity purposes under California law.

18 16. Common questions of law and fact exist as to all class members and predominate
19 over any questions which affect only individual class members. These questions include, but are
20 not limited to:

21 A. Do Defendants maintain policies or practices that systematically cause
22 the **Wages Class** not to be paid for all hours worked?

23 B. Have members of the **Overtime Class** been paid at the legally required
24 overtime rates for all hours worked in excess of eight (8) hours in one (1) day?

25 C. Do Defendants maintain policies or practices that systematically cause
26 the **Overtime Class** not to be paid at overtime rates for all overtime hours worked?

27 D. Did Defendants fail to provide members of the **Rest Period Class** with
all legally required rest periods in violation of California law?

 E. Did Defendants fail to provide members of the **Meal Period Class** with
all legally required meal periods in violation of California law?

 F. Did Defendants fail to pay members of the **Rest Period Class** the

1 additional wages required for rest periods that were not provided?

2 G. Did Defendants fail to pay members of the **Meal Period Class** the
3 additional wages required for meal periods that were not provided?

4 H. Did Defendants deduct wages from the paychecks of members of the
5 **Unauthorized Deduction Class** without written consent?

6 I. Did Defendants intentionally fail to provide members of the **Inaccurate**
7 **Wage Statement Class** with accurate written wage statements?

8 J. Did Defendants intentionally fail to indemnify members of the
9 **Indemnification Class** for all necessary expenditures incurred by the members of the class in
10 direct consequence of the discharge of their duties?

11 K. Are the vacation days received by members of the **Vacation Pay Class**
12 subject to forfeiture?

13 L. Did Defendants fail to timely pay **Former Employee Class** all final
14 wages owed following termination or discharge?

15 M. Are Defendants liable to members of the **Former Employee Class** for
16 continuation wages under California Labor Code § 203?

17 N. Did Defendants engage in unfair competition within the meaning of
18 California Business & Professions Code §§ 17200, *et seq.*, with respect to members of the **UCL**
19 **Class**?

20 O. Are class members entitled to prejudgment interest?

21 P. Are class members entitled to attorneys' fees?

22 17. Plaintiffs' claims are typical of the other class members' claims. Plaintiffs are
23 informed and believe and thereon allege that Defendants have a policy or practice of failing to
24 comply with the California Labor Code and the California Business and Professions Code as
25 alleged herein.

26 18. Plaintiffs will fairly and adequately represent and protect the interests of the
27 other class members. Plaintiffs have no interests adverse to the interests of the other class
members. In addition, Plaintiffs are represented by counsel experienced in wage and hour class

1 action cases.

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

12 **FIRST CLAIM FOR RELIEF**

13 **FAILURE TO PAY ALL EARNED HOURLY WAGES IN VIOLATION OF THE**
14 **CALIFORNIA LABOR CODE**

15 **(By Plaintiffs, the Wages Class, and the Overtime Class)**

16 20. Plaintiffs incorporate paragraphs 1 through 19 of the Complaint as if fully
17 alleged herein.

18 21. At all relevant times, Plaintiffs and the other members of the **Wages Class** and
19 the **Overtime Class** have been entitled to the protections of the California Labor Code,
20 including California Labor Code §§ 204, 510, and applicable Wage order(s). These protections
21 include the rights to be timely paid all wages earned at the legally required rates for all hours
22 worked.

23 22. California Labor Code § 510(a) requires employers to compensate employees at
24 one and one-half times their regular rates of pay for:

- 25 A. All hours worked in excess of eight hours in one workday;
26 B. All hours worked in excess of forty hours in one workweek; and,
27 C. The first eight hours worked on a seventh consecutive workday during a
workweek.

1 23. California Labor Code § 510(a) also requires employers to compensate
2 employees at two times their regular rates of pay for:

3 A. All hours worked in excess of twelve hours in one day; and,

4 B. All hours worked in excess of eight hours on a seventh consecutive
5 workday during a workweek.

6 24. During the applicable limitations period, Plaintiffs have worked more than eight
7 hours in one workday, more than forty hours in one workweek, and eight or more hours on a
8 seventh consecutive workday without being paid for all of those hours at the rates required
9 under California Labor Code § 510(a).

10 25. Plaintiffs are informed and believe and thereon allege that Defendants have
11 maintained a policy or practice of not compensating him and the other members of the **Wages**
12 **Class** for all hours worked. Additionally, Plaintiffs are informed and believe and thereon allege
13 that Defendants have maintained a policy or practice of not compensating the other members of
14 the **Wages Class** and the **Overtime Class** at the rates required under California Labor Code §
15 510(a) for all hours worked in excess of eight hours in one day, all hours worked in excess of
16 forty hours in one week, the first eight hours on a seventh consecutive workday, and all worked
17 hours in excess of eight hours on a seventh consecutive workday.

18 26. As a result of Defendants' conduct, Plaintiffs, on behalf of themselves and the
19 other members of the **Wages Class** and the **Overtime Class**, seeks declaratory and injunctive
20 relief, damages for unpaid overtime wages, interest thereon, costs of suit, and reasonable
21 attorney's fees pursuant to California Labor Code § 1194(a).

22 **SECOND CLAIM FOR RELIEF**

23 **FAILURE TO PROVIDE REST AND MEAL PERIODS**

24 **(By Plaintiffs, the Rest Period Class, and the Meal Period Class)**

25 27. Plaintiffs incorporate paragraphs 1 through 26 of the Complaint as if fully
26 alleged herein.

27 28. At all relevant times, Plaintiffs and other members of the **Rest Period Class** and
Meal Period Class have been employees of Defendants covered by California Labor Code §§

1 226.7 and 512, and Wage order 11.

2 29. Pursuant to the applicable wage order(s), Defendants are required to provide
3 Plaintiffs and the other members of the **Rest Period Class** with net rest periods of a least ten
4 (10) minutes for each four (4) hour work period, or major portion thereof, during any given
5 workday.

6 30. Pursuant to California Labor Code § 226.7, Defendants are required to pay
7 Plaintiffs and the other members of the **Rest Period Class** one (1) additional hour of wages for
8 each rest period not provided in accordance with the applicable wage order(s).

9 31. During the applicable limitations period, Defendants failed to provide Plaintiffs
10 with net rest periods of at least ten (10) minutes for every four (4) hours work period, or major
11 portion thereof, and failed to pay them the required additional wages for rest periods not
12 provided to her.

13 32. Plaintiffs are informed and believe and thereon allege that Defendants maintain a
14 policy or practice of failing to provide other members of the **Rest Period Class** with net rest
15 periods of at least ten (10) minutes for every four (4) hours worked and of failing to pay them
16 the required additional wages for rest periods not provided to them.

17 33. Pursuant to California Labor Code § 512 and Industrial Welfare Commission
18 Order 7-2001, Defendants are required to provide Plaintiffs and the other members of the **Meal**
19 **Period Class** with an uninterrupted thirty (30) minute meal period for each five (5) hour work
20 period during any given workday.

21 34. Pursuant to California Labor Code § 226.7, Defendants are required to pay
22 Plaintiffs and the other members of the **Meal Period Class** one (1) additional hour of wages for
23 each meal period not provided in accordance with Wage order 11.

24 35. During the applicable limitations period, Defendants failed to provide Plaintiff
25 with an uninterrupted thirty (30) minute meal period for each five (5) hour work period,
26 including a second uninterrupted thirty (30) minute meal period on days he worked more than
27 ten (10) hours, and failed to pay him the required additional wages for rest periods not provided
to her.

1 36. Plaintiffs are informed and believe and thereon allege that Defendants maintain a
2 policy or practice of failing to provide other members of the **Meal Period Class** with
3 uninterrupted thirty (30) minute meal periods for each five (5) hour work period, including
4 second uninterrupted thirty (30) minute meal periods on days they worked more than ten (10)
5 hours, and failed to pay him the required additional wages for meal periods not provided to her.

6 37. Plaintiffs on behalf of themselves and the other members of the **Rest Period**
7 **Class** and the **Meal Period Class**, seeks declaratory and injunctive relief, damages for unpaid
8 wages owed, interest thereon and costs of suit pursuant to California Labor Code § 218.6, and
9 reasonable attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

10 **THIRD CLAIM FOR RELIEF**

11 **FORFEITURE OF VACATION PAY**

12 **(By Plaintiffs and the Vacation Pay Class)**

13 38. Plaintiffs incorporate paragraphs 1 through 37 of the Complaint as if fully
14 alleged herein.

15 39. Under California Labor Code § 227.3 and applicable case law, vested paid
16 vacation benefits and other similar forms of paid time off that earned based on labor performed
17 are considered wages and cannot be subject to forfeiture without providing compensation for
18 forfeited days at the applicable rates required by law.

19 40. Pursuant to written company policies, members of the **California Vacation Pay**
20 **Class** have earned vested paid vacation days, including, but not limited to, "Personal Holidays"
21 and/or "Management Recognition Days," that are explicitly subject to unpaid forfeiture
22 pursuant to written company policies if they are not used within specified time periods.

23 41. During the applicable limitations period, Plaintiff has earned vested paid
24 vacation days, including, but not limited to, "Personal Holidays" and "Management Recognition
25 Days," without being compensated by Defendants for each vested paid vacation day.

26 42. Plaintiff is informed and believes and thereon alleges that Defendants have
27 maintained policies or practices of causing members of the **California Vacation Pay Class** to
forfeit vested paid vacation days, including, but not limited to, "Personal Holidays" and/or

1 “Management Recognition Days,” without compensating them for each vested paid vacation
2 day.

3 43. As a result of the above, Plaintiff seeks declaratory and injunctive relief,
4 damages for unpaid wages owed, interest thereon and costs of suit pursuant to California Labor
5 Code § 218.6, and reasonable attorney’s fees pursuant to California Code of Civil Procedure §
6 1021.5.

7 **FOURTH CLAIM FOR RELIEF**

8 **FAILURE TO PROVIDE ACCURATE, WRITTEN WAGE STATEMENTS**

9 **(By Plaintiffs and the All-Inclusive Class)**

10 44. Plaintiffs incorporate paragraphs 1 through 43 of the Complaint as if fully
11 alleged herein.

12 45. At all relevant times, Plaintiffs and the other members of the **All-Inclusive Class**
13 have been employees of Defendants entitled to the benefits and protections of California Labor
14 Code § 226. Pursuant to California Labor Code § 226(a), Plaintiffs and the other class members
15 were entitled to receive, semimonthly or at the time of each payment of wages, an accurate
16 itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable
17 hourly rates in effect during the pay period; and d) the corresponding number of hours worked
18 at each hourly rate by the employee.

19 46. Defendants failed to provide Plaintiffs accurate itemized statements in
20 accordance with California Labor Code § 226(a) because Plaintiffs’ wage statements did not,
21 among other things, accurately reflect all of the hours that they actually worked, the descriptions
22 for all of the hours they actually worked, and the corresponding rates of pay for all of the hours
23 they actually worked.

24 47. Plaintiffs are informed and believe and thereon allege that, at all relevant times
25 during the applicable limitations period, Defendants maintained a policy or practice of not
26 providing the other members of the **All-Inclusive Class** wage statements did not, among other
27 things, accurately reflect all of the hours that they actually worked, the descriptions for all of the
hours they actually worked, and the corresponding rates of pay for all of the hours they actually

1 worked.

2 48. Defendants' failure to provide Plaintiffs and the other members of the **All-**
3 **Inclusive Class** with accurate wage statements was knowing and intentional. Defendants had
4 the ability to provide Plaintiffs and the other class members with accurate wage statements but
5 intentionally provided wage statements that Defendants knew were not accurate.

6 49. As a result of being provided with inaccurate wage statements by Defendants,
7 Plaintiffs and the other members of the **All-Inclusive Class** have suffered an injury. Their legal
8 rights to receive accurate wage statements were violated and they were misled about the amount
9 of wages they had actually earned and were owed. In addition, the absence of accurate
10 information on their wage statements prevented immediate challenges to Defendants' unlawful
11 pay practices, has required discovery and mathematical computations to determine the amounts
12 of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay
13 records, and/or has led to the submission of inaccurate information about wages and amounts
14 deducted from wages to state and federal government agencies.

15 50. Pursuant to California Labor Code § 226(e), Plaintiffs and the other members of
16 the **All-Inclusive Class** are entitled to recover the greater of actual damages, or penalties of fifty
17 dollars (\$50) for the initial pay period in which a violation of California Labor Code § 226(a)
18 occurred and one hundred dollars for each violation of California Labor Code § 226(a) in a
19 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per
20 class member, and are also entitled to an award of costs and reasonable attorney's fees.

21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

23 **(Cal. Lab. Code §§ 201-203)**

24 **(By Plaintiffs and the Former Employee Class)**

25 51. Plaintiffs incorporate paragraphs 1 through 50 of the Complaint as if fully
26 alleged herein.

27 52. At all relevant times, Plaintiffs and the members of the **Former Employee Class**
were employees of Defendants covered by California Labor Code § 201 or California Labor

1 Code § 202. Pursuant to California Labor Code § 201 or California Labor Code § 202, Plaintiffs
2 and the members of the **Former Employee Class** were entitled to payment of all wages earned
3 and unpaid prior to the termination of their employment. Members of the **Former Employee**
4 **Class** who are discharged employees were entitled to payment of their earned and unpaid wages
5 no later than the day on which their employment was terminated. Members of the **Former**
6 **Employee Class** who resigned were entitled to payment of their earned and unpaid wages
7 within 72 hours after giving notice of resignation or, if they had given at least 72 hours previous
8 notice, no later than the day their employment terminated.

9 53. Defendants failed to timely pay Plaintiffs all final wages earned and unpaid prior
10 to the termination of his employment with Defendants, including, but not limited to, additional
11 earned wages for rest and meal periods not provided to them, and earned wages in the forms of
12 vested paid vacation time and unlawfully deducted wages, in accordance with California Labor
13 Code § 201. Plaintiffs are informed and believe and thereon allege that, at relevant times during
14 the applicable limitations period, Defendants maintained a policy or practice of not providing
15 members of the **Former Employee Class** with a final paycheck encompassing all wages owed
16 upon termination or discharge of employment, including, but not limited to, additional earned
17 wages for rest and meal periods not provided to them, and/or earned wages in the forms of
18 vested paid vacation time and/or unlawfully deducted wages, in accordance with California
19 Labor Code § 201 or California Labor Code § 202.

20 54. Defendants' failure to pay Plaintiffs and members of the **Former Employee**
21 **Class** all wages earned prior to termination in accordance with California Labor Code § 201 or
22 California Labor Code § 202 was willful. Plaintiffs are informed and believe and thereon allege
23 that Defendants had the ability to pay all wages earned by members of the **Former Employee**
24 **Class** prior to termination in accordance with California Labor Code § 201 or California Labor
25 Code § 202, but intentionally adopted policies or practices incompatible with the requirements
26 of California Labor Code § 201 or California Labor Code § 202.

27 55. Pursuant to California Labor Code § 201 or California Labor Code § 202,
Plaintiffs and the members of the **Former Employee Class** are entitled to all wages earned

1 prior to the termination of their employment that Defendants did not pay them as well as
2 continuations of their wages, from the days they earned and unpaid wages were due upon the
3 termination of their employment until paid, up to a maximum of thirty (30) days, in amounts
4 subject to proof.

5 56. Accordingly, Plaintiffs and the members of the **Former Employee Class** are
6 entitled to recover the full amount of their unpaid wages and interest thereon pursuant to
7 California Labor Code § 218.6, continuation wages under California Labor Code § 203,
8 reasonable attorney's fees, and costs of suit.

9 **SIXTH CLAIM FOR RELIEF**

10 **UNAUTHORIZED DEDUCTIONS**

11 **(By Plaintiffs and the Unauthorized Deductions Class)**

12 57. Plaintiffs incorporate paragraphs 1 through 56 of the Complaint as if fully
13 alleged herein.

14 58. California Labor Code §§ 221 and 224 prohibit an employer from taking
15 deductions from an employee's wages without the employee's express written consent or other
16 legal authority for doing so.

17 59. At relevant times during the applicable limitations period, Defendants deducted
18 wages from Plaintiffs' paychecks without their express written consent or other legal authority
19 for doing so. Plaintiffs are informed and believe and thereon allege that, at relevant times during
20 the applicable limitations period, Defendants deducted wages from the paychecks of members
21 of the **Unauthorized Deduction Class** without their express written consent or other legal
22 authority for doing so.

23 60. By reason of the above, Plaintiffs and the members of the **Unauthorized**
24 **Deductions Class** are entitled to restitution for all unpaid amounts due and owing to within four
25 years (4) of the date of the filing of the Complaint until the date of entry of judgment. Further,
26 Plaintiffs, on behalf of themselves and the members of the **Unauthorized Deductions Class**,
27 seek interest thereon pursuant to California Labor Code § 218.6, costs pursuant to California
Labor Code § 218.6, and reasonable attorney's fees pursuant to California Code of Civil

1 Procedure § 1021.5.

2 **SEVENTH CLAIM FOR RELIEF**

3 **FAILURE TO INDEMNIFY**

4 **(By Plaintiffs and the Indemnification Class)**

5 61. Plaintiffs incorporate paragraphs 1 through 60 of the Complaint as if fully
6 alleged herein.

7 62. In pertinent part, California Labor Code § 2802(a) states, "An employer shall
8 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in
9 direct consequence of the discharge of his or her duties." California Labor Code § 452 of the
10 Labor Code authorizes employers to prescribe the weight, color, quality, texture, style, form,
11 and make of uniforms required to be worn by their employees. However, the Wage Orders
12 impose an obligation on an employer that requires uniforms to be worn by its nonexempt
13 employees as a condition of employment to provide and maintain such uniforms, regardless of
14 the amount of the employees' compensation. The applicable wage order states, "When uniforms
15 are required by the employer to be worn by the employee as a condition of employment, such
16 uniforms shall be provided and maintained by the employer. The term "uniform" includes
17 wearing apparel and accessories of distinctive design or color." If the employer does not choose
18 to maintain employees' uniforms itself where it is required to do so, the Division of Labor
19 Standards Enforcement takes the position that the employer may pay each affected employee a
20 weekly maintenance allowance of an hour's pay at the state minimum wage rate (\$7.50 as of
21 January 1, 2007, and \$8.00 as of January 1, 2008) in lieu of maintaining the uniforms, assuming
22 that an hour is a realistic estimate of the time involved in maintaining the uniforms. The term
23 "uniform" is defined to include wearing apparel and accessories of distinctive design or color.

24 63. At relevant times during the applicable limitations period, Defendants required
25 Plaintiffs and the members of the **Indemnification Class** to purchase and maintain uniforms
26 and apparel unique to Defendants at their expense. Defendants failed to indemnify Plaintiffs and
27 the members of the **Indemnification Class** for such expenditures.

64. By reason of the above, Plaintiffs and the members of the **Indemnification Class**

1 are entitled to restitution for all unpaid amounts due and owing to within four years (4) of the
2 date of the filing of the Complaint until the date of entry of judgment. Further, Plaintiffs, on
3 behalf of themselves and the members of the **Indemnification Class**, seeks interest thereon
4 pursuant to California Labor Code § 218.6, costs pursuant to California Labor Code § 218.6,
5 and reasonable attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

6 **EIGHTH CLAIM FOR RELIEF**

7 **UNFAIR COMPETITION**

8 **(By Plaintiffs and the California All-Inclusive Class)**

9 65. Plaintiffs incorporate paragraphs 1 through 64 of the Complaint as if fully
10 alleged herein.

11 66. The unlawful conduct of Defendants alleged herein amounts to and constitutes
12 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
13 *seq.* California Business & Professions Code §§ 17200, *et seq.*, protects against unfair
14 competition and allows a person who has suffered an injury-in-fact and has lost money or
15 property as a result of an unfair, unlawful, or fraudulent business practice to seek restitution on
16 her own behalf and on behalf of other similarly situated persons in a class action proceeding.

17 67. As a result of Defendants' violations of the California Labor Code as during the
18 applicable limitations period as alleged herein, Plaintiffs have suffered an injury-in-fact and
19 have lost money or property in the form of earned wages. Specifically, Plaintiffs have lost
20 money or property as a result of not being paid for hours worked, not being paid at legal
21 overtime rates for all overtime hours worked, not being paid additional required wages for rest
22 and meal periods not provided to them, being provided with inaccurate written wage statements
23 that have had the effect of concealing other wage underpayments, Defendants' improper
24 deductions, and Defendants' failure to reimburse for necessary expenditures, and Defendants'
25 failure to timely pay all wages due or owed upon termination or resignation.

26 68. Plaintiffs are informed and believe that other similarly situated persons have
27 been subject to the same unlawful policies or practices of Defendants, including not being paid
for all wages earned, not being paid at overtime rates for all overtime hours worked, not being

1 paid additional required wages for rest and meal periods not provided to them, being provided
2 with inaccurate written wage statements that have had the effect of concealing other wage
3 underpayments, Defendants' improper deductions, and Defendants' failure to reimburse for
4 necessary expenditures, and/or Defendants' failure to timely pay all wages due or owed upon
5 termination or resignation.

6 69. Due to its unfair and unlawful business practices in violation of the California
7 Labor Code as alleged herein, Defendants have gained a competitive advantage over other
8 comparable companies doing business in the State of California that comply with their legal
9 obligations to compensate employees for all earned wages and to provide them with reasonable
10 means of verifying that they have been paid all earned wages with accurate written wage
11 statements.

12 70. Pursuant to California Business & Professions Code § 17203, Plaintiffs, on
13 behalf of themselves and the other members of the **All-Inclusive Class**, seek declaratory and
14 injunctive relief, and restitution of all monies rightfully belonging to them that Defendants did
15 not pay them or otherwise retained by means of its unlawful and unfair business practices.

16 71. Plaintiffs and the other members of the **All-Inclusive Class** are entitled to
17 recover reasonable attorney's fees in connection with their unfair competition claims pursuant
18 to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the
19 common fund doctrine.

20 **NINTH CLAIM FOR RELIEF**

21 **CIVIL PENALTIES**

22 **(By Plaintiffs and the All-Inclusive Class)**

23 72. Plaintiffs incorporate paragraphs 1 through 71 of the Complaint as if fully
24 alleged herein.

25 73. During the applicable time period, Defendants violated California Labor Code §§
26 204, 223, 226(a), 226.7, 227.3, 510, 512, and 1194.

27 74. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
behalf of himself and other current or former employees, to bring a civil action to recover civil

1 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

2 75. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiffs and the other
3 aggrieved employees of Defendants are entitled to recover civil penalties for Defendants'
4 violations of California Labor Code §§ 200, 201, 202, 203, 204, 224, 226(a), 226.7, 227.3, 510,
5 512, 1194 and 2802 during the applicable limitations period in the following amounts:

6 A. For violations of California Labor Code §§ 200, 201, 202, 203, 224,
7 226.7, 1194, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay
8 period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee
9 per pay period for each subsequent violation (penalty amounts established by California Labor
10 Code § 2699(f)(2));

11 B. For violations of California Labor Code § 204, one hundred dollars
12 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
13 (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount
14 unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional
15 violation (penalty amounts established by California Labor Code § 210);

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

20 D. For violations of California Labor Code §§ 510 and 512, fifty dollars
21 (\$50.00) for each aggrieved employee for each initial violation for pay period for which the
22 employee was underpaid in addition to an amount sufficient to recover unpaid wages and one
23 hundred dollars (\$100.00) for each underpaid employee for each pay period for which the
24 employee was underpaid in addition to an amount sufficient to recover unpaid wages (penalty
25 amounts established by California Labor Code § 558).

26 76. Plaintiffs have complied with the procedures for bringing suit specified in
27 California Labor Code § 2699.3. By letters dated January 8 and February 19, 2010, Plaintiffs
gave written notice by certified mail to the Labor and Workforce Development Agency

1 (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to
2 have been violated, including the facts and theories to support the alleged violations. Plaintiffs
3 anticipate that the LWDA will soon provide Plaintiffs with written notice that it does not intend
4 to investigate the violations of the California Labor Code alleged herein.

5 77. Pursuant to California Labor Code § 2699(g), Plaintiffs and the other members of
6 the **All-Inclusive Class** are entitled to an award of reasonable attorney’s fees and costs in
7 connection with their claims for civil penalties.

8 **PRAYER FOR RELIEF**

9 78. WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly
10 situated, prays for relief and judgment against Defendants as follows:

11 A. An order that the action be certified as a class action with respect to
12 Plaintiffs’ claims for violations of California law;

13 B. An order that Plaintiffs be appointed class representatives;

14 C. An order that counsel for Plaintiffs be appointed class counsel;

15 D. Declaratory relief;

16 E. Injunctive relief;

17 F. Actual damages;

18 G. Liquidated damages;

19 H. Restitution;

20 I. Civil penalties;

21 J. Statutory penalties;

22 K. Pre-judgment interest;

23 L. Costs of suit;

24
25 ///

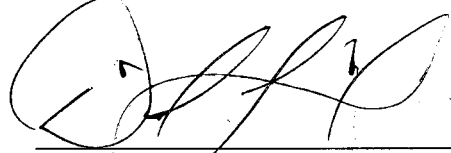
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- M. Reasonable attorney's fees; and
- N. Such other relief as the Court deems just and proper.

Respectfully submitted,

THE SPIVAK LAW FIRM



By:

Date: February 23, 2010

DAVID G. SPIVAK, Attorney for
Plaintiff, ALINA GHRDILYAN,
EVGENIA SULTANIAN, and all others
similarly situated

EXHIBIT 16

1 CASE NUMBER: BC430633
2 CASE NAME: ALINA GHRDILYAN, ET AL., VERSUS
3 RJ FINANCIAL, ET AL.,
4 LOS ANGELES, CALIFORNIA MONDAY, APRIL 23, 2012
5 DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE
6 APPEARANCES: (SEE TITLE PAGE.)
7 REPORTER: ANGELA Z. PARADELA, CSR NO. 9659
8 TIME: A.M. SESSION
9

10 (THE FOLLOWING PROCEEDINGS WERE HELD IN
11 OPEN COURT:)

12
13 THE COURT: OKAY. THANK YOU VERY MUCH. I'M GOING
14 TO ASK YOU LAWYERS TO WAIT FOR JUST A MOMENT.

15 AS YOU CAN PROBABLY TELL, FROM THE QUESTIONS
16 AND THE WAY I'VE BEEN TAKING NOTES, SO FORTH, I HAVE A CASE
17 IN MIND AND I HAVE BEEN WORKING ON IT BOTH WHILE YOU'VE BEEN
18 WITH ME AND DURING THE RECESSES LIKE WEEKENDS AND NIGHTS.
19 JUST A SECOND. I HAVE TWO MORE THINGS I HAVE TO BRING OUT.
20 I WILL DO SOME MORE WORK WITH YOU.

21 (A PAUSE IN THE PROCEEDINGS.)

22 THE COURT: OKAY. YOU PROBABLY ALREADY GOT THE
23 IMPRESSION THAT I AM A JUDGE WHO TRIES TO DOCUMENT AND SHOW
24 THE LEGAL PREMISES FOR PROCEDURAL STEPS WE TAKE, AND I INTEND
25 TO DO THAT. I JUST WANT TO TELL YOU WHAT I'M GOING TO DO
26 HERE AND I GUESS I WILL START THIS WAY.

27 I SAID I AM GOING TO BRING OUT TWO THINGS. I
28 BROUGHT OUT ONLY ONE.

1 (A PAUSE IN THE PROCEEDINGS.)

2 THE COURT: THE -- I'M GOING TO CALL YOUR ATTENTION
3 TO SOME CASES THAT HAVEN'T BEEN CITED. I'M GOING TO DEAL
4 WITH THE MERITS OF YOUR CLIENTS'S CASE. SO HERE WE GO.

5 UNDER CALIFORNIA CONSTITUTION ARTICLE VI,
6 SECTION 6 AND GOVERNMENT CODE 68070(B) AND 68603(A), THE
7 CALIFORNIA JUDICIAL COUNCIL HAS CONSTITUTIONALLY GRANTED AND
8 LEGISLATIVELY AFFIRMED POWER TO ADOPT RULES, REPORT
9 ADMINISTRATION PRACTICE AND PROCEDURE THAT ARE CONSISTENT
10 WITH STATUTES. THE CALIFORNIA RULES OF COURT HAVE THE FORCE
11 OF LAW AND BINDING AS PROCEDURAL STATUTES AS LONG AS THEY ARE
12 CONSISTENT WITH LEGISLATIVE ENACTMENTS AND CONSTITUTIONAL
13 GUARANTEES.

14 I WILL CITE YOU THREE CASES WHERE THAT POINT
15 IS MADE. THEY ARE IN RE JUAN -- THAT'S J-U-A-N -- C.,
16 (1993), 20 CALIFORNIA APPELLATE 4TH, 748, PARTICULARLY AT
17 PAGES 752 TO 753; ALICIA T. VERSUS COUNTY OF LOS ANGELES,
18 (1990), 222 CALIFORNIA APPELLATE 3D 869 AT 884, AND OATS
19 VERSUS OATS. OATS IS SPELLED O-A-T-S, (1983) 14 CALIFORNIA
20 APPELLATE 3D 416 AT 420. THIS IS HOW THE OATS VERSUS OATS
21 COURT EXPRESSED THIS VIEW.

22 RULES OF COURT HAVE THE FORCE OF POSITIVE LAW.
23 THEY ARE AS BINDING ON THIS COURT AS PROCEDURAL STATUTES
24 UNLESS THEY TRANSCEND LEGISLATIVE ENACTMENTS OR
25 CONSTITUTIONAL GUARANTEES.

26 SO THE HIERARCHY THEN WOULD BE CONSTITUTION,
27 STATUTES AND CALIFORNIA RULES OF COURT, AND THEN CASE LAW.

28 I SAY THAT BECAUSE THE CASE OF WHITTINGTON

1 VERSUS MCKINNEY -- WHITTINGTON IS SPELLED

2 W-H-I-T-I-N-G-T-O-N, VERSUS MCKINNEY, CAPITAL M, C, CAPITAL
3 K, I-N-N-E-Y, (1991), 234 CALIFORNIA APPELLATE 3D 123 --
4 CRITICIZED THE CONDUCT OF A NOW FORMER JUDGE, I BELIEVE, AT
5 THE ORANGE COUNTY SUPERIOR COURT, WHO ANNOUNCED A DECISION,
6 GAVE A STATEMENT OF DECISION ORALLY AND SAID IF YOU WANTED A
7 WRITTEN STATEMENT OF DECISION, YOU COULD MAKE REFERENCE TO
8 THE COURT TRANSCRIPT. THAT CASE, WHITTINGTON VERSUS MCKINNEY
9 WAS, AS I SAY, DECIDED IN 1991.

10 IN 2010, EFFECTIVE JANUARY 1, 2010, THE
11 CALIFORNIA RULES OF COURT WERE AMENDED WITH RESPECT TO, AMONG
12 OTHER PROVISIONS OF THE CALIFORNIA RULES OF COURT, RULE
13 3.1590 HAVING TO DO WITH ANNOUNCEMENT OF TENTATIVE DECISION
14 AND STATEMENT DECISION AND JUDGMENT.

15 THE (C) SUBSECTION OF RULE 15 -- RULE 3.1590
16 WAS AMENDED BY THE ELIMINATION OF SOME PROVISIONS AND BY
17 BEING INSERTION OF OTHER PROVISIONS. I'M GOING TO REFER TO
18 THE (C) SUBSECTION.

19 IT READS NOW, (READING:)

20 THE COURT IN ITS TENTATIVE DECISION MAY:
21 STATE THAT IT IS THE COURT'S PROPOSED
22 STATEMENT OF DECISION, SUBJECT TO A PARTY'S
23 OBJECTION UNDER SUBSECTION (G);

24 (2) INDICATE THAT THE COURT WILL PREPARE
25 A STATEMENT OF DECISION;

26 (3) ORDER A PARTY TO PREPARE A STATEMENT
27 OF DECISION; OR

28 (4) DIRECT THAT THE TENTATIVE DECISION

1 WILL BECOME THE STATEMENT OF DECISION UNLESS,
2 WITHIN 10 DAYS AFTER ANNOUNCEMENT OR SERVICE
3 OF THE TENTATIVE DECISION, A PARTY SPECIFIES
4 THOSE PRINCIPAL CONTROVERTED ISSUES AS TO
5 WHICH THE PARTY IS REQUESTING A STATEMENT OF
6 DECISION OR MAKES PROPOSALS NOT INCLUDED IN
7 THE TENTATIVE DECISION.

8 NOW, I WILL NOT USE METHOD TWO. THAT'S THE
9 COURT WILL PREPARE A STATEMENT OF DECISION. I WILL USE
10 EITHER (1), (3), OR (4) EITHER SAYING THAT THIS IS A PROPOSED
11 STATEMENT OF DECISION SUBJECT TO OBJECTIONS UNDER SUBSECTION
12 (G), OR ORDER A PARTY TO PREPARE A STATEMENT OF DECISION, OR
13 DIRECT THAT THE TENTATIVE DECISION WILL BECOME THE STATEMENT
14 OF DECISION UNLESS WITHIN TEN DAYS A PARTY SPECIFIES
15 PRINCIPAL CONTROVERTED ISSUES AS TO WHICH THE PARTY IS
16 REQUESTING A STATEMENT OF DECISION OR MAKES PROPOSALS NOT
17 INCLUDED IN THE TENTATIVE DECISION.

18 I WOULD LIKE TO HEAR FROM BOTH SIDES NOW
19 CONCERNING WHICH OF THREE ALTERNATIVES WHICH I PROPOSED THEY
20 PREFER, AND THEN I WILL MAKE THE DECISION CONCERNING THAT
21 THAT IS PROPER. LET'S START WITH THE DEFENSE. DEFENDANT?

22 MR. SABZEVAR: YOUR HONOR, I PREFER THAT THE COURT
23 ISSUES A STATEMENT OF DECISION ITSELF AND NOT LEAVE IT TO THE
24 PARTIES OR TEN DAYS.

25 THE COURT: I TOLD YOU I'M NOT GOING TO PREPARE A
26 STATEMENT OF DECISION. I'M GOING TO USE EITHER METHOD (1),
27 (3), OR (4). (1) IS THIS IS THE PROPOSED STATEMENT OF
28 DECISION SUBJECT TO OBJECTIONS UNDER (D). (3) IS ORDER A

1 PARTY TO PREPARE A STATEMENT OF DECISION; OR (4), DIRECT THAT
2 THE TENTATIVE DECISION WILL BECOME THE STATEMENT OF DECISION
3 UNLESS WITHIN TEN DAYS AFTER ANNOUNCEMENT OR SERVICE OF THE
4 TENTATIVE DECISION, THE PARTY SPECIFIES THOSE PRINCIPAL
5 CONTROVERTED ISSUES AS TO WHICH THE PARTY IS REQUESTING A
6 STATEMENT OF DECISION OR MAKES PROPOSALS NOT INCLUDED IN THE
7 TENTATIVE DECISION.

8 MR. SABZEVAR: DEFENSE PREFERENCE IS NUMBER ONE.

9 THE COURT: STATE THAT THIS IS THE COURT'S
10 STATEMENT OF DECISION SUBJECT TO A PARTY'S OBJECTION UNDER
11 (G)?

12 MR. SABZEVAR: YES, YOUR HONOR.

13 THE COURT: PLAINTIFF?

14 MR. SPIVAK: WE PREFER TO WRITE THE DECISION, YOUR
15 HONOR, ONCE THE COURT HAS MADE ITS POSITION KNOWN.

16 THE COURT: ALL RIGHT.

17 MR. SPIVAK: BY "WE" I MEAN WE BELIEVE IT SHOULD BE
18 PREVAILING PARTY.

19 THE COURT: UH-HUH. I'M GOING TO USE -- I
20 APPRECIATE -- I'M GOING TO USE METHOD (4). THIS TENTATIVE
21 DECISION WILL BECOME THE STATEMENT OF DECISION UNLESS WITHIN
22 TEN DAYS AFTER ANNOUNCEMENT, AND SO FORTH. THAT'S
23 3.1590(C)(4).

24 SO WHAT I'M GOING TO DO NOW IS ANNOUNCE A
25 TENTATIVE WHICH, AS YOU CAN SEE, IS ALSO A CONDITIONAL
26 STATEMENT OF DECISION.

27 THIS CASE CAME BEFORE ME PRESIDING IN THIS
28 DEPARTMENT 41 ON THE 10TH OF APRIL, 2012, FOR TRIAL WITHOUT

1 JURY. DAVID G. SPIVAK, STATE BAR 179684, APPEARED AS
2 ATTORNEY FOR PLAINTIFFS ALINA GHRDILYAN AND EVGENIA
3 SULTANIAN, AND F. MICHAEL SABZEVAR, STATE BAR 172312 APPEARED
4 AS ATTORNEY FOR DEFENDANT, RAMIL ABALKHAD.

5 THE CASE WAS SUBMITTED FOR DECISION TODAY, THE
6 23RD OF APRIL, 2012.

7 IN THIS CASE, TWO PLAINTIFFS CLAIM THAT
8 DEFENDANT ABALKHAD IS LIABLE TO THEM ON VARIOUS
9 EMPLOYMENT-DERIVED THEORIES INCLUDING AND ESPECIALLY FOR
10 PENALTIES AND THAT THEY CAN ENFORCE VARIOUS REMEDIES AGAINST
11 THEM UNDER THE LABOR CODE PRIVATE ATTORNEY GENERAL ACT, WHICH
12 IS AT LABOR CODE 2698, AND FOLLOWING.

13 IN OPEN COURT ON THE 10TH OF APRIL, 2012, THE
14 ATTORNEYS CONFIRMED THAT THE OPERATIVE PLEADINGS ARE THE
15 PLAINTIFFS'S FIRST AMENDED COMPLAINT, ET CETERA, FILED
16 FEBRUARY 24, 2010, AND THE DEFENDANT'S ANSWER TO THEIR FIRST
17 AMENDED COMPLAINT FILED SEPTEMBER 13, 2010. I WILL MAKE A
18 COUPLE OF QUICK COMMENTS ABOUT THOSE TWO DOCUMENTS NOW.

19 THE FULL NAME OF THE PLAINTIFFS'S OPERATIVE
20 PLEADING IS FIRST AMENDED COMPLAINT FOR -- AND THEN THERE ARE
21 NINE THEORIES LISTED: FAILURE TO COMPENSATE EMPLOYEES FOR
22 ALL HOURS WORKED; NUMBER TWO IS FAILURE TO PROVIDE BOTH REST
23 AND MEAL PERIODS; NUMBER THREE IS FORFEITURE OF VESTED
24 VACATION BENEFITS; NUMBER FOUR IS FAILURE TO PROVIDE ACCURATE
25 WRITTEN WAGE STATEMENTS; NUMBER FIVE IS FAILURE TO TIMELY PAY
26 ALL FINAL WAGES; NUMBER SIX IS UNAUTHORIZED DEDUCTIONS;
27 NUMBER SEVEN IS FAILURE TO INDEMNIFY; NUMBER EIGHT IS UNFAIR
28 COMPETITION; AND NUMBER NINE IS CIVIL PENALTIES.

1 THE DEFENDANT'S ANSWER TO THE FIRST AMENDED
2 COMPLAINT WAS ON A JUDICIAL COUNCIL FORM PLEADING.

3 INSOFAR AS IT'S PERTINENT TO THIS PORTION OF
4 MY ANALYSIS, LABOR CODE 2699 READS, (READING:)

5 SUBSECTION (A), NOTWITHSTANDING ANY OTHER
6 PROVISION OF LAW, ANY PROVISION OF THIS CODE
7 THAT PROVIDES FOR A CIVIL PENALTY TO BE
8 ASSESSED AND COLLECTED BY THE LABOR AND
9 WORKFORCE DEVELOPMENT AGENCY OR ANY OF ITS
10 DEPARTMENTS, DIVISIONS, COMMISSIONS, BOARDS,
11 AGENCIES, OR EMPLOYEES FOR A VIOLATION OF THIS
12 CODE MAY, AS AN ALTERNATIVE, BE RECOVERED
13 THROUGH A CIVIL ACTION BROUGHT BY AN AGGRIEVED
14 EMPLOYEE ON BEHALF OF HIMSELF OR HERSELF AND
15 OTHER CURRENT OR FORMER EMPLOYEES PURSUANT TO
16 THE PROCEDURES SPECIFIED IN SECTION 2699.3.

17 THE PLAINTIFFS HAD ORIGINALLY DENOMINATED THIS
18 CASE AS A CLASS ACTION AND THEY CONTINUED THAT DESIGNATION
19 THROUGH VARIOUS OTHER FILINGS, BUT THEY HAVE NEVER OBTAINED
20 AN ORDER CERTIFYING THE CLASS. THEY CLAIM, THOUGH, THAT THEY
21 ARE ENTITLED TO PROCEED ON BEHALF OF OTHERS PURSUANT TO THE
22 CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL ACT AS TO
23 DEFENDANT ABALKHAD.

24 THE PLAINTIFFS HAD TRIED THIS CASE BEFORE ME
25 SOLELY AS TO CAUSE OF ACTION NINE. THEY CONCEDE THAT THIS
26 CASE IS STAYED IN THIS COURT IN PART BECAUSE OF THE FACT THAT
27 DEFENDANT RJ FINANCIAL, INC., ORIGINALLY THE ONLY NAMED
28 DEFENDANT, BUT BY VIRTUE OF THE FIRST AMENDED PLEADING, A

1 CODEFENDANT, THAT CORPORATION IS A DEBTOR IN CHAPTER 11
2 PROCEEDING, WHICH IS STILL PENDING.

3 PURSUANT TO 11 U.S.C. 362, THIS CASE WOULD BE
4 STAYED AS TO THAT PARTY. BUT MR. ABALKHAD HAS NOT BEEN SHOWN
5 TO BE A DEBTOR IN A BANKRUPTCY PROCEEDING AND DURING CLOSING
6 ARGUMENT OF THE 17TH OF APRIL, 2012, MR. SPIVAK CONFIRMED HIS
7 CLIENTS HAVE CLAIMS PENDING IN THE BANKRUPTCY CASE. THAT
8 WILL MEAN THAT THE CASE CAN PROCEED AND HAS PROCEEDED ON THE
9 BASIS PLEADED AGAINST MR. ABALKHAD AS AN INDIVIDUAL.

10 ALTHOUGH BECAUSE OF 11 U.S.C. 362, IT IS STAYED AS TO THE
11 CORPORATION.

12 THE PERSONS WHO GAVE TESTIMONY AT THE TRIAL
13 WERE JOSEPH HARSANY, H-A-R-S-A-N-Y, AN EMPLOYEE OF PAYROLL
14 CHECK WRITING SERVICE USED BY THE DEFENDANTS; BREK OYAMA --
15 BREK IS SPELLED B-R-E-K; AND OYAMA IS O-Y-A-M-A, MR. SPIVAK'S
16 PARALEGAL; RAMIL ABALKHAD, ONE OF THE DEFENDANTS, THE
17 PRESIDENT AND CHIEF EXECUTIVE OFFICER OF DEFENDANT RJ
18 FINANCIAL AND, INDEED, THAT -- APPARENTLY THAT COMPANY'S ONLY
19 OFFICER AND ONLY DIRECTOR. THE FOURTH WITNESS WAS ALINA
20 GHRDILYAN, ONE OF THE PLAINTIFFS, AND THE FIFTH WAS EVGENIA
21 SULTANIAN, ONE OF THE PLAINTIFFS, THE OTHER PLAINTIFF.

22 I'M GOING TO REFER TO THE LABOR CODE PRIVATE
23 ATTORNEY GENERAL ACT IN THE WAY THE ATTORNEYS HAVE -- IT
24 SEEMS TO ME TO BE SERVICEABLE -- AND I'M GOING TO REFER --
25 I'M GOING TO USE THE ACRONYM PAGA, P-A-G-A.

26 PAGA ACTIONS DO NOT HAVE BEEN MAINTAINED AS
27 CLASS ACTIONS. THEY CAN BE, BUT THEY ARE NOT REQUIRED TO BE.
28 THE AUTHORITY ON THAT IS ARIAS VERSUS SUPERIOR COURT, (2009),

1 46 CALIFORNIA 4TH, 969, 981 TO 982.

2 WE WILL GO INTO RECESS NOW. COME BACK AT
3 1:30, PLEASE.

4 (AT 11:58 A.M., A LUNCH RECESS WAS TAKEN.)

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1 (THE FOLLOWING PROCEEDINGS WERE HELD AT 1:47 P.M.)
2 THE COURT: NOW, WE WILL GO BACK TO THE GHRDILYAN
3 AGAINST RJ CASE.

4 OKAY. WHEN WE LEFT, I HAD, I THINK, TALKED
5 ABOUT SOME GENERAL POINTS OF LAW HAVING TO DO WITH PAGA
6 ACTIONS, AND I WILL JUST OVERLAP SLIGHTLY.

7 I WAS SAYING THAT PAGA ACTIONS DO NOT HAVE TO
8 BE HAVE MAINTAINED AS CLASS ACTIONS. THEY CAN BE, BUT ARE
9 NOT REQUIRED TO BE. AND ONE OF AUTHORITIES ON THAT IS ARIAS,
10 A-R-I-A-S, VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH
11 969 FROM PAGES 981 TO 982. PAGA IS NOT THE EMPLOYEE'S
12 EXCLUSIVE REMEDY. THEY MAY SEPARATELY OR CONCURRENTLY SEEK
13 OTHER REMEDIES. LABOR CODE 2699(G) AND CALIBER BODY WORKS
14 VERSUS SUPERIOR COURT, (2005) 134 CALIFORNIA APPELLATE 4TH
15 365 AT 375.

16 THE KINDS OF PENALTIES THAT PAGA PLAINTIFFS
17 CAN SEEK TO RECOVER, ASSUMING THAT THE FACTS SUPPORT IT, ARE
18 THOSE FOR FAILURE TO PAY STATUTORILY PRESCRIBED WAGES --
19 THAT'S LABOR CODE 210 -- UNLAWFULLY WITHHELD WAGES -- THAT'S
20 LABOR CODE 225.5 -- OR FOR VIOLATING, FOR EXAMPLE, AN
21 INDUSTRIAL WELFARE COMMISSION ORDER -- THAT'S LABOR CODE 558.
22 AN AGGRIEVED EMPLOYEE -- THAT WOULD MEAN ANYONE EMPLOYED BY
23 THE ALLEGED VIOLATOR AND AGAINST WHOM ONE OR MORE VIOLATIONS
24 WAS COMMITTED -- AND I PICKED UP THAT DEFINITION FROM LABOR
25 CODE 2699(C) AND FROM THE COMMENTS IN AMALGAMATED TRANSIT
26 UNION VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH 993 AT
27 1004 TO 1005 -- AN AGGRIEVED EMPLOYEE CAN SUE TO RECOVER
28 CIVIL PENALTIES FOR VIOLATIONS OF THE LABOR CODE ON BEHALF OF

1 HIMSELF, OR HERSELF, AND OTHER CURRENT OR FORMER EMPLOYEES
2 AGAINST WHOM ONE OR MORE OF THE ALLEGED VIOLATIONS WAS
3 COMMITTED. THAT'S LABOR CODE 2699(G)(1).

4 THE ATTORNEYS HAVE FROM TIME TO TIME REFERRED
5 TO WHAT THEY HAVE CALLED THE BRINKER CASE.

6 NOW, WHAT THEY ARE REFERRING TO IS THE CASE
7 ENTITLED BRINKER RESTAURANT CORPORATION VERSUS SUPERIOR
8 COURT, REAL PARTY IN INTEREST, HOHNBAUM H-O-H-N-B-A-U-M. THE
9 VERSION OF THAT THAT I HAVE USED IN MY ANALYSIS AND
10 PREPARATION IS THE VERSION THAT WAS PRINTED AT 2012 DAILY
11 JOURNAL, DAILY APPELLATE REPORT, PAGE 4615, AND FOLLOWING.

12 I HAVE BEEN REQUIRED TO EVALUATE THE TESTIMONY
13 OF THE PARTY WITNESSES IN THIS CASE, THAT IS, MS. GHRDILYAN,
14 MS. SULTANIAN, AND MR. ABALKHAD WITH SOME CAUTION AND
15 RESERVATIONS. THOSE THREE PERSONS IN THEIR CAPACITIES AS
16 WITNESSES ARGUED AND WRANGLED WITH THE QUESTIONERS DURING
17 TRIAL, AND SOME OF THAT WAS PROVOKED BY THE QUESTIONERS; SOME
18 OF IT WAS NOT. THAT BECOMES AN IMPORTANT FACTOR IN
19 EVALUATING RELATIVE CREDIBILITIES UNDER EVIDENCE CODE 780(A).
20 THOSE THREE PARTIES ALL HAVE AN INTEREST, BIAS, AND OTHER
21 MOTIVE FOR SLANTING THEIR TESTIMONY, OBVIOUSLY, AND THAT
22 BECOMES SIGNIFICANT UNDER EVIDENCE CODE 780(F) AND EVIDENCE
23 CODE 780(J).

24 MR. ABALKHAD HAS SUFFERED FELONY CONVICTIONS
25 ON HIS PLEA OF NOLO CONTENDERE AS TO PERJURY AND TAX EVASION
26 AND DID NOT OWN UP TO THAT COMPLETELY IN DISCOVERY. THAT'S
27 EVIDENCE -- THAT BECOMES PERTINENT UNDER EVIDENCE CODE 780(E)
28 AND EVIDENCE CODE 780(H), AND EVIDENCE CODE 780(I) AND IS

1 COMMENTED ON IN THE CASE OF RUSHEEN, R-U-S-H-E-E-N, VERSUS
2 DREWS, D-R-E-W-S, (2002) 99 CALIFORNIA APPELLATE 4TH 279 AT
3 PAGES 283 TO 284.

4 ASPECTS OF THE TESTIMONY OF THESE WITNESSES,
5 THESE THREE PEOPLE AS WITNESSES, WERE EXAGGERATED AND
6 OVERSTATED. THAT BECOMES PERTINENT UNDER EVIDENCE CODE
7 780(B).

8 FURTHERMORE, EVIDENCE CODE SECTION 412
9 PROVIDES THAT IF WEAKER AND LESS SATISFACTORY EVIDENCE IS
10 OFFERED WHEN IT WAS IN -- WHEN IT WAS WITHIN THE POWER OF THE
11 PARTY TO PRODUCE STRONGER AND MORE SATISFACTORY EVIDENCE, THE
12 EVIDENCE ACTUALLY OFFERED SHOULD BE VIEWED WITH DISTRUST.
13 THIS, OF COURSE, IS A PERMISSIBLE INFERENCE AND NOT A
14 MANDATORY ONE, BUT THIS COURT HAS, AS THE LAW INDICATES,
15 TAKEN THIS INTO CONSIDERATION.

16 BUT ALL THAT HAVING BEEN SAID, THE COURT DOES
17 NOT ACCEPT MR. SABZEVAR'S INVITATION TO REJECT THE ENTIRETY
18 OF THE PLAINTIFFS'S TESTIMONY. INSTEAD, THIS COURT HAS HAD
19 TO ACCEPT THE PART OF THE TESTIMONY OF THE WITNESSES WHICH
20 THIS COURT FOUND -- HAS FOUND TO BELIEVE TRUE AND -- AND WILL
21 REJECT THE REST. THIS IS PRECISELY WHAT THE COURT -- PARDON
22 ME -- IS AUTHORIZED TO DO OR ANY FINDER OF FACT WOULD BE
23 AUTHORIZED TO DO. ONE MODEL FOR THAT IS CACI INSTRUCTION
24 107, FOURTH PARAGRAPH.

25 THE DATES INVOLVED IN THIS CASE -- AND THE
26 DATES BECOME SIGNIFICANT -- ARE AS FOLLOWS. MS. SULTANIAN
27 WAS HIRED ON -- IN NOVEMBER, 2007, AND WAS FIRED ON NOVEMBER
28 19, 2009. MS. GHRDILYAN WAS HIRED IN AUGUST, 2008, AND WAS

1 FIRED ON DECEMBER 3, 2009. ONE OF THE QUESTIONS WHICH I HAVE
2 BEEN CALLED UPON TO ANSWER IS WHETHER MR. ABALKHAD AS AN
3 INDIVIDUAL WAS AN EMPLOYER OF PLAINTIFFS AND -- UNDER WAGE
4 ORDER 7. I FIND THAT HE WAS NOT. BUT I FIND THAT THE
5 THEORIES OF LIABILITY UNDER -- I SHOULD BACK OFF. BUT I FIND
6 THAT THE OTHER BASES FOR ASSERTING LIABILITY ON THE PART OF
7 MR. ABALKHAD DO HAVE MERIT, AND LIABILITY DOES ATTACH TO HIM
8 UNDER THOSE THEORIES.

9 THE THEORIES I'M REFERRING TO ARE LABOR CODE
10 558 TO WHICH LABOR CODE 510 AND 512 ARE APPENDED OR INCLUDED
11 SUBSTANTIVE PROVISIONS AND LABOR CODE 1197.1 TO WHICH THE
12 SUBSTANTIVE PROVISIONS OF LABOR CODE 1198 AND THE WAGE ORDER
13 ARE ASSOCIATED THEORIES OF LIABILITY.

14 IN OTHER WORDS, I AM FINDING THAT UNDER 558
15 LABOR CODE AND 1197.1 LABOR CODE FOR THE SUBSTANTIVE REASONS
16 REFERRED TO IN THE OTHER TWO SOURCES AS TO EACH OF THOSE
17 SECTIONS, THAT IS 510 AND 512 LABOR CODE, AND 1193 AND WAGE
18 ORDER, LIABILITY CAN ATTACH TO MR. ABALKHAD AND UNDER THE
19 CIRCUMSTANCES OF THIS CASE, WILL ATTACH.

20 I'M GOING TO MAKE A FINDING ON THAT, AS YOU
21 WILL SEE, IN FAVOR OF -- PARDON ME -- OF THE PLAINTIFFS'S
22 POSITION.

23 NOW, I SAY IN FAVOR OF THE PLAINTIFFS'S
24 POSITION BECAUSE THAT MEANS NOT JUST IN FAVOR OF THE
25 PLAINTIFFS BUT SINCE WE HAVE A PAGA ACTION, I AM REFERRING TO
26 THE PLAINTIFFS'S POSITION.

27 NOW -- PARDON ME. I WILL SAY THIS.

28 AS YOU CAN TELL, I AM AT SOME PAINS TO GO

1 THROUGH THE LEGAL REASONING AND STEPS PREPARATORY TO REACHING
2 A DECISION IN THIS CASE WITH SOME CARE BECAUSE IT MAY VERY
3 WELL BE THAT THIS CASE WILL REACH ITS WAY INTO THE APPELLATE
4 COURTS AND THAT IT IS ALSO POSSIBLE THAT THE APPELLATE COURTS
5 MAY DECIDE THIS CASE IN A PUBLISHED OPINION, AND I WILL SAY
6 THAT THE DETERMINATION I HAVE MADE ABOUT ABALKHAD AS AN
7 EMPLOYER -- I SAID THAT HE'S NOT -- OR ABALKHAD AS A
8 POTENTIALLY LIABLE PARTY UNDER LIABILITY-ENHANCING STATUTES
9 OTHER THAN LABOR CODE 558 AND LABOR CODE 1197.1, THAT IS, THE
10 ABALKHAD-FAVORING DETERMINATIONS I HAVE MADE ON THOSE POINTS,
11 ARE NOT BEYOND REASONABLE ARGUMENT.

12 MY DECISION IS, AS I HAVE EXPRESSED IT, AND I
13 BELIEVE THAT I AM CORRECT -- BUT I -- BUT I DO RECOGNIZE THAT
14 THERE ARE ARGUMENTS THAT CAN BE MADE -- AND THEY HAVE BEEN
15 MADE HERE IN THIS COURTROOM -- ON THOSE POINTS.

16 I HAVE COMPARED THE EMPLOYEE HANDBOOKS,
17 EXHIBIT 3 AND EXHIBIT D. IT APPEARS TO ME THAT EXHIBIT D
18 FROM THE EVIDENCE IN THIS CASE WAS NOT SUPPLIED BY ABALKHAD
19 DURING THE DISCOVERY PHASE OF THIS CASE. THE PARTICULAR
20 PROVISIONS THAT I AM DEALING WITH ARE THOSE HAVING TO DO WITH
21 OVERTIME AND LUNCH AND EXHIBIT 3 IS COMMENTED ON BY THE
22 PLAINTIFFS AS BEING DEFICIENT BECAUSE THEY SAY THAT A LUNCH
23 PERIOD MUST BE PROVIDED AFTER FIVE HOURS OF WORK, NOT SIX
24 HOURS OF WORK, AND THE PLAINTIFFS'S POSITION IS THAT THAT WAS
25 THE ONLY PERTINENT EMPLOYEE HANDBOOK.

26 I THINK THE PLAINTIFFS ARE RIGHT AS TO BOTH
27 THOSE CONTENTIONS. EXHIBIT 3 BEARS THE DATE OF JANUARY,
28 2003. PLAINTIFFS ADMIT THAT THIS IS THE CORRECT DATE. THAT

1 IS, IT SEEMS TO ME, THE OPERATIVE EMPLOYEE HANDBOOK. EXHIBIT
2 D WHICH HAS DIFFERENT PROVISIONS IN IT CONCERNING THE SAME
3 TOPICS WAS, IN MY VIEW, FIRST NOT PRODUCED DURING DISCOVERY;
4 SECOND, A WRITING THAT CAME INTO EXISTENCE IN AUGUST, 2010,
5 SUBSTANTIAL PERIOD OF TIME AFTER THE PLAINTIFFS HAD ALREADY
6 HAD THEIR EMPLOYMENT TERMINATED AND INDEED AUGUST, 2010, IS
7 EVEN AFTER THE PRESENT SUIT WAS FILED. THIS CAN BE SEEN FROM
8 EXHIBIT D PAGE 17, SECOND FULL PARAGRAPH.

9 AS I HAVE SAID, THIS SUIT WAS FILED ON THE
10 28TH OF JANUARY, 2010.

11 ONE OF THE COMPLICATING FACTORS IN THIS
12 CASE -- AND THE LAWYERS HAVE RECOGNIZED IT, AND IT'S OBVIOUS
13 TO ANYONE WITH ANY LEGAL EXPERIENCE -- IS THAT ALTHOUGH THE
14 LAWSUIT ORIGINALLY NAMED RJ FINANCIAL, INC., THAT DEFENDANT
15 IS A DEBTOR IN A CHAPTER 11 BANKRUPTCY. AS I HAVE SAID, THE
16 CASE IS OBVIOUSLY STAYED AS TO THAT PARTY, BUT THE PLAINTIFFS
17 HAVE HAD TO REORGANIZE THEIR CASE TO PRESS IT AGAINST
18 MR. ABALKHAD WHO IS NOT IN BANKRUPTCY AND IT SEEMS TO ME THEY
19 HAVE DONE SO SUCCESSFULLY.

20 THERE IS NO SERIOUS QUESTION BETWEEN THE SIDES
21 CONCERNING THE FOLLOWING PROPOSITIONS OF LAW. AN EMPLOYEE IS
22 ENTITLED TO OVERTIME COMPENSATION FOR WORK IN EXCESS OF EIGHT
23 HOURS IN ONE WORKDAY, FOR WORKING IN EXCESS OF 40 HOURS IN
24 ONE WORKWEEK, AND FOR WORK ON THE SEVENTH DAY IN ONE WORK
25 WEEK. THE OVERTIME COMPENSATION DIFFERS, BUT THOSE ARE
26 OVERTIME ITEMS.

27 IT IS ALSO TRUE -- BY THE WAY, THIS IS
28 PROVIDED FOR UNDER LABOR CODE 510(A). IT'S ALSO TRUE THAT

1 EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EMPLOYEES WHO ARE
2 SPECIFICALLY EXEMPTED BY THE CALIFORNIA INDUSTRIAL WELFARE
3 AND COMMISSION ARE EXEMPT FROM THE HOURS WORKED AND DAYS
4 WORKED PER WEEK LIMITATIONS AS PROVIDED FOR IN LABOR CODE 515
5 BUT -- PARDON ME -- THE PLAINTIFFS IN THIS CASE DO NOT FALL
6 INTO THAT EXEMPTED CATEGORY AND INDEED THE DEFENDANT DOES NOT
7 CLAIM THAT THEY DO.

8 FOR THE REASONS THAT I HAVE MENTIONED EARLIER
9 ABOUT THE RESERVATIONS WITH WHICH THE TESTIMONY OF THE
10 WITNESSES HAVE TO BE INTERPRETED WITH, I DO NOT ATTEMPT TO
11 SUMMARIZE ALL THE TESTIMONY OF ALL THE WITNESSES.

12 IT IS ALSO TRUE THAT SUCCESSFUL EMPLOYEE
13 PLAINTIFFS WHO ARE AWARDED UNPAID OVERTIME ARE ENTITLED TO
14 INTEREST ACCRUING FROM THE DATE ON WHICH THE RIGHT TO RECOVER
15 THEIR OVERTIME VESTS. THIS WOULD BE ON THE MODEL INDICATED
16 IN CIVIL CODE 3287(A) COMPUTED TO THE DATE OF ENTRY OF
17 JUDGMENT. THIS IS LABOR CODE 1194(A), AND IT'S ALSO
18 DISCUSSED IN ESPINOSA VERSUS CLASSIC PIZZA, WHICH IS A CASE
19 THAT APPEARS IN 114 CALIFORNIA APPELLATE 4TH. THE PARTICULAR
20 PASSAGE THAT I'M MAKING REFERENCE TO IS AT PAGE 975.

21 THE TERM "WILLFUL" UNDER THE LABOR CODE --
22 THIS APPEARS IN LABOR CODE 203 -- IT MEANS ONLY THAT AN
23 EMPLOYER INTENTIONALLY FAILED OR REFUSED TO PERFORM AN ACT
24 THAT WAS REQUIRED TO BE DONE. THAT POINT IS MADE IN BARNHILL
25 VERSUS ROBERT SAUNDERS & COMPANY, (1981) 125 CALIFORNIA
26 APPELLATE 3D 1 AT PAGES 7 AND 8.

27 OBVIOUSLY, IN THE CURRENT CASE, UNLIKE THE
28 SITUATION IN BARNHILL, THERE'S NO EVIDENCE OF OFFSET. I'M

1 CITING BARNHILL JUST FOR THE PURPOSE OF THE DEFINITION OF THE
2 WORD "WILLFUL."

3 I WILL MAKE A COUPLE OF OTHER POINTS.

4 I RECOGNIZE THE INTENSITY WITH WHICH THE
5 DEFENSE HAS MAINTAINED THAT THIS IS A CASE DRIVEN BY
6 ATTORNEYS AND ATTORNEY'S FEES ON THE PLAINTIFFS'S SIDE. FOR
7 THE REASONS THAT I HAVE MENTIONED PREVIOUSLY, THAT IS, THAT
8 ONE OF THE PURPOSES OF PAGA IS PRECISELY TO INCENTIVIZE
9 ATTORNEYS TO -- TO FILE AND TO PROSECUTE SUCH CASES -- THAT
10 ARGUMENT EXISTS AND IT DOES HAVE A CERTAIN AMOUNT OF
11 OCCURRENCE, BUT I DO NOT REGARD IT AS BEING A STRONG
12 ARGUMENT. IT IS THE PURPOSE OF THE LAW PRECISELY TO PROVIDE
13 AN INCENTIVE FOR ATTORNEYS WHO MIGHT OTHERWISE BE UNABLE TO
14 HANDLE CASES OF THIS TYPE TO BE ABLE TO HANDLE CASES OF THIS
15 TYPE.

16 I WILL SAY THAT APPLICATIONS FOR ATTORNEYS'S
17 FEES, IF ANYBODY CLAIMS ENTITLEMENT TO ANY, CAN BE MADE BY
18 POST-JUDGMENT MOTION FOR ALLOWANCE OF ATTORNEY'S FEES AS
19 PARTS OF COSTS UNDER CIVIL CODE 1717(A), IF THAT'S WHAT
20 APPLIES, OR UNDER THE CORRESPONDING STATUTE IN THE LABOR
21 CODE. AND THE METHOD OF MAKING A POST-JUDGMENT MOTION FOR
22 ALLOWANCE IS REFERRED TO IN SUCH CASES AS ALLSTATE INSURANCE
23 VERSUS LEW, (1996) 46 CALIFORNIA APPELLATE 4TH 174 -- 1794 AT
24 1797, AND BANKES VERSUS LUCAS -- BANKES IS SPELLED
25 B-A-N-K-E-S, VERSUS LUCAS -- (1992) 9 CALIFORNIA --
26 9 CALIFORNIA APPELLATE 4TH, 365 AT 370.

27 I CITE THOSE TWO CASES NOT FOR THE PROPOSITION
28 THAT THEY APPLY IN LABOR CASES OR THAT THEY ARE DISPOSITIVE

1 ON THE ISSUE OF THE AMOUNT OF LEGAL FEES BUT JUST TO SHOW
2 THAT THAT IS AN APPROPRIATE TIME TO MAKE APPLICATIONS FOR
3 FEES.

4 IN THE PREMISES OF THIS CASE, THOUGH, FOR
5 REASONS THAT I WILL EXPLAIN IN JUST A SECOND, THE APPLICATION
6 FOR ATTORNEY'S FEES, IF THERE IS GOING TO BE ONE ON THE PART
7 OF THE PLAINTIFFS'S ATTORNEY, SHOULD BE, IT SEEMS TO ME, MADE
8 AFTER DISTRIBUTION OF ALL THE FUNDS THAT WILL BE DISTRIBUTED
9 UNDER MY AWARD WHICH I'M GOING TO MAKE UNDER PAGA SO THAT WE
10 DON'T HAVE THE SITUATION WHERE THE ATTORNEY IS PAID,
11 PLAINTIFFS'S ATTORNEY IS PAID FIRST OR SEEKS PAYMENT FIRST
12 WITHOUT ALSO DOING ALL THE, IT SEEMS TO ME, RATHER LABORIOUS
13 WORK THAT'S GOING TO BE REQUIRED UNDER PAGA, AND IT'S 25
14 PERCENT, 75 PERCENT SHARING ARRANGEMENT WITH THE PLAINTIFFS
15 TO GET 25 PERCENT AND WITH THE STATE OF CALIFORNIA TO GET THE
16 75 PERCENT.

17 SO I'M GOING TO TREAT THAT ASPECT OF THIS CASE
18 AS CALLING FOR ATTORNEY FEE MOTIONS, IF ANY ARE TO BE MADE,
19 AT A TIME AFTER THAT STEP OF CONCURSUS OF CLAIMS AND
20 DISTRIBUTION OF FUNDS HAS EITHER BEEN COMPLETELY FINISHED OR
21 HAS BEEN FINISHED WITH THE EXCEPTION OF A FEW SMALL
22 MINISTERIAL ACTS.

23 PARDON ME.

24 WITH RESPECT TO THE -- TO THE REMEDIES, IT
25 SEEMS TO ME THAT THE EVIDENCE STRONGLY SUPPORTS THE
26 PLAINTIFFS'S ARGUMENTS AS TO WHAT I WILL CALL THE 558-510-512
27 THEORY AND THE 1197.1-1198-WORK ORDER THEORY.

28 I THINK THAT THE EVIDENCE ESTABLISHES

1 VIOLATIONS OF THOSE SUBSTANTIVE PROVISIONS AND THAT THE
2 EVIDENCE ESTABLISHES A RIGHT TO RECOVER ON BEHALF OF THE
3 PAGA-AGGRIEVED EMPLOYEES AND ON BEHALF OF THE PLAINTIFFS BUT
4 IN AMOUNTS THAT ARE DIFFERENT FROM THOSE -- THE THEORIES ARE
5 THOSE ADVOCATED BY MR. SPIVAK AND HIS CLIENTS. THE AMOUNTS
6 ARE AMOUNTS THAT I AM GOING TO ALTER, THOUGH, AS WILL BE
7 CLEAR.

8 WITH RESPECT TO THE GHRDILYAN 558-510-512
9 LABOR CODE RECOVERY, I AM GOING TO AWARD \$7,654.60 -- THAT'S
10 EXACTLY AS CALCULATED BY MR. SPIVAK AND THOSE ARE -- THAT'S
11 IN FAVOR OF MS. GHRDILYAN AND AGAINST MR. ABALKHAD.

12 WITH RESPECT TO THE 1197.1 THEORY, WITH 1198
13 AND WORK ORDER BEING THE SUBSTANTIVE BASES, I AGREE WITH
14 MR. SPIVAK THAT MS. GHRDILYAN'S RECOVERY SHOULD BE \$14,218
15 AND THAT COMES OUT TO A TOTAL OF 21,872.60 FOR GHRDILYAN.

16 WITH RESPECT TO SULTANIAN, MY DETERMINATION IS
17 THAT REGARDING THE LABOR CODE 558-510-512 THEORY,
18 MS. SULTANIAN IS ENTITLED TO RECOVERY AGAINST MR. ABALKHAD OF
19 \$5,264.19, AND WITH RESPECT TO HER THEORY UNDER 1197.1 LABOR
20 CODE, MS. SULTANIAN IS ENTITLED TO RECOVER AGAINST
21 MR. ABALKHAD \$13,936.50. TOTAL IS \$19,200.69, AND THAT'S THE
22 AMOUNT THAT SULTANIAN IS ENTITLED TO RECOVER ON HER ACCOUNT
23 AGAINST MR. ABALKHAD.

24 THIS NOW BRINGS US TO THE AWARD IN FAVOR OF
25 THE SO-CALLED AGGRIEVED EMPLOYEES.

26 MY DETERMINATION IS THAT THE AGGRIEVED
27 EMPLOYEES'S CLAIMS ARE VALID AND MERITORIOUS CLAIMS; THAT
28 THEY CAN BE AND HAVE BEEN VALIDLY ASSERTED BY, PROSECUTED BY

1 THE TWO PLAINTIFFS IN OUR CASE.

2 I AM GOING, HOWEVER, NOT TO ACCEPT THE DOLLAR
3 FIGURES IN THE ULTIMATE SENSE THAT MR. SPIVAK AND HIS CLIENTS
4 HAVE ADVOCATED. IN DOING THIS, I AM GOING TO SPECIFICALLY
5 EXERCISE MY POWERS, WHICH IT SEEMS TO ME ARE IN THE NATURE OF
6 JUDICIAL DISCRETION, TO REDUCE THE AMOUNT OF RECOVERY FROM
7 THE AMOUNTS ADVOCATED BY MR. SPIVAK AND HIS CLIENTS.

8 WITH RESPECT TO THE LABOR CODE 558, 510, AND
9 512 THEORIES, AS TO THE AGGRIEVED EMPLOYEES, MY DETERMINATION
10 IS THAT THE AMOUNT WHICH MR. ABALKHAD MUST PAY IS NOT THE
11 \$2,164,278 AMOUNT THAT MR. SPIVAK ARGUED FOR BUT RATHER
12 \$125,000.

13 WITH RESPECT TO THE 1197.1-1198-WAGE-ORDER
14 CLAIM, MY DETERMINATION IS THAT THE AMOUNT THAT MR. ABALKHAD
15 WILL BE REQUIRED TO PAY IS NOT \$3,269,490, WHICH WAS THE
16 AMOUNT ADVOCATED BY MR. SPIVAK ON BEHALF OF HIS CLIENTS BUT
17 RATHER \$200,000.

18 NOW, THAT COMES OUT TO A TOTAL THEN OF
19 \$325,000.

20 NOW, IN DOING THIS, I HAVE EXERCISED MY
21 DISCRETION TAKING INTO CONSIDERATION THE FOLLOWING POINTS. I
22 AGREE WITH MR. SPIVAK'S CHARACTERIZATION OF MR. ABALKHAD AS A
23 PERSON WHO WAS INADEQUATELY OBSERVANT OF CALIFORNIA LAW.
24 MR. SPIVAK REFERS TO HIM AS A "SCOFFLAW." THAT'S A
25 JOURNALISTIC RATHER THAN A -- A LEGAL TERM. BUT I THINK HE
26 DID HAVE THE INTENTION SIMPLY OF TRYING TO RUN THINGS THROUGH
27 AND GET OFF AS CHEAPLY AS HE COULD WHILE HE WAS RUNNING HIS
28 BUSINESSES.

1 BUT I ALSO FIND THAT ONE OF THE PROBLEMS IN
2 THE OPERATION OF HIS BUSINESS WAS THAT HE GOT IN WAY OVER HIS
3 HEAD. HE SIMPLY EXPANDED BEYOND HIS OR HIS CORPORATION'S
4 CAPACITY PROPERLY TO RUN THESE BUSINESSES. HE RAN THEM AS
5 THOUGH HE WERE RUNNING A KIND OF SMALL OPERATIONS OUT OF HIS
6 HIP POCKET, AND I RECOGNIZE THAT THAT IS NOT A PRAISEWORTHY
7 BEHAVIOR, BUT IT SEEMS TO ME THAT IT IS NOT BEHAVIOR OF A
8 HIGHLY BLAMEWORTHY SENSE AND THAT IT IS BEHAVIOR WHICH MERITS
9 A REDUCTION OR SOFTENING OF THE PENALTIES.

10 NOW, I WILL ALSO SAY THE FOLLOWING. IF ON
11 APPEAL, THE APPELLATE COURT DETERMINES THAT I AM MISTAKEN
12 CONCERNING THE POTENTIAL OTHER THEORIES OF LIABILITY ASSERTED
13 BY MR. SPIVAK AND HIS CLIENTS AGAINST MR. ABALKHAD, I WILL
14 TELL YOU WHAT I WOULD HAVE AWARDED ON THOSE THEORIES SO THAT
15 IT MAY BE THAT THE APPELLATE COURT CAN SIMPLY TAKE WHAT I
16 HAVE SAID HERE AND RATHER THAN MAKING A DISPOSITION WHICH
17 REMANDS THE CASE FOR FURTHER CALCULATION OF DAMAGES, THE
18 APPELLATE COURT CAN SIMPLY INSERT THE MONETARY REMEDY THAT I
19 WOULD HAVE INSERTED MYSELF HAD I NOT BEEN PERSUADED THAT
20 MR. ABALKHAD WAS NOT LIABLE EXCEPT UNDER THE THEORIES THAT I
21 HAVE MADE REFERENCE TO.

22 HAD THAT BEEN DONE, I WOULD HAVE AWARDED AN
23 ADDITIONAL \$200,000 AS TO THE AGGRIEVED EMPLOYEES.

24 NOW, I WILL SAY THAT THESE AMOUNTS ARE, I
25 RECOGNIZE, EXTREMELY LENIENT AND PERMISSIVE TO MR. ABALKHAD.
26 IN OTHER WORDS, THIS IS NOT A CASE WHERE THE COURT HAS TRIED
27 TO SOCK IT TO HIM. IT IS, RATHER, A CASE IN WHICH I HAVE
28 TREATED IT AS A SERIES OF OFFENSES BUT ONE AS TO WHICH

1 MR. ABALKHAD SHOULD BE GIVEN AT LEAST SOME LENIENCY IN THE
2 FASHIONING OF A REMEDY. I THINK THAT'S IT. LET ME ASK THE
3 LAWYERS.

4 FIRST OF ALL, PLAINTIFFS'S LAWYER. ARE THERE
5 OTHER MATTERS AS TO WHICH YOUR CLIENTS CONTEND I SHOULD MAKE
6 A STATEMENT OF SOME KIND OR A FINDING OF SOME KIND?

7 MR. SPIVAK: WAS THERE SOME FINDING AS TO THE
8 ADDITIONAL \$200,000 WITH RESPECT TO THE INDIVIDUAL
9 PLAINTIFFS, YOUR HONOR?

10 YOU SPOKE TO THE OTHER CLAIMS WHICH PERHAPS
11 WOULD AFFECT THE APPELLATE COURT SHOULD IT SEND BACK FOR
12 CALCULATION.

13 THE COURT: YEAH.

14 MR. SPIVAK: I KNOW YOU GAVE AN AGGRIEVED EMPLOYEE
15 NUMBER BUT NOT FOR THE TWO PLAINTIFFS.

16 THE COURT: SHOW ME -- JUST A SECOND. COULD YOU,
17 PLEASE, TURN BACK TO -- OH, I GUESS I OUGHT TO SAY THAT. LET
18 ME DO THAT NOW.

19 THE PLAINTIFFS CONTEND THAT THERE WERE THESE
20 WRONGS AS TO BOTH THEMSELVES AND AS TO THE AGGRIEVED
21 EMPLOYEES, AND I WILL JUST REFER TO THEM IN SHORT, COMPRESSED
22 TERMS. AND ESSENTIALLY IT BOILS DOWN TO I THINK NINE
23 THEORIES AND I WILL ENUMERATE THEM NOW: OVERTIME, REST AND
24 MEAL PERIODS, WAGE STATEMENT, IN OTHER WORDS, LABOR CODE 226,
25 UNPAID TRAVEL EXPENSES AND MILEAGE -- THAT'S FOUR --
26 OFF-THE-CLOCK WORK, UNTIMELY PAYMENT OF WAGES, VACATION PAY
27 AT TERMINATION, AND FAILURE FAIRLY TO ADVISE THE EMPLOYEES OF
28 CHANGE IN THE COMMISSION STRUCTURE SO THAT WHAT HAPPENED WAS

1 THAT THEY WERE MADE TO DO WORK WITHOUT KNOWING -- WITHOUT, AS
2 IT TURNED OUT, WHAT THE ULTIMATE PAYMENT FOR IT WAS GOING TO
3 BE.

4 EACH OF THOSE CONTENTIONS -- EACH OF THOSE
5 THEORIES IS A THEORY THAT WOULD BE DECIDED IN FAVOR OF THE
6 PLAINTIFFS AND AGAINST THE -- AND AGAINST THE DEFENDANT
7 ABALKHAD EXCEPT FOR MY DETERMINATION THAT HE INDIVIDUALLY IS
8 NOT LIABLE. BUT IF HE IS LIABLE, THAT IS, IF THE APPELLATE
9 COURT DECIDES THAT I HAVE MADE AN ERROR REGARDING EXCESSIVELY
10 NARROW INTERPRETATION OF THE LABOR CODE PROVISIONS, I WOULD
11 AWARD EACH OF THE PLAINTIFFS AS PENALTIES \$60,000 EACH; 60
12 PLUS 60 IS 120.

13 NOW, I WILL SAY, AGAIN, I RECOGNIZE THAT THIS
14 IS WAY BELOW THE PLAINTIFFS'S TARGET NUMBER, BUT IT IS A
15 NUMBER THAT I THINK IS APPROPRIATE.

16 NOW, I WANT TO SAY SOMETHING ELSE ABOUT THIS,
17 AND THIS IS A COMPLICATION CREATED BY FACTORS THAT I HAD
18 REFERRED TO PREVIOUSLY. THIS IS THE BANKRUPTCY OF THE
19 CORPORATION.

20 WHAT I AM SAYING CONCERNING THESE OTHER
21 PENALTIES AND OTHER AMOUNTS, THAT IS, AMOUNTS I AM NOT
22 ACTUALLY AWARDED ARE FOR THE BENEFIT OF THE APPELLATE COURT
23 IN ASSISTING IT TO FRAME A DISPOSITIONAL ORDER IF THE CASE IS
24 SENT BACK TO THE SUPERIOR COURT UPON A REVERSAL IN PART OR IN
25 WHOLE.

26 I WANT TO PUT THESE PEOPLE IN A POSITION SO
27 THEY WILL HAVE A REMEDY ON BOTH SIDES WITHOUT THE NECESSITY
28 OF THE SUPERIOR COURT HAVING TO REVISIT THIS AND BY THE

1 SUPERIOR COURT TELLING THE APPELLATE COURT WHAT THE SUPERIOR
2 COURT WOULD HAVE DONE HAD THE SUPERIOR COURT'S REASONING NOT
3 FORECLOSED IT.

4 I AM EXTREMELY CONCERNED TO STATE THIS IN THAT
5 WAY SO THAT THE BANKRUPTCY PROCEEDINGS ARE NOT IN SOME WAY
6 SPOILED OR IMPROPERLY AFFECTED BY THE WORK DONE HERE IN THE
7 -- IN THE TRIAL COURT. AND I AM TRYING TO SUPPLY ALL OF THE
8 INFORMATION THAT I CAN WHILE STILL BEING TRUE TO AND
9 OBSERVANT OF THE NECESSITY FOR TRYING TO ACHIEVE AS MUCH
10 FINALITY AS I CAN WHILE STILL ASSISTING IN THE LITIGATION
11 PROCESS AS MUCH AS THIS COURT CAN.

12 NOW, I HAVE PREVIOUSLY DISCUSSED AND I WILL
13 MAKE A PART OF MY STATEMENT OF DECISION HERE THE SET OF DATES
14 THAT PIVOT AROUND THE APPEAL. AS I HAVE SAID PREVIOUSLY, THE
15 CASE THAT I HAVE BEEN TRYING, THIS CASE, WAS FILED ON THE
16 26TH OF JANUARY, 2010. THE DEFENDANT WAS AT THAT TIME ONLY
17 RJ FINANCIAL, AND THE CASE WAS DENOMINATED A CLASS ACTION. A
18 LITTLE LESS THAN MONTH AFTER THAT, ON THE 24TH OF FEBRUARY,
19 2010, THE PLAINTIFFS FILED A FIRST AMENDED COMPLAINT. THEY
20 ADDED MR. ABALKHAD AS A NAMED DEFENDANT. THEY CONTINUED WITH
21 THE DESIGNATION OF THIS CASE AS A CLASS ACTION.

22 ON THE 8TH OF MARCH, 2010, THE PLAINTIFFS
23 FILED A 170.6 AS TO JUDGE WILLIAM FAHEY OF THIS COURT.

24 ON THE 22ND OF MARCH, 2010, THE LAWYER WHO THE
25 TESTIMONY HAS IDENTIFIED AS MR. SANFORD FREY, F-R-E-Y -- THAT
26 NAME ALSO APPEARS ON THE DOCUMENT I'M GOING TO DESCRIBE --
27 FILED A NOTICE OF STAY AS TO THE CORPORATE DEFENDANT,
28 REFERRING TO THE CHAPTER 11 BANKRUPTCY. THAT BANKRUPTCY

1 PETITION APPEARS TO HAVE BEEN FILED ON THE 7TH OF JANUARY,
2 2010, THAT IS, BEFORE THE CASE WAS EVER FILED.

3 THAT ACCOUNTS FOR THE MODIFICATION OF THE NAME
4 OF THE PARTIES TO INCLUDE ABALKHAD AS AN INDIVIDUAL. I THINK
5 IT IS THAT OBVIOUS THAT -- BUT I WANT TO MAKE IT VERY, VERY
6 CLEAR THAT THIS IS NOT ONLY OBVIOUS, BUT IT IS A FACT THAT --
7 THIS CASE IS STAYED AS TO THE RJ FINANCIAL CORPORATION UNDER
8 THE STATUTORY CITATION I HAVE GIVEN, 11 U.S.C. 362.

9 MR. ABALKHAD'S DEFAULT WAS TAKEN IN THIS CASE
10 AND IN AUGUST OF 2010, HE MOVED TO SET ASIDE THE DEFAULT. IN
11 THAT SET OF PAPERS, THERE WAS THE CLAIM MADE THAT PLAINTIFFS
12 ADDED ABALKHAD ON THE 26TH OF MARCH, 2010. AS I HAVE
13 INDICATED, THAT WAS NOT TRUE. IT WAS ON THE 26TH -- 24TH OF
14 FEBRUARY, 2010, BUT THAT WAS NOT A SIGNIFICANT INACCURACY
15 BECAUSE IN THE COURT'S VIEW, ABALKHAD WAS ENTITLED TO HAVE
16 THE DEFAULT SET ASIDE.

17 NOW IS THERE ANYTHING THAT I AM SUPPOSED TO
18 SAY?

19 MR. SPIVAK: I DON'T THINK SO, YOUR HONOR.

20 THE COURT: OKAY. HOW ABOUT YOU, MR. SABZEVAR?

21 MR. SABZEVAR: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT. HERE'S WHAT I'M GOING TO DO
23 THEN.

24 I'M GOING TO SET A HEARING OUT IN THE FUTURE.
25 FIRST OF ALL, THE STATEMENT OF DECISION IS SUFFICIENT IF IT
26 STATES ALL THE FACTS. IT NEED NOT STATE EVIDENTIARY FACTS.
27 I THINK THE STATEMENT OF DECISION I HAVE MADE DOES THAT.

28 SECONDLY, I'M GOING TO ORDER THE PLAINTIFFS

1 THROUGH COUNSEL TO PREPARE, SERVE, OBTAIN APPROVAL AS TO FORM
2 FROM DEFENDANT ABALKHAD. THIS MAY REQUIRE A MEET AND CONFER
3 AND COURT EXPECTS COUNSEL TO BE ATTENTIVE AND COOPERATIVE IN
4 THIS REGARD. SO SUBMIT THAT TO DEFENSE COUNSEL AND LODGE
5 WITH THE COURT A JUDGMENT SUITABLE FOR COURT'S SIGNATURE IN
6 CONFORMITY WITH THE FOREGOING.

7 I AM GOING TO ORDER ALSO THAT THE PARTIES
8 AND/OR COUNSEL PICK UP ALL EXHIBITS LODGED WITH THE CLERK AND
9 ALL EXHIBITS MARKED AND/OR RECEIVED IN EVIDENCE, EACH SIDE TO
10 PICK UP THE ITEM PROFFERED BY THAT SIDE FOR RECEIPT INTO
11 EVIDENCE WITHIN FIVE DAYS FROM THE COURT'S SIGNING OF THE
12 JUDGMENT.

13 NOW, TODAY IS THE 23RD OF APRIL, 2010 -- 2012,
14 I SHOULD SAY. I WANT TO HAVE A HEARING AT WHICH THE JUDGMENT
15 IS PRESENTED TO ME FOR SIGNATURE AND I WANT TO DO THESE
16 THINGS AT THAT HEARING. I WANT TO SETTLE THE FORM AND
17 SUBSTANCE OF THE DECISION -- OF THE JUDGMENT. IF THERE'S ANY
18 OTHER WORK THAT NEEDS TO BE DONE, I WANT TO DO THAT AT THIS
19 HEARING. I WANT TO DETERMINE WHAT, IF ANYTHING, REMAINS TO
20 BE DONE REGARDING FUTURE PROCEEDINGS IN THIS CASE, AND I WANT
21 TO DETERMINE WHAT THE STATUS OF THIS CASE IS AND I WANT TO
22 HAVE THE LAWYERS FOR THE PARTIES PERSONALLY PRESENT.

23 MY IDEA WOULD BE THE JUDGMENT SHOULD BE
24 SUBMITTED BEFORE THE HEARING BUT THAT PLAINTIFFS'S COUNSEL
25 SHOULD BRING WITH HIM A DUPLICATE ORIGINAL OF THE JUDGMENT IN
26 CASE THE PAPERWORK HANDLING PRODUCES A SITUATION WHERE I
27 CAN'T LAY MY HANDS ON THE JUDGMENT THAT I AM SUPPOSED TO SIGN
28 IMMEDIATELY. I LOOK TO THE ATTORNEYS NOW FOR SOME

1 SUGGESTIONS AS TO THE DATE WHEN THAT HEARING SHOULD BE
2 SCHEDULED.

3 MR. SABZEVAR, DO YOU HAVE ANY IDEAS ABOUT WHEN
4 I SHOULD SCHEDULE IT?

5 MR. SABZEVAR: FORTY-FIVE DAYS, YOUR HONOR?

6 THE COURT: FORTY-FIVE DAYS.

7 MR. SPIVAK: THAT'S FINE FOR PLAINTIFFS.

8 THE COURT: SO TODAY IS THE 23RD. LET'S SET IT FOR
9 HEARING ON THE -- LET'S GO OUT MORE THAN 45 DAYS.

10 AS YOU CAN SEE, FROM THE 4TH TO THE 8TH, I
11 WON'T BE ABLE TO WORK WITH YOU -- OF JUNE. I WON'T BE ABLE
12 TO WORK WITH YOU. SO WOULD IT ALL RIGHT WITH YOU LAWYERS IF
13 I PICK THE 21ST OF JUNE, 2012, 8:30, THIS DEPARTMENT?

14 MR. SABZEVAR: THAT'S FINE, YOUR HONOR.

15 THE COURT: ARE YOU GOING TO BE AVAILABLE ON THOSE
16 DATES?

17 MR. SPIVAK: YES, YOUR HONOR.

18 THE COURT: ARE YOU GOING TO BE ABLE TO DO THE
19 THINGS I TALKED ABOUT, SETTLING THE FORM AND SUBSTANCE OF THE
20 JUDGMENT?

21 MR. SPIVAK: YES, YOUR HONOR.

22 MR. SABZEVAR: THAT'S FINE.

23 THE COURT: THANK YOU VERY MUCH. I APPRECIATE YOUR
24 PARTICIPATION AND -- AND YOUR ADVOCACY, AND I WILL SEE YOU
25 WHEN WE NEXT HAVE TO WORK ON THE CASE.

26 NOW, I WILL TELL YOU SOMETHING ELSE. PLEASE
27 STAY ALERT AND PLEASE LOOK IN ADVISES TO ATTORNEYS, OR
28 NOTICES, OR WHATEVER WE ARE GOING TO DO IN THE NEXT THREE OR

1 FOUR WEEKS. HERE'S OUR SITUATION.

2 AS OF 15TH OF MAY, WE WON'T HAVE REPORTERS IN
3 THESE DEPARTMENTS ANYMORE FOR TRIAL MATTERS -- THEY WILL HAVE
4 TO BE SUPPLIED BY THE PARTIES -- AND WE WON'T HAVE THE
5 REPORTERS EXCEPT TWO LAW AND MOTION SESSIONS A WEEK. THE
6 IDEA IS IT WILL BE ONE MORNING AND ONE AFTERNOON. THAT WILL
7 BE ALL THE REPORTERS WE ARE GOING TO HAVE SUPPLIED BY THE
8 COURT.

9 MOREOVER, THEY ARE GOING TO, AS I MENTIONED TO
10 YOU PREVIOUSLY, THEY ARE GOING TO REDUCE THE STAFF.

11 SO I HAD GIVEN YOU DATE, BUT I AM NOT ONE
12 HUNDRED PERCENT CERTAIN ABOUT HOW THAT DATE IS GOING TO WORK.
13 PLEASE KEEP YOUR EYES AND EARS OPEN. IF THERE'S SOME FOUL UP
14 OR SOMETHING, DO WHATEVER YOU NEED TO DO TO MAKE IT RIGHT. I
15 MEAN, WE ARE -- I WISH I COULD SAY SOMETHING THAT SOUNDED
16 MORE EMPHATIC AND MORE DEFINITIVE, BUT I CAN'T. I JUST DON'T
17 KNOW WHAT'S GOING TO HAPPEN.

18 WHAT I WANT TO DO IS TO FINISH UP YOUR CASE
19 AND GET YOU ALONG FOR THE NEXT STEP FOR OBVIOUS REASONS. AND
20 I DON'T WANT THE COLLAPSE OF THE SYSTEM'S ABILITY TO HANDLE
21 MATTERS TIMELY TO REDOUND TO YOUR DISADVANTAGE OR TO
22 ADDITIONAL EXPENSE ON THE PART OF EITHER SIDE THAT MIGHT
23 OTHERWISE BE AVOIDED IF YOU LAWYERS KEPT YOUR EYES PEELED FOR
24 WHAT'S HAPPENING IN THE COURTS AND IF I WERE ABLE TO PREDICT
25 A LITTLE BIT, I JUST CAN'T PREDICT THAT. I DON'T EVEN KNOW.
26 BUT KEEP YOUR EYES OPEN. TRY TO DO WHAT'S RIGHT, AND I WILL
27 TRY TO DO WHAT'S RIGHT. IT'S ABOUT THE BEST I CAN DO FOR
28 YOU.

1 ALL RIGHT. THANK YOU ALL VERY MUCH.

2 MR. SPIVAK: THANK YOU, YOUR HONOR.

3 MR. SABZEVAR: THANK YOU, YOUR HONOR.

4 THE COURT: SEE YOU WHEN WE NEXT HAVE TO WORK ON

5 THE CASE.

6 (PROCEEDINGS CONCLUDED.)

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DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE

CASE NO. BC430633
CERTIFIED COPY

MONDAY, APRIL 23, 2012

REPORTED BY:
ANGELA ZARATAN PARADELA
OFFICIAL COURT REPORTER
CSR NO. 9659

EXHIBIT 17