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10 AMBER ASHLEY DAMAS, and all others similarly situated

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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF SAN JOAQUIN**

14 **(UNLIMITED JURISDICTION)**

15 AMBER ASHLEY DAMAS, on behalf of
16 herself and as an “aggrieved employee” on behalf
17 of other “aggrieved employees” under the Labor
18 Code Private Attorneys General Act of 2004,

19 *Plaintiff(s),*

20 vs.

21 JUST WINGIN' IT, INC., a California
22 corporation; and DOES 1–50, inclusive,

23 *Defendant(s).*

Case No. STK-CV-UOE-2022-0007989

**DECLARATION OF DAVID SPIVAK
IN SUPPORT OF PLAINTIFF AMBER
ASHLEY DAMAS’ MOTION FOR
APPROVAL OF PAGA SETTLEMENT**



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1 **DECLARATION OF DAVID G. SPIVAK IN SUPPORT OF MOTION FOR APPROVAL**
2 **OF PAGA SETTLEMENT**

3 I, DAVID SPIVAK, declare as follows:

4 1. I am an attorney duly licensed to practice law in the State of California and am an
5 attorney of record for Plaintiff Amber Ashley Damas (“Plaintiff” or “Damas”) in this action
6 against Defendant Just Wingin' It, Inc. (“Just Wingin' It, Inc.” or “Defendant”). I am a member
7 in good standing of the State Bar of California. Except as otherwise indicated, I have personal
8 knowledge of all matters set forth herein and, if called as a witness, could and would competently
9 testify thereto under oath.

10 2. A true and correct copy of the PAGA Settlement Agreement (the “Agreement” or
11 “PAGA Settlement” or “Settlement”) is attached hereto as **Exhibit 1**. A true and correct copy of
12 the parties agreed upon notice to the Aggrieved Employees (the “PAGA Notice”) is attached
13 hereto as **Exhibit 2**.

14 ***Factual and Procedural Background***

15 3. Defendant, Just Wingin' It, Inc., is a restaurant known for their various flavors of
16 chicken wings. Defendant employed Plaintiff as a Crew Member/Crew Lead from about August
17 21, 2021 until January 28, 2022 and then again from approximately March 16, 2022 through May
18 5, 2022.

19 4. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit
20 under PAGA. By letters dated September 12, 2022, Plaintiff, on behalf of herself and other
21 aggrieved hourly employees gave written notice by certified mail to the Labor and Workforce
22 Development Agency (“LWDA”) and Defendant of the specific provisions of the California
23 Labor Code alleged to have been violated, including the facts and theories to support the alleged
24 violations. A true and correct copy of Plaintiff’s notice letter to the LWDA and Defendant is
25 attached as **Exhibit 3**.

26 5. Plaintiff and the Aggrieved Employees are subject to arbitration agreements with
27 Defendant. Plaintiff filed her lawsuit in San Joaquin County Superior Court on September 12,
28 2022. A true and correct copy of Plaintiff’s Complaint is attached as **Exhibit 4**. On March 23,
2023, Plaintiff filed a First Amended Complaint (“1AC”). A true and correct copy of Plaintiff’s
First Amended Complaint is attached as **Exhibit 5**. On February 17, 2023, Defendant moved to
compel this Action to arbitration. The Court granted the motion. At present, Plaintiff’s



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1 representative, non-individual PAGA claim is stayed while she arbitrates her representative,
2 individual PAGA claim and various other non-representative individual claims before the
3 Honorable Monica Bachner (ret.) at Judicate West (no. A313431).

4 6. Plaintiff's complaint presents one cause of action in Court for civil penalties under
5 PAGA. Shortly after the litigation began, the Parties agreed to stay formal discovery and
6 participate in mediation. **Exhibit 6** has been omitted by Plaintiff.

7 7. On December 19, 2023, the Parties participated in mediation with mediator the
8 Honorable John Leo Wagner (ret.) in an attempt to resolve the PAGA claim. The Parties engaged
9 in arm's-length negotiations and ultimately reached a resolution of the PAGA claims asserted in
10 the Action. The PAGA Settlement Agreement was reached after exchanges of data, information
11 and documents, and is a result of extensive arms-length negotiations. The Parties conducted
12 informal discovery for purposes of potential resolution through which they ascertained the size
13 of the aggrieved employee group and the number of pay periods worked by them during the
14 PAGA Period to ascertain the total value of Plaintiff's PAGA claim. Now that the parties have
15 finalized the PAGA Settlement Agreement, Plaintiff submits it to this Court for approval.

16 8. Notice is being given to the LWDA concurrently with the filing of this motion.
17 Here, notice is being given to the LWDA concurrently with the filing of this motion. A true and
18 correct copy of Plaintiff's submission with the LWDA and a confirmation email is attached as
19 **Exhibit 7**.

20 9. The PAGA Settlement Agreement warrants a presumption of fairness for several
21 reasons: (1) The Parties reached the Settlement through arm's-length bargaining with the aid of a
22 respected mediator; (2) The Parties conducted sufficient investigation and discovery to allow
23 Counsel and the Court to act intelligently. Plaintiff requested and Defendant provided the number
24 Aggrieved Employees, the number of total pay periods during the PAGA Period, and all policies
25 in effect during the relevant time period; and (3) Counsel for the Parties are experienced with
26 PAGA cases.

27 10. To the best of my knowledge, neither Plaintiff nor I have any conflicts of interest
28 with the absent Aggrieved Employees. Plaintiff contends that she is an adequate PAGA
representative. Plaintiff and the Aggrieved Employees have strong and co-extensive interests in
this litigation because they all worked for Defendant during the relevant time period under the
same written and unwritten policies, allegedly suffered the same alleged injuries from the same



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1 alleged course of conduct, and there is no evidence of any conflict of interest between Plaintiff
2 and the Aggrieved Employees. As this is a PAGA-only claim, there is no issue of ascertainability.
3 However, Plaintiff maintains that the number of Aggrieved Employees is ascertainable because
4 they may be identified by reference to Defendant's records and Defendant has agreed to share the
5 relevant information from its records to facilitate the process. Therefore, the number of Aggrieved
6 Employees and their whereabouts are ascertainable.

7 ***Background of Counsel***

8 11. I am experienced in handling employment law matters and specifically wage and
9 hour cases. I have been practicing law since 1995. My experience has been almost exclusively in
10 the area of employment law representing employees with claims of wrongful termination,
11 harassment, whistleblower retaliation, discrimination, wage and hour, and family and medical
12 leave violations. I have tried many cases before California and federal courts, government
13 agencies and neutral arbitrators. I am a member of the California Employment Lawyers
14 Association (CELA).

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

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

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



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1999.

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

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

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

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

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



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1 13. I have been involved in the prosecution of numerous wage and hour class and
2 representative actions at various stages of litigation. A small sampling of the representative wage
3 and hour cases in which I have been counsel of record is as follows:

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

7 B. *Cuellar v. Lovin Oven*, Orange County Superior Court, Case No. 30-2010-
8 000382146 (appointed Class Counsel and granted final approval of class action settlement by the
9 court on behalf of nonexempt employees).

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

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

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

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

23 G. *Huynh v. Carefusion Resources, LLC, et al*, San Diego Sup.Ct., Case No.
24 37-2009-00103277-CU-OE-CTL (appointed Class Counsel and granted final approval of class
25 action settlement on behalf of medical devices employees).

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

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



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

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

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

10 M. *Montes v. Branam Enterprises, Inc.*, Los Angeles Sup.Ct. Case No.
11 BC442608 (appointed Class Counsel and granted final approval by this Court of class action
12 settlement on behalf of call concert rigging employees).

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

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

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

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

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

S. *Stucker v. L'Oreal*, Los Angeles Sup.Ct. Case No. BC456080 (appointed
Class Counsel and granted final approval by this Court of class action settlement involving alleged



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misclassification of sales employees and unpaid vacation pay).

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

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

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

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

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

Exposure & Risk Analysis

14. I considered various sources of information in the lead-up to, during and after the mediation that enabled Plaintiff to achieve the PAGA Settlement Agreement at issue. Among other things, I considered the following:

- Defendant produced and Plaintiff reviewed her personnel file.
- Defendant produced and Plaintiff reviewed and analyzed time and payroll records for over 37 Aggrieved Employees.
- Plaintiff requested that Defendant produce any and all relevant policies regarding Plaintiff's claims and Defendant produced those policies in effect during the relevant time period.
- Plaintiff interviewed other employees about the claims at issue.
- Plaintiff analyzed the state of caselaw on PAGA claims, claims for , and related claims.



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1 • Plaintiff surveyed the outcomes of PAGA cases that went to trial or
2 otherwise concluded before trial.

3 15. As set forth above, Defendant has posed valid defenses to the Labor Code claims
4 underlying Plaintiff's PAGA allegations. Thus, the PAGA claims likewise face significant
5 uncertainty. There is a risk that the Court would consider the maximum civil penalty available to
6 be confiscatory. This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and
7 required a significant discount for settlement purposes. For mediation purposes, Plaintiff's
8 counsel estimated a maximum exposure of approximately \$2,376,000.00 in civil penalties. This
9 estimate did not take into account any of the risks discussed above and assumed a violation for
10 every single pay period. Plaintiff's counsel also assessed multiple penalties for the same pay
11 period for the same alleged violations of different Labor Code provisions and derivative
12 violations. Although two federal district court decisions held that "stacking" PAGA penalties in
13 this fashion may be appropriate to determine the amount in controversy for purposes of removal
14 jurisdiction, Plaintiff's counsel is not aware of any California state courts awarding plaintiffs
15 multiple PAGA penalties for the same violation for the same pay period under different Labor
16 Code provisions. This may be because the PAGA does not provide for what many employers
17 characterize as claim splitting and not merely stacking.

18 16. In preparation for mediation and during the settlement negotiations that followed,
19 Defendant disclosed that there were approximately 364 potentially aggrieved employees and
20 4,320 pay periods. The maximum possible civil penalties under the PAGA is the total number of
21 pay periods with one or more violations multiplied by the maximum possible civil penalty amount
22 per pay period. Unfortunately for the employees concerned, the potential for recovery of the
23 maximum possible civil penalties depends on circumstances that are extremely unlikely
24 independently and in combination. It would depend on the Court stacking the maximum
25 recoverable civil penalties for \$550 per pay period for all 4,320 pay periods for all 364 potentially
26 aggrieved employees during the PAGA Period. Plaintiff's counsel is not aware of any California
27 State court decision awarding a plaintiff and the other aggrieved employees she represents
28 multiple civil penalties for the same pay period under different Labor Code provisions. Plaintiff's
counsel had to substantially discount the value of these claims in the settlement negotiations for
this and a variety of other reasons (outlined below).

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17. **Risks Associated with Plaintiff's Claim That Defendant Failed To Pay All Earned Wages at the Correct Rates of Pay.** There is a risk that Plaintiff's claim that Defendant did not pay all wages at the correct rates of pay would be extremely limited at best, largely because Defendant's written policies throughout the relevant time period prohibited off-the-clock work. In its written employment policies, Defendant mandates that employees must record all time worked accurately on its time records and strictly prohibit employees from performing any work off-the-clock. Moreover, while Defendant disputes that off-the-clock work occurred, it contends that any time spent off the clock was *de minimis*. Defendant contends that the *de minimis* doctrine may apply here because the time spent off the clock were minute and insignificant.

18. The difficulty inherent in proving that off-the-clock work occurred poses a significant hurdle to Plaintiff. Plaintiff will rely on declarations and witness statements to prove this claim. Plaintiff may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially given the lack of records indicating when such off-the-clock work may have taken place. Individualized inquiries would need to be conducted person-by-person, day-by-day, to determine if an individual in fact worked "minutes" off-the-clock on a "regular" basis. Accordingly, there is a significant risk that the Court would consider this evidentiary showing insufficient as a methodology for all aggrieved employees.

19. **Risks Associated with Plaintiff's Claim That Defendant Failed To Provide All Meal Periods.** There are risks to Plaintiff's claims that Defendant failed to provide all meal periods. Defendant contends that, to establish a violation of the meal period law, a plaintiff must do more than show that a meal break was not taken. Defendant contends it did not impede or discourage Plaintiff, or any other employees, from taking their meal periods. Defendant's policies mandate that employees take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time of their meal breaks each day on their time records. The time records that comprise the random sample Defendant produced to Plaintiff for purposes of mediation show that meal periods were taken the vast majority of the time. Of the time records that show a late, short or no lunch, individualized evidence may be necessary to determine whether they occurred due to conduct of the Defendant or each of the employees concerned.

20. **Risks Associated with Plaintiff's Claim That Defendant Failed To Authorize or Permit Rest Breaks.** There are risks to Plaintiff's claims that Defendant failed to authorize or permit rest breaks. Defendant contends it provided non-exempt employees the opportunity to take

1 rest periods in accordance with California law. Further, Defendant's written policies on meal and
2 rest periods are consistent with the Wage Order. Thus, unlike meal periods, where there are often
3 records showing whether an employee clocked out or not, there is no such evidence to prove a
4 missed rest period or that the employer refused to authorize and permit one. Managing such claims
5 at trial has become exceedingly difficult. Plaintiff will depend on sample witness testimony and
6 surveys to prove the claims.

7 **21. Risks Associated with Plaintiff's Claim That Defendant Failed To Indemnify**
8 **for Expenses.** There is a risk that the Court may consider Plaintiff's claim that Defendant failed
9 to indemnify for business expenses to be individual in nature and thus decline to to allow a trial
10 on behalf of all aggrieved employees and the State. Plaintiff alleges that Defendant required
11 Plaintiff and the Aggrieved Employees to use their personal items for work, including cellular
12 phones, computers and other electronic devices, vehicles, and knives, and failed to indemnify
13 them for these business expenses. Defendant presented evidence that they have supplied their
14 employees with knives, equipment, and other supplies and had an expense reimbursement policy.
15 As such, there is a risk that the Court may consider Plaintiff's claims to be individual in nature
16 and unfit for class wide resolution.

17 **22. Risks Associated with Plaintiff's Claim That Defendant Failed To Issue**
18 **Accurate and Complete Wage Statements.** Plaintiff also asserts claims for wage statement
19 violations, untimely wage violations, and PAGA penalties. Under Labor Code section 226, wage
20 statements must include various information, including the applicable rates of pay, corresponding
21 hours worked, and gross pay. Here, Plaintiff's wage statement claim has the same underlying
22 risks as the above claims, as it is derivative of them. *Id.* On their face, the wage statements issued
23 by Defendant comply with the requirements of Labor Code § 226.

24 **23. Risks Associated with Plaintiff's Claim That Defendant Failed To Timely Pay**
25 **All Wages.** Plaintiff's claim for untimely wages is predicated on Labor Code section 201 to 203.
26 Like the claim under Labor Code sec. 226, Plaintiff must establish that the late payments were
27 willful. The evidence of good faith Defendant puts forth will defeat this claim.

28 **24. The Absence of Large Civil Penalty Awards under PAGA.** The sole source of
money recoverable for the Aggrieved Employees and the State is civil penalties available under
PAGA. It allows employees to seek civil penalties for certain violations of the Labor Code so
long as the penalties are not unjust, arbitrary, oppressive, or confiscatory. As discussed above,



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1 Plaintiff's maximum estimated liability exposure is based on the theories that: (1) Every paycheck
2 that Defendant issued to employees during the PAGA Period represents a pay period in which
3 every Aggrieved Employee suffered a minimum wage violation; (2) Every paycheck that
4 Defendant issued to employees during the PAGA Period represents a pay period in which every
5 Aggrieved Employee suffered an overtime wage violation; (3) Every paycheck that Defendant
6 issued to employees during the PAGA Period represents a pay period in which every Aggrieved
7 Employee suffered a meal period violation; (4) Every paycheck that Defendant issued to
8 employees during the PAGA Period represents a pay period in which every Aggrieved Employee
9 suffered a rest period violation; and (5) Every paycheck that Defendant issued to employees
10 during the PAGA Period represents a pay period in which every Aggrieved Employee suffered
11 an unreimbursed expense violation. There are no California state court decisions under the PAGA
12 to date with substantial awards of civil penalties. Plaintiff's counsel is aware of only two
13 significant awards under the PAGA in a contested proceeding, both issued by federal district
14 courts, one of which was overturned on May 28, 2021.⁷

15 ⁷ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil
16 penalties under the PAGA of \$12,277,500.00 where total adjusted damages were
17 \$18,695,692.58. In this regard, the district court stated,

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

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

32 In *Robert Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d. 1058, the court
33 awarded approximately \$102 million in damages, primarily based on the Defendant's failures to
34 comply with the requirements of California Labor Code section 226. On May 28, 2021, the
35 United States Court of appeals for the Ninth Circuit overturned the decision finding that there is



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1 25. Additionally, PAGA states a court has discretion to award a lesser amount than
2 the maximum penalty. Labor Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.*
3 (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that the
4 Court could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff's
5 evidence of willful and intentional conduct. *Carrington v. Starbucks (2018) 30 Cal.App.5th 504*
6 (*"Carrington"*) illustrates this. In that case, the Court of Appeal affirmed a trial court's heavily
7 discounted award of only \$5 per violation because it was within the Court's discretion to
8 significantly reduce PAGA penalties even when there is a finding that a violation of the California
9 Labor Code occurred. Under *Carrington*, assuming 5 violations for each pay period for all 364
10 Aggrieved Employees, will result in a recovery of \$108,000.00 (4,320 pay periods x 5 days x \$5
11 = \$108,000.00).

12 26. Moreover, judges have awarded extremely small sums to PAGA claimants in the
13 past. In *Ghrdilyan v. RJ Financial, Inc., Los Angeles Superior Court*, case number BC430633 in
14 which I represented the Plaintiffs, the employer underpaid commission overtime wages. The
15 plaintiffs sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial,
16 the Honorable Judge Ronald M. Sohigian awarded approximately \$235,000.00 in civil penalties
17 under the PAGA. A true and correct copy of the amended judgment in *Ghrdilyan* is attached as
18 **Exhibit 8**. A true and correct copy of the first amended complaint in *Ghrdilyan* is attached as
19 **Exhibit 9**. A true and correct copy of the judgment transcript in *Ghrdilyan* is attached as **Exhibit**
20 **10**, 19:8-20:19. In a similar PAGA case before the Los Angeles Superior Court, *Shields v. Security*
21 *Paving Company, Inc.*, LA Superior Court case no. BC492828, on October 24, 2017, the court
22 awarded the prevailing PAGA plaintiff civil penalties totaling only \$50.00. A similar result could
23 occur here. A true and correct copy of the judgment in *Shields* is attached as **Exhibit 11**.

24 27. Defendant could also convince the Court to dismiss the claims due to
25 unmanageability because determining whether each Aggrieved Employee worked off the clock
26 or why each employee missed a meal or rest period would require separate mini-trials. *Id. See,*
27 *Mendiola v. CPS Sec. Solutions, Inc.* (2015) 60 Cal.4th 833. In *Ortiz v. CVS Caremark Corp.*, the
28 no technical wage statement violation for a failure to list the rates and hours of pay associated
 with adjustments to overtime pay. *Magadia v. Wal-Mart Assocs.*, No. 19-16184, 2021 U.S. App.
 LEXIS 16070 (9th Cir. May 28, 2021).



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1 court dismissed a PAGA claim because it was unmanageable. 2014 WL 1117614, at *3–4 (N.D.
2 Cal. 2014). The *Ortiz* court cited the “multitude of individualized assessments” that case would
3 have required in ordering dismissal. *Id.* at *4. Several other courts have adopted *Ortiz*, and
4 dismissed PAGA claims where, there are a large number of allegedly aggrieved individuals whose
5 claims require individual assessments. *See, e.g., Litty v. Merrill Lynch & Co.*, 2014 WL 5904904,
6 at *3 (C.D. Cal. 2014); *Bowers v. First Student, Inc.*, 2015 WL 1862914, at *4 (C.D. Cal. 2015);
7 *see also Stafford v. Dollar Tree Stores, Inc.*, 2014 WL 6633396, at *2–4 (E.D. Cal. 2014)
8 (bifurcating trial of plaintiff’s claim from representative claims: “in light of the number of
9 potential aggrieved employees, judicial economy favors deferring the representative portion of
10 the PAGA claim”); *Amey v. Cinemark USA Inc.*, 2015 WL 2251504, at *16 (N.D. Cal. May 13,
11 2015). Further, on September 9, 2021, the California Court of Appeal issued a decision in *Wesson*
12 *v. Staples The Office Superstore, LLC*, 68 Cal. App. 5th 746 (2021), reh’g denied (Sept. 27, 2021)
13 holding that trial courts have authority to ensure that claims under PAGA are manageable, and
14 that courts may limit or strike unmanageable PAGA claims.

15 28. **Expense Associated with Taking the Case to Trial.** I estimate that the cost of
16 taking this case to trial will exceed \$500,000 in attorney fees and costs alone.

17 29. As stated above, the Parties have agreed to resolve this matter for \$235,000.00 to
18 resolve this controversy. The Parties have also agreed to a separate payment to Plaintiff of
19 \$15,000.00 for a general release of her individual (non-PAGA) claims pursuant to a separate
20 confidential settlement agreement. Plaintiff will present the confidential agreement to the Court
21 if requested.

22 30. While the evidence gathered through Plaintiff’s discovery supports the merits of
23 the claims asserted in this lawsuit, the settlement is fair, reasonable, and adequate in light of the
24 risks associated with the merits of Plaintiff’s claims, the uncertainties of complex litigation, the
25 cost of pretrial and trial proceedings, the Court’s discretion to lower the amount of penalties
26 ultimately awarded, and the secured benefit to the Aggrieved Employees and the LWDA
27 promoting compliance with the Labor Code.

28 31. **The Risk That PAGA Claims Are Subject To Arbitration Agreements.** The
arbitration agreements entered into between Defendant on the one hand, and the Plaintiff and
comparable workers, on the other, present a significant risk to the success of Plaintiff’s
representative litigation. According to Defendant, the majority of the workers entered into



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1 arbitration agreements with Defendant. *Id.* As the arbitration agreements in question restrict
2 potential litigants from bringing PAGA actions against Defendant, Plaintiff would be effectively
3 barred from pursuing claims on behalf of the Class in Court. *Id.* As such, by continuing to trial
4 on representative claims, Plaintiff would run the high risk of suffering defeat due to the existence
5 of the arbitration agreements. Also, because different defenses would apply to some workers and
6 not others – i.e., the existence of signed arbitration agreements – there is a risk that the Court
7 could determine that Plaintiff’s claims present too many individualized inquiries to allow for
manageable PAGA trial. *Id.*

8 32. Each Aggrieved Employee will receive a portion of the civil penalties on a pro-
9 rata basis depending on the number of pay periods Defendant employed them for during the
10 PAGA Period. Agreement, ¶ 1.11, 3.2.3.1. With a total of approximately 364 Aggrieved
11 Employees, the average estimated individual Settlement Payment for each Aggrieved Employee
12 is approximately \$155.56 (\$46,666/ Aggrieved Employees). Although an average payment of
13 \$155.56 per Aggrieved Employee is not an enormous sum of money, it is an excellent result given
14 the uncertainties this lawsuit entails. It is also reasonable given the structure and purpose of the
15 PAGA. The PAGA is not a restitution statute with a traditional damages provision designed to
16 restore victims to the position they would have been in had the Labor Code violations not taken
17 place. Rather, it is at best a punishment statute designed to reduce future Labor Code violations.
It provides for civil penalties only.

18 33. Further, PAGA obligates the prevailing plaintiff to disburse 75% of the civil
19 penalties collected to the State. Within the framework she is bound by, Plaintiff, considering the
20 evidence she faced, achieved a phenomenal result for the employees concerned. What’s more, the
21 Settlement Plaintiff achieved permits the employees concerned who are dissatisfied with the
22 amount they received in civil penalties to pursue any unpaid restitution, wages, interest, statutory
23 penalties, and attorney fees and costs they believe they are owed in arbitration pursuant to their
24 agreements with the Defendant. The Settlement does not require them to opt out to do so. As
25 such, there is no basis for objection even if the PAGA permitted it.

Attorneys’ Fees and Costs

26 34. My co-counsel and I intend to request attorneys’ fees of \$78,333.00 (1/3 of the
27 Gross Settlement Amount) and up to \$16,000.00 in litigation expenses. The written retainer
28 agreement I entered into with Plaintiff provides that I may elect to recover either (a) statutorily



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1 awarded attorney fees or (b) up to 40% of any recovery.

2 35. Should the Court elect to use Plaintiff's Counsel's lodestar as the method for
3 awarding fees, notwithstanding courts' clear preference for the percentage method, Plaintiff's
4 9:reasonable based on their lodestar as cross-checked against the percentage of the recovery. In
5 this case, Plaintiff's Counsel have a total lodestar of approximately \$96,930.10 without the use
6 of any multiplier, which results in a negative multiplier of 0.81 when compared against the
7 \$78,333.00 fee request. A true and correct summary of the time records of my firm is attached as
8 **Exhibit 12** to this declaration. I will make the detailed copies of such records available to the
9 Court for in camera inspection upon its request. I will have waited for a lengthy period to be
10 awarded attorneys' fees for work performed since Plaintiff first contacted my office, compared to
11 Defendant's counsel who have been paid as they performed work during this case. Moreover, my
12 co-counsel and I have expended time, effort, and money that we could have expended on less
13 risky cases instead.

14 36. My firm's current litigation costs total approximately \$14,419.90. A true and
15 correct summary of my firm's costs and expense is attached as **Exhibit 13** to this declaration. I
16 will make detailed copies of such records available to the Court for in camera inspection upon its
17 request. I anticipate that I will incur an additional \$ 121.36 in costs, which consist of filing fees
18 and attorney service fees for filing this motion and notice of entry of order. Thus, I anticipate my
19 firm's litigations costs will total approximately \$14,541.26 through final accounting of the
20 Settlement. Including the out-of-pocket expenses incurred by my co-counsel⁸, Plaintiff's Counsel
21 request a total of \$14,542.34 in reasonable litigation costs.⁹

22 37. In addition, based on my experience in wage and hour class action and PAGA
23 matters, fee awards of approximately one-third of the settlement fund are routinely approved as
24 reasonable. I have been awarded attorneys' fees equaling approximately one-third of the fund in
25 several wage and hour class actions, including: *Alvarez v. Gary Grace Enterprises, LP*, Marin
26 County Superior Court, Case No. CIV1002553 (one-third of fund); *Calderon v. Greatcall, Inc.*,
27 San Diego Superior Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of fund); *Butler*

28 ⁸ My co-counsel's current out of pocket expenses total approximately \$1.08. *See* Haines Decl. ¶
11.

⁹ My co-counsel and I do not seek reimbursement for the wages I paid to the attorneys, paralegals,
and legal assistants to aid in the representation of the Class. We bore these expenses over the
time since this lawsuit began without expectation of reimbursement.



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1 v. *Lexxiom, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1001579 (one-third of
2 fund); *Perez v. Southwest Dealer Services, Inc.*, Los Angeles County Superior Court, Case No.
3 BC439253 (one-third of fund); *O'Brien v. Optima Network Services, Inc.*, San Bernardino County
4 Superior Court, Case No. CIVRS1107056 (one-third of fund); *Noyd v. The Cristcat Group, et al.*,
5 Los Angeles County Superior Court, Case No. BC439558 (one-third of fund); *Huynh v.*
6 *Carefusion Resources, LLC, et al*, San Diego Sup.Ct., Case No. 37-2009-00103277-CU-OE-CTL
7 (one-third of fund); *Cunningham v. DPI Specialty Foods West, Inc.*, Los Angeles Sup.Ct., Case
8 No. BC465017 (one-third of fund); *Stucker v. L'Oreal USA S/D, Inc.*, Los Angeles Sup. Ct., Case
9 No. BC456080 (one-third of fund); *Valdez v. Healthcare Services Group, Inc.*, Los Angeles
10 Sup.Ct., Case No. BC462917 (one-third of fund); *Hernandez, et al v. HSBC*, U.S. District Court,
11 Central District of California, Case No. 10-CV-4753 (one-third of fund); *Sandoval, et al. v. Thrifty*
12 *Payless, Inc.*, et al. Los Angeles Sup.Ct., Case No. BC431249 (one-third of fund); *Alafa v. Custom*
13 *Built Personal Training, Inc.*, Tulare County Superior Court, Case No. VCU-245496 (one-third
14 of fund); *Nardone v. Sequoia Beverage Company, LP*, Tulare Sup.Ct., Case No. VCU-248370
15 (one-third of fund); *Rosen v. Image Transfer*, Los Angeles Sup.Ct., Case No. BC511702 (one-
16 third of fund); *Tucker v. Maly's West, Inc.*, Los Angeles Sup.Ct., Case No. BC483920 (one-third
17 of fund); *King v. Build.com*, Butte Sup.Ct., Case No. 159985 (one-third of fund); *Clifford v.*
18 *Anderson Hay & Grain*, Los Angeles Sup.Ct., Case No. BC517625 (one-third of fund); *Nichols,*
19 *et al. v. Vitamin Shoppe*, Contra Costa Sup.Ct., Case No. CIVMSC13-01136 (one-third of fund);
20 *Clarke v. Insight Global*, U.S. District Court, Southern District of California, Case No. 13-CV-
21 0357 (one-third of fund); *Fischer, et al. v. National Distribution Centers LP, et al.*, Riverside
22 Sup.Ct., Case No. RIC1114952 (one-third of fund); *Shaw, et al. v. Interthinx, Inc.*, United States
23 District Court for the District of Colorado, Case No. 13-CV-01229-REB-BNB (one-third of
24 fund); *Ogbuehi v. Comcast of California/ Colorado/ Florida/ Oregon, Inc.*, United States District
25 Court, Eastern District of California, Case No. EDCV13-00672-KJM-KJN (one-third of fund);
26 *Lynch, et al. v. American Guard Services*, Los Angeles Superior Court, Case No. BC462681 (one-
27 third of fund); *Volney-Parris v. Southern California Edison Company*, Los Angeles Superior
28 Court, Case No. BC493038 (one-third of fund); *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior
Court, Case No. BC480808 (one-third of fund); *Martin, et al. v. Aukeman Dairy, et al.*, Kern
Superior Court, Case No. S-1500-CV-282679 (one-third of fund); *Linder, et al. v. Warehouse*
Services, Inc., San Bernardino Superior Court, Case No. CIVDS1500146 (one-third of fund).

38. My previous experience in litigating wage and hour class and representative actions supports the reasonableness of the fee request, as does the caliber of opposing counsel. My previous experience in similar matters was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the Settlement. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law, state and federal, as well as the procedural law of class action litigation. Because it is reasonable to compensate me commensurate with my skill, reputation, and experience, attorneys' fees of approximately one-third of the Gross Settlement Amount is reasonable. Likewise, the caliber and experience of opposing counsel in labor and employment litigation support the fairness and reasonableness of the requested fee award.

Settlement Administration Duties

39. The duties of the Administrator are spelled out in the in the bid by Simpluris, Inc. ("Simpluris, Inc."), a true and correct copy of which is attached as **Exhibit 14**.

40. With regard to the Administration Expenses Payment provision, it is reasonable. Before agreeing to Simpluris, Inc., the Parties sought and reviewed bids from other reputable third-party administrators which provided higher bids:

- A. Simpluris = \$3,000.00;
- B. ILYM Group, Inc. = \$3,750.00; and
- C. CPT Group, Inc. = \$7,000.00.

A true and correct copy of the bid from ILYM Group, Inc. is attached hereto as **Exhibit 15**. A true and correct copy of the bid from CPT Group, Inc. is attached hereto as **Exhibit 16**. Thus, the Administration Expenses Payment provision should be given approval.

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

Executed on Tuesday, November 26, 2024 at New York, New York.



DAVID SPIVAK,
Declarant



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EXHIBIT 1

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2 THE SPIVAK LAW FIRM

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6 Attorneys for Plaintiff(s),

7 AMBER ASHLEY DAMAS, 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 SAN JOAQUIN**

10 **(UNLIMITED JURISDICTION)**

11
12 AMBER ASHLEY DAMAS, on behalf of herself
13 and all others similarly situated, and as an
14 “aggrieved employee” on behalf of other
15 “aggrieved employees” under the Labor Code
16 Private Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 JUST WINGIN' IT, INC., a California
20 corporation; and DOES 1–50, inclusive,

21 *Defendant(s).*

Case No. STK-CV-UOE-2022-0007989

PAGA SETTLEMENT AGREEMENT

Action filed: September 12, 2022

Dept: 10B, Hon. Blanca Banuelos

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ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

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AMBER ASHLEY DAMAS, and all others similarly situated

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Attorneys for Defendant(s),
JUST WINGIN' IT, INC.

1 This PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff
2 Amber Ashley Damas (“Plaintiff”) and defendant Just Wingin' It, Inc. (“Defendant”). The
3 Agreement refers to Plaintiff and Defendant collectively as the “Parties,” or individually as
4 “Party.”

5 **1. DEFINITIONS.**

6 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against
7 Just Wingin' It, Inc. captioned “Amber Ashley Damas, on behalf of herself, and all others
8 similarly situated, and as an ‘aggrieved employee’ on behalf of other ‘aggrieved employees’ under
9 the Labor Code Private Attorneys General Act of 2004, *Plaintiff(s)*, vs. Just Wingin' It, Inc., a
10 California corporation; and DOES 1 through 50, inclusive, *Defendant(s)*,” Case No. STK-CV-
11 UOE-2022-0007989 initiated on September 12, 2022 and pending in Superior Court of the State
of California, County of San Joaquin.

12 1.2. “Administrator” means Simpluris, Inc.’s the neutral entity the Parties have agreed
13 to appoint to administer the Settlement.

14 1.3. “Administration Expenses Payment” means the amount the Administrator will be
15 paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
16 accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection
with approval of the Settlement.

17 1.4. “Aggrieved Employee” means a person employed by Defendant in California and
18 classified as a non-exempt hourly employee who worked for Defendant during the PAGA Period.

19 1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information
20 in Defendant’s possession including the Aggrieved Employee’s name, last-known mailing
21 address, Social Security number, and number of PAGA Pay Periods.

22 1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation
23 and search for current Aggrieved Employee mailing addresses using all reasonably available
24 sources, methods and means including, but not limited to, the National Change of Address
database, skip traces, and direct contact by the Administrator with Aggrieved Employees.

25 1.7. “Court” means the Superior Court of California, County of San Joaquin.

26 1.8. “Defense Counsel” means Michael J. O'Connor, Jr. and Sarkis A. Atoyan of
27 Atkinson, Andelson, Loya, Ruud & Romo.

1 1.9. "Effective Date" means the date by when both of the following have occurred: (a)
2 the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment
3 is final. The Judgment is final on the day after the deadline for filing a notice of appeal from the
4 Judgment; or if a timely appeal is filed, the day after the appellate court affirms the Judgment and
5 issues a remittitur.

6 1.10. "Gross Settlement Amount" means \$235,000.00 which is the total, all-in amount
7 Defendant agrees to pay under the Settlement, except as provided in Paragraph 9 below. The
8 Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA
9 Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the
10 Administrator's Expenses Payment.

11 1.11. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of
12 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved
13 Employee worked during the PAGA Period.

14 1.12. "Judgment" means the judgment entered by the Court based upon the Court's
15 approval of the Settlement.

16 1.13. "LWDA" means the California Labor and Workforce Development Agency, the
17 agency entitled, under Labor Code section 2699, subd. (i).

18 1.14. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the
19 LWDA under Labor Code section 2699, subd. (i).

20 1.15. "Net Settlement Amount" means the Gross Settlement Amount, less the following
21 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
22 Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the
23 Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as
24 Individual PAGA Payments.

25 1.16. "PAGA Counsel" means David Glenn Spivak of The Spivak Law Firm and Walter
26 L. Haines of United Employees Law Group, the attorneys representing the Plaintiff in the Action.

27 1.17. "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses
28 Payment" mean the amounts allocated to PAGA Counsel for reimbursement of reasonable
attorneys' fees and expenses, respectively, incurred to prosecute the Action.

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

1 1.19. "PAGA Period" means the period from September 12, 2021 to either the date the
2 Court grants approval of the settlement or the date the total number of PAGA Pay Periods totals
3 4,632, whichever is first. Defendant represents that as of December 19, 2023, there were 364
4 Aggrieved Employees that worked a total of approximately 4,320 PAGA Pay Periods during the
PAGA Period.

5 1.20. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

6 1.21. "PAGA Notice" means Plaintiff's September 12, 2022 letter to Defendant and the
7 LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

8 1.22. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from
9 the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$33,291.75) and the
10 75% to LWDA (\$99,875.25) in settlement of PAGA claims.

11 1.23. "Plaintiff means Amber Ashley Damas, the named plaintiff in the Action.

12 1.24. "Approval Order" means the proposed Court Order Granting Approval of PAGA
Settlement.

13 1.25. "Released PAGA Claims" means all claims that were, or reasonably could have
14 been alleged, based on the facts and allegations set forth in the operative complaint, and also the
15 PAGA notice to the California Labor and Workforce Development Agency, that arose during the
16 PAGA Period, including but not limited to claims for: (1) unpaid minimum, regular and overtime
17 wages; (2) meal period violations; (3) rest period violations; (4) noncompliant wage statements;
18 (5) untimely payment of final wages; (6) unreimbursed business expenses; (7) unfair competition;
19 (8) off the clock work; and (9) all claims for liquidated damages, penalties, interest, fees, and
costs based on the foregoing.

20 1.26. "Released Parties" means: Defendant and all of Defendant's shareholders,
21 members, owners, officers, directors, managers, operators, employees, representatives, agents,
22 predecessors, successors, assigns, current and former subsidiaries, parents, affiliates, franchisors,
23 franchisees, joint venturers, co-owners, co-employers, joint employers, payroll providers,
attorneys, insurers, and reinsurers.

24 1.27. "Settlement" means the disposition of the Action effected by this Agreement and
25 the Judgment.

26 1.28. "Defendant" means named Defendant Just Wingin' It, Inc.

1 **2. RECITALS.**

2 2.1. On September 12, 2022, Plaintiff commenced this Action by filing a Complaint
3 alleging causes of action against Defendant for various wage and hour claims and alleged Labor
4 Code violations, including failure to pay wages, failure to provide meal periods, failure to
5 authorize and permit rest periods, failure to indemnify for business expenses, failure to issue
6 proper wage statements, failure to timely pay wages, failure to maintain required payroll records,
7 and related claims. On March 23, 2023, Plaintiff filed a First Amended Complaint alleging causes
8 of action against Defendant for failure to pay wages, failure to provide meal periods, failure to
9 authorize and permit rest periods, failure to indemnify for business expenses, failure to issue
10 proper wage statements, failure to timely pay wages, failure to maintain required payroll records,
11 and related allegations. The First Amended Complaint is the operative complaint in the Action
12 (the “Operative Complaint.”) Defendant denies the allegations in the Operative Complaint,
denies any failure to comply with the laws identified in the Operative Complaint, and denies any
and all liability for the causes of action alleged.

13 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written
14 notice to Defendant and the LWDA by sending the PAGA Notice.

15 2.3. On December 19, 2023, the Parties participated in an all-day mediation presided
16 over by the Honorable John Leo Wagner, then continued to dialogue and work with him for
17 several months thereafter, which led to this Agreement to settle the Action.

18 2.4. Prior to negotiating the Settlement, Plaintiff obtained, through informal
19 discovery, the number of comparable employees, the number of pay periods, average rates of pay,
sample time records, sample payroll records, written policies, and related information.

20 2.5. The Parties, PAGA Counsel and Defense Counsel represent that they are not
21 aware of any other pending matter or action asserting claims that will be extinguished or affected
22 by the Settlement.

23 **3. MONETARY TERMS.**

24 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below,
25 Defendant promises to pay the total amount of \$235,000.00, and no more, as the Gross Settlement
26 Amount. Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline
27 stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross

1 Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a
2 condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3 3.2. Payments from the Gross Settlement Amount. The Administrator will make and
4 deduct the following payments from the Gross Settlement Amount, in the amounts specified by
5 the Court in the Court's Approval order:

6 3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than
7 33.33%, which is currently estimated to be \$78,333.00 and a PAGA Counsel Litigation Expenses
8 Payment of not more than \$16,000.00. Defendant will not oppose requests for these payments
9 provided they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an
10 application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment.
11 If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation
12 Expenses Payment less than the amounts requested, the Administrator will allocate the remainder
13 to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any
14 other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment
15 and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA
16 Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099
17 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA
18 Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendant
19 harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or
20 sharing of any of these Payments.

21 3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed
22 \$7,500.00 except for a showing of good cause and as approved by the Court. To the extent the
23 Administration Expenses are less or the Court approves payment less than \$7,500.00, the
24 Administrator will retain the remainder in the Net Settlement Amount.

25 3.2.3. To the LWDA and Aggrieved Employees: PAGA Penalties in the
26 amount of \$133,167.00 to be paid from the Gross Settlement Amount, with 75% (\$99,875.25)
27 allocated to the LWDA PAGA Payment and 25% (\$33,291.75) allocated to the Individual PAGA
28 Payments.

3.2.3.1. The Administrator will calculate each Individual PAGA Payment
by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties
(\$33,291.75) by the total number of PAGA Period Pay Periods worked by all Aggrieved

1 Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's
2 PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any
3 taxes owed on their Individual PAGA Payment.

4 3.2.3.2. 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. Aggrieved Employee Pay Periods. Based on a review of its records to date,
9 Defendant estimates there are 364 Aggrieved Employees who worked a total 4,320 PAGA Pay
10 Periods as of December 19, 2023.

11 4.2. Aggrieved Employee Data. Within 15 days after approval of the Settlement by
12 the Court, Defendant will deliver the Aggrieved Employee Data to the Administrator, and only to
13 the Administrator, in the form of a Microsoft Excel spreadsheet, to be used on a confidential basis
14 and for Court-approved Settlement purposes only, though the Administrator will report to PAGA
15 Counsel the number of employees and pay periods states in the spreadsheet. In turn, to protect
16 Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee
17 Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and
18 for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator
19 employees who need access to the Aggrieved Employee Data to effect and perform under this
20 Agreement. Defendant has a continuing duty to immediately notify PAGA Counsel if it discovers
21 that the Aggrieved Employee Data omitted employee identifying information and to provide
22 corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any
23 extension of the deadline by which Defendant must send the Aggrieved Employee Data to the
24 Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to
25 reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee
26 Data.

27 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross
28 Settlement Amount by transmitting the funds to the Administrator no later than 14 days after the
Effective Date.

4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant

1 funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA
2 Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA
3 Counsel Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment
4 shall not precede disbursement of Individual PAGA Payments.

5 4.4.1. The Administrator will issue checks for the Individual PAGA Payments
6 and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face
7 of each check shall prominently state the date (not less than 180 days after the date of mailing)
8 when the check will be voided. The Administrator will cancel all checks not cashed by the void
9 date. Before mailing any checks, the Administrator must update the recipients' mailing addresses
10 using the National Change of Address Database.

11 4.4.2. The Administrator must conduct an Aggrieved Employee Address Search
12 for all other Aggrieved Employees whose checks are returned undelivered without USPS
13 forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail
14 checks to the USPS forwarding address provided or to an address ascertained through the
15 Aggrieved Employee Address Search. The Administrator need not take further steps to deliver
16 checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The
17 Administrator shall promptly send a replacement check to any Aggrieved Employee whose
18 original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

19 4.4.3. For any Aggrieved Employee whose Individual PAGA Payment check is
20 uncashed and cancelled after the void date, the Administrator shall transmit the funds represented
21 by such check to the California Controller's Unclaimed Property Fund in the name of the
22 Aggrieved Employee.

23 4.4.4. The payment of Individual PAGA Payments shall not obligate Defendant
24 to confer any additional benefits or make any additional payments to Aggrieved Employees (such
25 as 401(k) contributions or bonuses) beyond those specified in this Agreement.

26 **5. RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire
27 Gross Settlement Amount Plaintiff, Aggrieved Employees, and PAGA Counsel will release
28 claims against all Released Parties as follows:

5.1. Plaintiff's Release. Plaintiff and her respective former and present spouses,
representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors,

1 and assigns generally, release and discharge Released Parties from all claims, transactions, or
2 occurrences [that occurred during the PAGA Period], including, but not limited to: (a) all claims
3 that were, or reasonably could have been, alleged, based on the facts contained in the Operative
4 Complaint and the PAGA Notice (“Plaintiff’s Release”). Plaintiff’s Release does not extend to
5 any claims or actions to enforce this Agreement, or to any claims for vested benefits,
6 unemployment benefits, disability benefits, social security benefits, workers’ compensation
7 benefits that arose at any time, or based on occurrences outside the PAGA Period. It also does
8 not extend to the individual non-PAGA claims in Plaintiff’s arbitration demand submitted to
9 Judicate West of February 16, 2024 (which individual non-PAGA claims are subject to a separate
10 confidential settlement agreement between the Parties). Plaintiff acknowledges that Plaintiff may
11 discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or
12 believes to be true but agrees, nonetheless, that Plaintiff’s Release shall be and remain effective
13 in all respects, notwithstanding such different or additional facts or Plaintiff’s discovery of them.

14 5.1.1. Plaintiff’s Waiver of Rights Under California Civil Code Section 1542.

15 Further, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of
16 and pursuant to section 1542 of the California Civil Code, which reads:

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

21 5.2. Release by Aggrieved Employees: All Aggrieved Employees are deemed to
22 release, on behalf of themselves and their respective former and present representatives, agents,
23 attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for
24 PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA
25 Period facts stated in the Operative Complaint and the PAGA Notice. This includes all claims
26 that were, or reasonably could have been alleged, based on the facts and allegations set forth in
27 the Operative Complaint, and also the PAGA notice to the California Labor and Workforce
28 Development Agency that arose during the PAGA Period, including but not limited to claims for:
(1) unpaid minimum, regular and overtime wages; (2) meal period violations; (3) rest period
violations; (4) noncompliant wage statements; (5) untimely payment of final wages; (6)
unreimbursed business expenses; (7) unfair competition; (8) off the clock work; and (9) all claims

1 for liquidated damages, penalties, interest, fees, and costs based on the foregoing.

2 5.3. Release by PAGA Counsel: PAGA Counsel release on behalf of their present and
3 former attorneys, employees, agents, successors and assigns the Released Parties from all claims
4 for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts
5 stated in the Operative Complaint and the PAGA Notice.

6 **6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.** The Parties
7 agree to jointly prepare and file an application or motion for approval of this Settlement.

8 6.1 Plaintiff's Responsibilities. Plaintiff will prepare, and five days prior to the filing
9 deadline deliver to Defense Counsel, all documents necessary for obtaining approval of this
10 Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order
11 Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator
12 attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness
13 to serve; competency; operative procedures for protecting the security of Aggrieved Employee
14 Data; amounts of insurance coverage for any data breach, defalcation of funds or other
15 misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved
16 Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff,
17 PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting
18 to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of
19 violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section
20 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (iv) a redlined version
21 of the parties' Agreement showing all modifications made to the Model Agreement ready for
22 filing with the Court; and (v) all facts relevant to any actual or potential conflict of interest with
23 Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA shall
24 aver that they are not aware of any other pending matter or action asserting claims that will be
25 extinguished or adversely affected by the Settlement.

26 6.2 Responsibilities of Counsel. PAGA Counsel and Defense Counsel are jointly
27 responsible for coordinating to expeditiously finalize and support the filing of Plaintiff's
28 application or motion for approval of this Settlement, within no later than 30 days after the full
execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion
and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for

1 delivering the Court's Approval to the Administrator.

2 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed
3 application or motion for approval of this Settlement and/or the supporting declarations and
4 documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of
5 the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement
6 and obtaining the support and input of their mediator, Hon. John Leo Wagner, (Ret.), if needed.
7 If the Court does not grant the motion for approval of this Settlement or conditions its approval
8 on any material change to this Agreement, PAGA Counsel and Defense Counsel will
9 expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in
10 good faith, to modify the Agreement and otherwise satisfy the Court's concerns and obtaining the
11 support and input of their mediator, Hon. John Leo Wagner (Ret.), if needed.

11 **7. SETTLEMENT ADMINISTRATION.**

12 7.1 Selection of Administrator. The Parties have jointly selected Simpluris, Inc.'s to
13 serve as the Administrator and verified that, as a condition of appointment, Simpluris, Inc.'s
14 agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this
15 Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel
16 represent that they have no interest or relationship, financial or otherwise, with the Administrator
17 other than a professional relationship arising out of prior experiences administering settlements.

18 7.2 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 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund
22 that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury
23 Regulation section 468B-1.

24 7.4 Administrator Duties. The Administrator has a duty to perform or observe all
25 tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

26 **8. ESTIMATES OF NUMBERS OF AGGRIEVED EMPLOYEES AND PAGA PAY**
27 **PERIODS.** Based on its records, Defendant estimates that, as of December 19, 2023, there are
28 364 Aggrieved Employees who worked 4,320 Pay Periods during the PAGA Period.

1
2 **9. CONTINUING JURISDICTION OF THE COURT.** The Parties agree that, after entry
3 of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely
4 for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
5 administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

6 9.1 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms
7 and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and
8 PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all rights
9 to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the
10 right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals.
11 The waiver of appeal does not include any waiver of the right to oppose such motions, writs or
12 appeals. If another party appeals the Judgment, the Parties' obligations to perform under this
13 Agreement will be suspended until such time as the appeal is finally resolved and the Judgment
14 becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

15 **10. ADDITIONAL PROVISIONS.**

16 10.1 No Admission of Liability or Representative Manageability for Other Purposes.
17 This Agreement represents a compromise and settlement of highly disputed claims. Nothing in
18 this Agreement is intended or should be construed as an admission by Defendant that any of the
19 allegations in the Operative Complaint have merit or that Defendant has any liability for any
20 claims asserted; nor should it be intended or construed as an admission by Plaintiff that
21 Defendant's defenses in the Action have merit. The Parties agree that representative treatment is
22 for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement,
23 Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the
24 right to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to
25 settle the Action will have no bearing on, and will not be admissible in connection with, any
26 litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

27 10.2 Integrated Agreement. Upon execution by all Parties and their counsel, this
28 Agreement together with its attached exhibits shall constitute the entire agreement between the
29 Parties relating to the Settlement, superseding any and all oral representations, warranties,
30 covenants, or inducements made to or by any Party.

1 10.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant
2 and represent that they are authorized by Plaintiff and Defendant, respectively, to take all
3 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
4 to effectuate its terms, and to execute any other documents reasonably required to effectuate the
5 terms of this Agreement including any amendments to this Agreement.

6 10.4 Cooperation. The Parties and their counsel will cooperate with each other and
7 use their best efforts, in good faith, to implement the Settlement by, among other things,
8 modifying the Settlement Agreement, submitting supplemental evidence and supplementing
9 points and authorities as requested by the Court. In the event the Parties are unable to agree upon
10 the form or content of any document necessary to implement the Settlement, or on any
11 modification of the Agreement that may become necessary to implement the Settlement, the
12 Parties will seek the assistance of a mediator and/or the Court for resolution.

13 10.5 No Prior Assignments. The Parties separately represent and warrant that they
14 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
15 or encumber to any person or entity and portion of any liability, claim, demand, action, cause of
16 action, or right released and discharged by the Party in this Settlement.

17 10.6 No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendant nor Defense
18 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
19 Settlement be relied upon as such within the meaning of United States Treasury Department
20 Circular 230 (31 CFR Part 10, as amended) or otherwise.

21 10.7 Modification of Agreement. This Agreement, and all parts of it, may be
22 amended, modified, changed, or waived only by an express written instrument signed by all
23 Parties or their representatives, and approved by the Court.

24 10.8 Agreement Binding on Successors. This Agreement will be binding upon, and
25 inure to the benefit of, the successors of each of the Parties.

26 10.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will
27 be governed by and interpreted according to the internal laws of the state of California, without
28 regard to conflict of law principles.

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

1 10.11 Confidentiality. To the extent permitted by law, all agreements made, and orders
2 entered during Action and in this Agreement relating to the confidentiality of information shall
3 survive the execution of this Agreement.

4 10.12 Use and Return of Defendant Documents and Information. Information provided
5 to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA
6 Data provided to PAGA Counsel by Defendant in connection with the mediation, other settlement
7 negotiations, or in connection with the Settlement, may be used only with respect to this
8 Settlement, and no other purpose, and may not be used in any way that violates any existing
9 contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator
10 discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and
11 electronic versions of documents and information received from Defendant unless, prior to the
Administrator's payment of all Settlement Funds, Defendant makes a written request to PAGA

12 10.13 Headings. The descriptive heading of any section or paragraph of this Agreement
13 is inserted for convenience of reference only and does not constitute a part of this Agreement.

14 10.14 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement
15 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
16 weekend or federal legal holiday, such date or deadline shall be on the first business day
thereafter.

17 10.15 Notice. All notices, demands or other communications between the Parties in
18 connection with this Agreement will be in writing and deemed to have been duly given as of the
19 third business day after mailing by United States mail, or the day sent by email or messenger,
20 addressed as follows:

21 To Plaintiff:
22 David Glenn Spivak, Esq.
23 The Spivak Law Firm
24 8605 Santa Monica Bl
25 PMB 42554
26 West Hollywood, CA 90069
27 david@spivaklaw.com

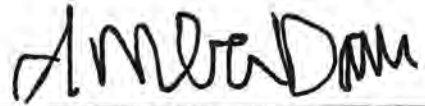
28 To Defendant:
Michael J. O'Connor, Jr., Esq.

Sarkis A. Atoyan, Esq.
Atkinson, Andelson, Loya, Ruud & Romo
4275 Executive Square, Suite 700
La Jolla, CA 92037
michael.oconnor@aalrr.com
sarkis.atoyan@aalrr.com

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

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

10 / 28 / 2024
Dated: _____, 2024

By: 
AMBER ASHLEY DAMAS

Dated: 10/7, 2024

By: 

Just Wingin' It, Inc.

10 / 28 / 2024
Dated: _____, 2024

THE SPIVAK LAW FIRM

By: 
DAVID GLENN SPIVAK, Attorneys
for Plaintiff, AMBER ASHLEY
DAMAS, and all others similarly
situated

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UNITED EMPLOYEES LAW GROUP

Dated: _____, 2024

By: _____
WALTER L. HAINES, Attorneys for
Plaintiff, AMBER ASHLEY DAMAS,
and all others similarly situated

ATKINSON, ANDELSON, LOYA, RUUD &
ROMO

Dated: October 22, 2024

By:  _____
MICHAEL J. O'CONNOR
SARKIS A. ATOYAN, Attorneys for
Defendant, JUST WINGIN' IT, INC.

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UNITED EMPLOYEES LAW GROUP

Dated: October 24, 2024

By: 
WALTER L. HAINES, Attorneys for
Plaintiff, AMBER ASHLEY DAMAS,
and all others similarly situated

ATKINSON, ANDELSON, LOYA, RUUD &
ROMO

Dated: _____, 2024

By: _____
MICHAEL J. O'CONNOR
SARKIS A. ATOYAN, Attorneys for
Defendant, JUST WINGIN' IT, INC.

EXHIBIT 2

1 **NOTICE OF PAGA SETTLEMENT**

2 *Amber Ashley Damas v. Just Wingin' It, Inc.*

3 *(Superior Court of California, San Joaquin County*

4 *Case No. STK-CV-UOE-2022-0007989*

5 <<Simpluris, Inc.'s>>

6 []

7 []

8 Telephone: []

9 «Barcode» «BarcodeString»

10 SIMID «SIMID»

11 «FirstName»

12 «LastName»

13 «Address1» «Address2»

14 «City» «State» «Zip»

15 You are receiving this notice as a result of a lawsuit brought on a representative basis
16 under the Private Attorneys General Act, Labor Code §§ 2698, *et seq.* (“PAGA”) (“the Action”).
17 The plaintiff in the Action is Amber Ashley Damas (“Plaintiff”) and the defendant is Just Wingin’
18 It, Inc. (“Defendant”). The Action seeks civil penalties for purported violations of the California
19 Labor Code on behalf of all Defendant’s current and former California non-exempt employees
20 (“Aggrieved Employees”) who Defendant employed during the PAGA Period of September 12,
21 2021 to either the date the Court grants approval of the settlement or the date the total number of
22 pay periods totals 4,632, whichever is first.. Defendant denies all claims and allegations in the
23 Action, denies that it owes any penalties, and asserts that it has fully complied with all applicable
24 Labor Code provisions. Nevertheless, to avoid further costs and time in defending the Action,
25 Plaintiff and Defendant have agreed to settle the case and the Court has approved the settlement
26 and release of claims. By settling the Action, Defendant is not admitting that it has done anything
27 wrong. As of and subject to the occurrence of the Effective Date of the Settlement, the Settlement
28 resolves all claims for PAGA penalties that were alleged, or reasonably could have been alleged,
based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice. This
means all claims that were, or reasonably could have been alleged, based on the facts and
allegations set forth in the Operative Complaint, and also the PAGA notice to the California
Labor and Workforce Development Agency that arose during the PAGA Period, including but
not limited to claims for: (1) unpaid minimum, regular and overtime wages; (2) meal period
violations; (3) rest period violations; (4) noncompliant wage statements; (5) untimely payment
of final wages; (6) unreimbursed business expenses; (7) unfair competition; (8) off the clock
work; and (9) all claims for liquidated damages, penalties, interest, fees, and costs based on the
foregoing. The “Released Parties” are Defendant and all of Defendant’s shareholders, members,
owners, officers, directors, managers, operators, employees, representatives, agents,
predecessors, successors, assigns, current and former subsidiaries, parents, affiliates, franchisors,
franchisees, joint venturers, co-owners, co-employers, joint employers, payroll providers,
attorneys, insurers, and reinsurers.

1 By Order dated <<court approval order date>>, the Superior Court of the State of
2 California, San Joaquin County approved the Settlement of the PAGA claims.

3 According to the Defendant's records, you are an Aggrieved Employee and therefore
4 entitled to an Individual PAGA Payment, a share of the settlement based upon the Court approved
5 allocation. Enclosed with this Notice is your check for your Individual PAGA Payment. The
6 settlement check shall remain valid for 180 days. Thereafter, all uncashed checks shall be
7 distributed to California State Controller's Office Unclaimed Property Fund with an
8 identification of the amount of unclaimed funds attributable to each Aggrieved Employee.

9 Please Note: One hundred percent (100%) of your individual PAGA payment under this
10 Settlement will be considered penalties and may be subject to local, state, or federal tax
11 withholdings and will be reported to the IRS and state tax authorities. You should rely on your
12 own tax advisors as to the tax consequences of your individual PAGA Payment. Neither Plaintiff
13 nor Defendant have made any representations or warranties regarding the taxation of your
14 individual PAGA payment. Nothing within this notice or any other communication shall
15 constitute or be construed or relied upon as tax advice within the meaning of United States
16 Treasury Department Circular 230 (31 C.F.R. Part 10, as amended). Enclosed are the appropriate
17 tax forms pertaining to your payment.

18 Do not call or write the Court or Office of the Clerk to ask questions about the settlement
19 or to ask questions about the claims process. If you have any questions, you may call or write to
20 Simpluris, Inc.'s (the Administrator) using the contact information at the top of this
21 correspondence.
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EXHIBIT 3



THE SPIVAK LAW FIRM

EMPLOYEE RIGHTS

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

Mail
Office
Tel
Fax
Web

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

September 12, 2022

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

Re: Amber Ashley Damas / Just Wingin' It

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Amber Ashley Damas (hereafter “Damas” or “Complainant”) provides notice that Just Wingin' It, Inc., a California corporation, and related entities (collectively “the Just Wingin' It Employers” or “the Employers”) violated her rights and those of all other individuals the Just Wingin' It Employers have employed or otherwise contracted with in California as hourly, 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, 226.7, 510, 512, 1174, 1194, 1197, 1198, 2802, and related Labor Code sections. On behalf of herself and all other Aggrieved Employees, Damas hereby provides this notice to the Labor & Workforce Development Agency and the Just Wingin' It Employers and their agents and representatives.

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

Statement of Facts

On approximately August 8, 2021, the Just Wingin' It Employers began to employ Damas in Turlock and Riverbank. Over the course of her employment, she worked in the positions of hourly, non-exempt crew member and shift lead. The Just Wingin' It Employers continuously employed her until on or about June 28, 2022 when her employment ended.

At all relevant times, the Just Wingin' It Employers issued wages to Damas and all of the other Aggrieved Employees on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant times, the Just Wingin' It Employers classified Damas and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Just Wingin' It Employers failed to compensate Damas and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Just Wingin' It Employers frequently interrupted the meals periods of Damas and the Aggrieved Employees, though they would not pay wages to Damas and the Aggrieved Employees for time spent in such meal periods clocked out.

The Just Wingin' It Employers failed to compensate Damas and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The Just Wingin' It Employers frequently interrupted the meals periods of Damas and the Aggrieved Employees, though they would not pay wages to Damas and the Aggrieved Employees for time spent in such meal periods clocked out. These unpaid work periods combined with other work time resulted in Damas and the Aggrieved Employees working overtime hours. However, the Just Wingin' It Employers did not pay overtime premium wages to Damas and the Aggrieved Employees for such overtime work.

At all relevant times, the Just Wingin' It Employers failed to provide Damas and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Just Wingin' It Employers frequently interrupted the meals periods of Damas and the Aggrieved Employees, though they would not pay wages to Damas and the Aggrieved Employees for time spent in such meal periods clocked out. The Just Wingin' It Employers required Damas and the Aggrieved Employees to work through meal

periods because the Just Wingin' It Employers understaffed their restaurants. The Just Wingin' It Employers also failed to pay premium wages for days on which they failed to provide Damas and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Just Wingin' It Employers failed to authorize and permit Damas 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 Just Wingin' It Employers frequently interrupted the rest breaks of Damas and the Aggrieved Employees. The Just Wingin' It Employers required Damas and the Aggrieved Employees to work through rest breaks because the Just Wingin' It Employers understaffed their restaurants. The Just Wingin' It Employers also failed to pay premium wages for days on which they failed to authorize and permit Damas and all of the other Aggrieved Employees to take rest breaks as required by law. The Just Wingin' It Employers also failed to provide Damas and the other Aggrieved Employees a suitable place to eat on the premises.

At all relevant times, the Just Wingin' It Employers required Damas and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Just Wingin' It Employers required Damas and all of the other Aggrieved Employees to supply shirts, mobile phones, automotive vehicles, and knives, to perform their job duties. However, the Just Wingin' It Employers did not provide these items and did not reimburse Damas and the other Aggrieved Employees for these items. The Just Wingin' It Employers required Damas and the Aggrieved Employees to travel in their automotive vehicles to pick up supplies and chicken. The Just Wingin' It Employers did not reimburse Damas and the Aggrieved Employees for mileage they incurred in such travel. The Just Wingin' It Employers required Damas and the Aggrieved Employees to use their personnel mobile phones to communicate with management for work. The Just Wingin' It Employers did not reimburse Damas and the Aggrieved for such cell phone use or provide them with an alternative to using their personal mobile phones. The Just Wingin' It Employers required Damas and the Aggrieved Employees to use knives they purchased to perform their job duties. The Just Wingin' It Employers did not reimburse Damas and the Aggrieved for such knives. The Just Wingin' It Employers required Damas and the Aggrieved Employees to wear uniforms and pay for replacement uniform items when they wore out.

At all relevant times, the Just Wingin' It Employers failed to issue to Damas 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 Just Wingin' It Employers knowingly and intentionally failed to state on the wage statements they issued to Damas 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. Additionally, the wage statements incorrectly state the name of the employer as "Just Wing In It, Inc."

The Just Wingin' It Employers also failed to timely pay Damas and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Just Wingin' It Employers failed to maintain accurate employee records of Damas and all of the other Aggrieved Employees.

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

- (a) The Just Wingin' It Employers failed to pay Damas and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, and overtime wages;
- (b) The Just Wingin' It Employers failed to provide Damas and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Just Wingin' It Employers failed to authorize and permit Damas and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Just Wingin' It Employers failed to compensate Damas and all of the other Aggrieved Employees at one hour's pay for each day in which the Just Wingin' It Employers failed to provide them with one or more meal periods as required by law;

- (e) The Just Wingin' It Employers failed to compensate Damas and all of the other Aggrieved Employees at one hour's pay for each day in which the Just Wingin' It Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Just Wingin' It Employers failed to indemnify Damas and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (g) The Just Wingin' It Employers knowingly and intentionally failed to issue to Damas and all of the other Aggrieved Employees complete and accurate wage statements;
- (h) The Just Wingin' It Employers willfully failed to timely pay Damas and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Just Wingin' It Employers and when their employment ended; and
- (i) The Just Wingin' It Employers failed to maintain accurate employment records pertaining to Damas and all of the other Aggrieved Employees.

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

The Wage Order

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

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

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

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

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

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

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

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

In relevant part, Labor Code section 1194 states:

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

In relevant part, Labor Code section 510 states:

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

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

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

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

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

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

The Just Wingin' It Employers frequently interrupted the meals periods of Damas and the Aggrieved Employees, though they would not pay wages to Damas and the Aggrieved Employees for time spent in such meal periods clocked out. The Just Wingin' It Employers frequently interrupted the meals periods of Damas and the Aggrieved Employees, though they would not pay wages to Damas and the Aggrieved Employees for time spent in such meal periods clocked out. These unpaid work periods combined with other work time resulted in Damas and the Aggrieved Employees working overtime hours. However, the Just Wingin' It Employers did not pay overtime premium wages to Damas and the Aggrieved Employees for such overtime work.

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

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

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

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

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

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

In relevant part, Labor Code section 512 states:

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

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

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. . . .

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

In addition, Labor Code section 226.7 states:

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

At all relevant times, the Just Wingin' It Employers failed to provide Damas and all of the other Aggrieved Employees with all timely meal periods. The Just Wingin' It Employers denied Damas and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Just Wingin' It Employers frequently interrupted the meals periods of Damas and the Aggrieved Employees, though they would not pay wages to Damas and the Aggrieved Employees for time spent in such meal periods clocked out. The Just Wingin' It Employers required Damas and the Aggrieved Employees to work through meal periods because the Just Wingin' It Employers understaffed their restaurants. Furthermore, the Just Wingin' It Employers failed to pay premium wages for days on which they failed to provide Damas and all of the other Aggrieved Employees with timely meal periods. Accordingly,

Damas now seeks civil penalties for these Labor Code violations that the Just Wingin' It Employers have committed against her and all of the other Aggrieved Employees as follows:

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

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

Section 2(K) of the Wage Order states,

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

In relevant part, Labor Code section 1198 states,

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

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

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of

each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

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

In addition, Labor Code section 226.7 states:

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

The Just Wingin' It Employers failed to authorize and permit Damas 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 Just Wingin' It Employers did not seek an exemption from the rest period protections of the Wage Order from the California

Division of Labor Standards Enforcement. The Just Wingin' It Employers frequently interrupted the rest breaks of Damas and the Aggrieved Employees. The Just Wingin' It Employers required Damas and the Aggrieved Employees to work through rest breaks because the Just Wingin' It Employers understaffed their restaurants. Moreover, the Just Wingin' It Employers failed to pay Damas and all of the other Aggrieved Employees premium wages on workdays the Just Wingin' It Employers failed to provide Damas and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Damas now seeks civil penalties for these Labor Code violations that the Just Wingin' It Employers have committed against her and all of the other Aggrieved Employees as follows:

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

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

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

Additionally, the Wage Order states,

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

...

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

Wage Order, § 9(B).

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

As described above, the Just Wingin' It Employers required Damas and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Just Wingin' It Employers required Damas and all of the other Aggrieved Employees to supply knives, mobile phones, automotive vehicles to perform their job duties. However, the Just Wingin' It Employers did not provide these items and did not reimburse Damas and the other Aggrieved Employees for these items. The Just Wingin' It Employers required Damas and the Aggrieved Employees to travel in their automotive vehicles to pick up supplies and chicken. The Just Wingin' It Employers did not reimburse Damas and the Aggrieved Employees for mileage they incurred in such travel. The Just Wingin' It Employers required Damas and the Aggrieved Employees to use their personnel mobile phones to communicate with management for work. The Just Wingin' It Employers did not reimburse Damas and the Aggrieved for such cell phone use or provide them with an alternative to using their personal mobile phones. The Just Wingin' It Employers required Damas and the Aggrieved Employees to use knives they purchased to perform their job duties. The Just Wingin' It Employers did not reimburse Damas and the Aggrieved for such knives. The Just Wingin' It Employers required Damas and the Aggrieved Employees to wear uniforms and pay for replacement uniform items when they wore out. Accordingly, Damas seeks civil penalties for these Labor Code violations that the Just Wingin' It Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent

violation, per pay period (penalties set by Labor Code section 2699(f)(2));
and

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

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

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

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

8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the Just Wingin' It 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 Just Wingin' It Employers failed to state in the wage statements they issued to Damas 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 Just Wingin' It Employers knowingly and intentionally failed to state on the wage statements they issued to Damas 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, the correct name of the employer, and other required information.

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

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

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

calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

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

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

Under Labor Code § 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 Just Wingin' It Employers failed to pay Damas 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 Damas, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, and other compensation. By failing to pay Damas and all of the other Aggrieved Employees as set forth above at the end of employment, the Just Wingin' It Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the other Aggrieved Employees, Damas seeks civil penalties from the Just Wingin' It Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

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

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

Every person employing labor in this state shall:

...

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

Labor Code section 1174.5 states:

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

Section 7 of Wage Order states,

- (A) Every employer shall keep accurate information with respect to each employee including the following:
 - (1) Full name, home address, occupation and social security number.
 - (2) Birth date, if under 18 years, and designation as a minor.
 - (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total

daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

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

The Just Wingin' It Employers failed to compensate Damas 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, all rest break premium wages earned, and related information. As a result, the Just Wingin' It Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Damas and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Damas seeks civil penalties on behalf of herself 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 Just Wingin' It Employers
Re: Amber Ashley Damas
September 12, 2022
Page 22 of 22

Conclusion

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

Sincerely,



David Spivak, Esq.
David@spivaklaw.com

cc: Ms. Amber Ashley Damas

Mr. Walter L. Haines Esq.
United Employees Law Group
4276 Katella Avenue, Suite 301
Los Alamitos, CA 90720
walter@uelglaw.com

Just Wingin' It, Inc.
c/o Agent for service of process
Mr. James Patrick Toal
President, Just Wingin' It, Inc
2612 Barola Lane
Modesto, CA 95356

EXHIBIT 4

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11 Attorneys for Plaintiff(s).
12 AMBER ASHLEY DAMAS, and all others similarly situated
13 (Additional attorneys for Plaintiff(s) on next page)

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **FOR THE COUNTY OF SAN JOAQUIN**

16 **(UNLIMITED JURISDICTION)**

17 AMBER ASHLEY DAMAS, on behalf of
18 herself and all others similarly situated, and the
19 general public,

20 *Plaintiff(s),*

21 vs.

22 JUST WINGIN' IT, INC., a California
23 corporation; and DOES 1-50, inclusive,

24 *Defendant(s).*

FILED
SUPERIOR COURT
2022 SEP 12 PM 2:19
GRANDE L. TOLSON
BY **TREVA PARKER**
DEPUTY

Cas: STK-CV-00E-2022-7989

CLASS ACTION

COMPLAINT FOR:

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

JURY TRIAL DEMANDED



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1 Plaintiff, Amber Ashley Damas (hereafter “Plaintiff” or “Damas”), on behalf of herself
2 and all others similarly situated, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this class action for alleged violations of the California Labor
5 Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”), and the
6 California Business and Professions Code against Defendants Just Wingin' It, Inc., a California
7 corporation, and Does 1 through 50, inclusive (collectively “Defendants”).

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

- 11 (A) Pay all wages, including minimum, regular, and overtime, earned for all
12 hours worked at the correct rates of pay;
- 13 (B) Provide all meal periods;
- 14 (C) Authorize and permit all rest breaks;
- 15 (D) Pay premium wages for unprovided meal periods;
- 16 (E) Pay premium wages for unprovided rest breaks;
- 17 (F) Indemnify for necessary work-related expenditures;
- 18 (G) Issue only accurate and complete itemized wage statements; and
- 19 (H) Timely pay wages upon termination of employment

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

22 **II. THE PARTIES**

23 3. Plaintiff Amber Ashley Damas is a resident of California.

24 4. Defendant Just Wingin' It, Inc. is a corporation organized and existing under the
25 laws of California and also a citizen of California based on Plaintiff’s information and belief.

26 5. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
27 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
28 is informed and believes and thereon alleges that said Defendants are legally responsible for the
wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants



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when ascertained.

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

7. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack of a practice which resulted in Defendants not compensating Plaintiff and the other Class Members or otherwise complying with their rights in accordance with applicable California labor laws as alleged herein.

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

III. CLASS ALLEGATIONS

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

10. **Class Definition:** The Class is defined as follows: All persons Defendants employed in California as hourly, non-exempt employees, individuals performing work comparable to the aforementioned, compensated comparably to the aforementioned, and individuals in similar positions, at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is entered in this action (“Class” or “Class Members”).

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

///



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

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

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

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

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

15 D. Whether Defendants failed to indemnify the Class Members for the
16 reasonable expenses they incurred during the course of performing their duties;

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

19 F. Whether Defendants willfully failed to provide the class with timely final
20 wages;

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

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

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

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



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Members. Plaintiff will fairly and adequately represent and protect the interests of Class Members.

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

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

IV. **STATEMENT OF FACTS**

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

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

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



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of living, business, or commercial quarters;

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

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

19. On approximately August 8, 2021, the Defendants began to employ Damas in Turlock and Riverbank and, over the course of her employment, employed her in the positions of hourly, non-exempt crew member and shift lead. The Defendants continuously employed her until on or about June 28, 2022 when her employment ended.

20. At all relevant times, the Defendants issued wages to Damas and all of the other Class Members on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant times, the Defendants classified Damas and all of the other Class Members as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

21. At all relevant times, the Defendants failed to compensate Damas and all of the other Class Members for all hours worked at the applicable minimum or regular rates of pay. The Defendants frequently interrupted the meals periods of Damas and the Class Members, though they would not pay wages to Damas and the Class Members for time spent in such meal periods clocked out.

22. At all relevant times, the Defendants failed to compensate Damas and all of the other Class Members at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The Defendants



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frequently interrupted the meals periods of Damas and the Class Members, though they would not pay wages to Damas and the Class Members for time spent in such meal periods clocked out. These unpaid work periods combined with other work time resulted in Damas and the Class Members working overtime hours. However, the Defendants did not pay overtime premium wages to Damas and the Class Members for such overtime work.

23. At all relevant times, the Defendants failed to provide Damas and all of the other Class Members with all timely 30-minute, off-duty meal periods. The Defendants frequently interrupted the meals periods of Damas and the Class Members, though they would not pay wages to Damas and the Class Members for time spent in such meal periods clocked out. The Defendants required Damas and the Class Members to work through meal periods because the Defendants understaffed their restaurants. The Defendants also failed to pay premium wages for days on which they failed to provide Damas and all of the other Class Members with meal periods as required by law.

24. At all relevant times, the Defendants failed to authorize and permit Damas and all of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Defendants frequently interrupted the rest breaks of Damas and the Class Members. The Defendants required Damas and the Class Members to work through rest breaks because the Defendants understaffed their restaurants. The Defendants also failed to pay premium wages for days on which they failed to authorize and permit Damas and all of the other Class Members to take rest breaks as required by law.

25. At all relevant times, the Defendants required Damas and all of the other Class Members to incur certain business expenses in the course of performing their duties. The Defendants required Damas and all of the other Class Members to supply mobile phones, transportation between work sites to perform their job duties. However, the Defendants did not provide these items and did not reimburse Damas and the other Class Members for these items. The Defendants required Damas and the Class Members to travel in their automotive vehicles to pick up supplies and chicken. The Defendants did not reimburse Damas and the Class Members for mileage they incurred in such travel. The Defendants required Damas and the Class Members to use their personnel mobile phones to communicate with management for work. The Defendants did not reimburse Damas and the Class Members for such cell phone use or provide them with an alternative to using their personal mobile phones. The Defendants required Damas and the Class



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Members to use knives they purchased to perform their job duties. The Defendants did not reimburse Damas and the Class Members for such knives. The Defendants required Damas and the Class Members to wear uniforms and pay for replacement uniform items when they wore out.

26. At all relevant times, the Defendants failed to issue to Damas and all of the other Class Members complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on the wage statements they issued to Damas and all of the other Class Members 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 related information. The Defendants also failed to state the correct name of the employer on the wage statements, instead stating "Just Wing In It, Inc."

27. At all relevant times, the Defendants also failed to timely pay Damas and all of the other Class Members all earned wages as described above during and at the conclusion of employment.

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

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

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



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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL WAGES AT THE CORRECT RATES**

3 **Lab. Code §§ 510, 1194, 1197, and 1198**

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

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

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

7 **A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT**
8 **THE CORRECT RATES OF PAY**

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

12 33. Section 3 of the Wage Order states:

13 (A) Daily Overtime - General Provisions

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

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

(b) Double the employee’s regular rate of pay for all
hours worked in excess of 12 hours in any workday



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and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

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

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

35. Labor Code section 510 states:

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

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

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

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

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



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1 40. At all relevant times during the applicable limitations period, Defendants failed to
2 compensate Plaintiff and the Class Members for all hours worked, including, but not limited to
3 minimum, regular, overtime and doubletime wages for all minimum, regular, overtime and
4 doubletime hours, respectively, that they worked at the correct rates of pay.

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

9 **SECOND CAUSE OF ACTION**

10 **FAILURE TO PROVIDE MEAL PERIODS**

11 **Lab. Code §§ 226.7 and 512**

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

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

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

17 44. In relevant part, California Labor Code § 1198 states:

18 The maximum hours of work and the standard conditions of labor fixed by the
19 commission shall be the maximum hours of work and the standard conditions of
20 labor for employees. The employment of any employee for longer hours than those
21 fixed by the order or under conditions of labor prohibited by the order is unlawful.

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

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

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



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employee only if the first meal period was not waived.

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

Meal Periods

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

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

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

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

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



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1 compensation for each work day that the meal or rest
2 period is not provided.

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

7 49. Defendants intentionally failed to provide Plaintiff and the Class Members with
8 all required 30-minute duty free meal periods in accordance with the Wage Order. The Defendants
9 frequently interrupted the meals periods of Damas and the Class Members, though they would
10 not pay wages to Damas and the Class Members for time spent in such meal periods clocked out.
11 The Defendants required Damas and the Class Members to work through meal periods because
12 the Defendants understaffed their restaurants.

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

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

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

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

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THIRD CAUSE OF ACTION
FAILURE TO AUTHORIZE AND PERMIT REST BREAKS

Lab. Code § 226.7

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

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

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

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

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

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

Rest Periods

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

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

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

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the



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Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

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

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

60. Defendants intentionally failed to authorize and permit Plaintiff and the Class Members to take all 10-minute rest periods free from any work duties in accordance with the Wage Order.

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

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

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



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1 Defendants required Damas and all of the other Class members to supply mobile phones,
2 transportation between work sites to perform their job duties. However, the Defendants did not
3 provide these items and did not reimburse Damas and the other Class members for these items.
4 The Defendants required Damas and the Class Members to travel in their automotive vehicles to
5 pick up supplies and chicken. The Defendants did not reimburse Damas and the Class Members
6 for mileage they incurred in such travel. The Defendants required Damas and the Class Members
7 to use their personnel mobile phones to communicate with management for work. The Defendants
8 did not reimburse Damas and the Class Members for such cell phone use or provide them with an
9 alternative to using their personal mobile phones. The Defendants required Damas and the Class
10 Members to use knives they purchased to perform their job duties. The Defendants did not
11 reimburse Damas and the Class Members for such knives. The Defendants required Damas and
12 the Class Members to wear uniforms and pay for replacement uniform items when they wore out.

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

17 **FIFTH CAUSE OF ACTION**

18 **FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS**

19 **Lab. Code §§ 226 and 226.2**

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

21 **A. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE** 22 **STATEMENTS**

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

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

27 A. Gross wages earned;

28 B. 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;

C. The number of piece rate units earned and any applicable piece rate if the



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1 employee is paid on a piece-rate basis;

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

4 E. Net wages earned;

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

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

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

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

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

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

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

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

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

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

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



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1 to other documents or information.

2 78. As alleged herein, at all relevant times during the applicable limitations period,
3 Defendants violated California Labor Code section 226 because they did not properly and
4 accurately itemize each employee's gross wages earned, net wages earned, the total hours worked,
5 the corresponding number of hours worked at each rate by the employee and other requirements
6 of California Labor Code section 226. Defendants failed to state in the wage statements they
7 issued to Plaintiff and the other Class Members all their hours worked and wages earned,
8 including, but not limited to, regular and overtime wages for work they performed off-the-clock
9 after clocking-out (as described above). Defendants knowingly and intentionally did not issue
10 either as a detachable part of the check, draft, or voucher paying the employee's wages, or
11 separately if wages are paid by personal check or cash, statements to Plaintiff and the Class
12 Members that state all minimum wages earned, all regular wages earned, all overtime wages
13 earned, all meal period premium wages earned, all rest break premium wages earned, and related
14 information. The defendants also failed to state the correct name of the employer on the way to
15 statements, instead stating "Just Wing In It, Inc."

16 79. Defendants' failure to provide Plaintiff and the other Class Members with accurate
17 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
18 the other Class Members with accurate wage statements but intentionally provided wage
19 statements that Defendants knew were not accurate.

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

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SIXTH CAUSE OF ACTION

WILLFUL FAILURE TO TIMELY PAY FINAL WAGES

Lab. Code §§ 201, 202, and 203

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

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

82. At all relevant times during the applicable limitations period, Plaintiffs and the Class have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 201, 202, and 203, and the Wage Order.

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

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

85. The Defendants failed to pay Damas and all of the other Class Members whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Damas, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, and related compensation.

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

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

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

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SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

Bus. & Prof. Code §§ 17200, *et seq.*

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

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

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

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

92. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class Members were deprived of minimum wages, regular wages, overtime wages, missed meal period premium wages, missed rest period premium wages, uniform expense, phone expenses, telecom expenses, mileage expenses, the costs for knives, and comparable money and property.

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

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

V. PRAYER FOR RELIEF

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

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

B. An order that Plaintiff be appointed class representative;



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- 1 C. An order that counsel for Plaintiff be appointed class counsel;
2 D. Unpaid wages, including minimum, regular, overtime, double-time, split
3 shift, vacation, missed meal period, missed rest period, nonproductive time, rest and recovery
4 time, and reporting time wages;
5 E. Liquidated damages;
6 F. Statutory penalties, including waiting time penalties;
7 G. Restitution;
8 H. Declaratory relief;
9 I. Actual damages;
10 J. Pre-judgment interest;
11 K. Costs of suit;
12 L. Reasonable attorneys' fees; and
13 M. Such other relief as the Court deems just and proper.

14 **VI. DEMAND FOR JURY TRIAL**

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

17 Respectfully submitted,

18 THE SPIVAK LAW FIRM

19 Dated: September 12, 2022

20 By:



21 DAVID G. SPIVAK
22 MAYA CHEAITANI, Attorneys for
23 Plaintiff(s), AMBER ASHLEY
24 DAMAS, and all others similarly
25 situated



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EXHIBIT 5

FILED
SUPERIOR COURT

2013 MAR 23 AM 11:26

BRADLEY E. RILEY, CLERK

DANIELLE JEANDEBIEN
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7 Attorneys for Plaintiff(s),

8 AMBER ASHLEY DAMAS, and all others similarly situated

9 (Additional attorneys for Plaintiff(s) on next page)

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

11 **FOR THE COUNTY OF SAN JOAQUIN**

12 **(UNLIMITED JURISDICTION)**

13 AMBER ASHLEY DAMAS, on behalf of
14 herself, all others similarly situated, and as
15 an "aggrieved employee" on behalf of other
16 "aggrieved employees" under the Labor
Code Private Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 JUST WINGIN' IT, INC., a California
20 corporation; and DOES 1-50, inclusive,

21 *Defendant(s).*

Case No. STK-CV-UOE-2022-7989

FIRST AMENDED CLASS ACTION

COMPLAINT FOR:

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

JURY TRIAL DEMANDED



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1 Plaintiff, Amber Ashley Damas (hereafter “Plaintiff” or “Damas”), on behalf of herself
2 and all others similarly situated, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this class and representative action for alleged violations of the
5 California Labor Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage
6 Order”), and the California Business and Professions Code against Defendants Just Wingin' It,
7 Inc., a California corporation, and Does 1 through 50, inclusive (collectively “Defendants”).

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

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

13 (B) Provide all meal periods;

14 (C) Authorize and permit all rest breaks;

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

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

17 (F) Indemnify for necessary work-related expenditures;

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

19 (H) Timely pay wages upon termination of employment

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

23 **II. THE PARTIES**

24 3. Plaintiff Amber Ashley Damas is a resident of California. On approximately
25 August 8, 2021, the Defendants began to employ Damas in Turlock and Riverbank and, over the
26 course of her employment, employed her in the positions of hourly, non-exempt crew member
27 and shift lead. The Defendants employed her until on or about June 28, 2022, when her
28 employment ended.

4. At all relevant times, Plaintiff was an "employee" within the meaning of Title 8
California Code of Regulations § 11040 and "aggrieved employee" within the meaning of Labor
Code § 2699(c).



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1 individuals in similar positions, at any time during the period beginning four years prior to the
2 filing of this action and ending on the date that final judgment is entered in this action (“Class”
3 or “Class Members”).

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

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

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

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

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

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

21 D. Whether Defendants failed to indemnify the Class Members for the
22 reasonable expenses they incurred during the course of performing their duties;

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

25 F. Whether Defendants willfully failed to provide the class with timely final
26 wages;

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

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

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

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

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

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

23 IV. **STATEMENT OF FACTS**

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

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



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

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

20. On approximately August 8, 2021, the Defendants began to employ Damas in Turlock and Riverbank and, over the course of her employment, employed her in the positions of hourly, non-exempt crew member and shift lead. The Defendants employed her until on or about June 28, 2022 when her employment ended.

21. At all relevant times, the Defendants issued wages to Damas and all of the other Class Members on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant times, the Defendants classified Damas and all of the other Class Members as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

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1 22. At all relevant times, the Defendants failed to compensate Damas and all of the
2 other Class Members for all hours worked at the applicable minimum or regular rates of pay. The
3 Defendants frequently interrupted the meals periods of Damas and the Class Members, though
4 they would not pay wages to Damas and the Class Members for time spent in such meal periods
5 clocked out.

6 23. At all relevant times, the Defendants failed to compensate Damas and all of the
7 other Class Members at the correct rates of pay for all hours worked over eight in a day, over 40
8 in a week, and for the first eight hours of the seventh day of the workweek. The Defendants
9 frequently interrupted the meals periods of Damas and the Class Members, though they would
10 not pay wages to Damas and the Class Members for time spent in such meal periods clocked out.
11 These unpaid work periods combined with other work time resulted in Damas and the Class
12 Members working overtime hours. However, the Defendants did not pay overtime premium
13 wages to Damas and the Class Members for such overtime work.

14 24. At all relevant times, the Defendants failed to provide Damas and all of the other
15 Class Members with all timely 30-minute, off-duty meal periods. The Defendants frequently
16 interrupted the meals periods of Damas and the Class Members, though they would not pay wages
17 to Damas and the Class Members for time spent in such meal periods clocked out. The Defendants
18 required Damas and the Class Members to work through meal periods because the Defendants
19 understaffed their restaurants. The Defendants also failed to pay premium wages for days on
20 which they failed to provide Damas and all of the other Class Members with meal periods as
21 required by law.

22 25. At all relevant times, the Defendants failed to authorize and permit Damas and all
23 of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked
24 or major portion thereof. The Defendants frequently interrupted the rest breaks of Damas and the
25 Class Members. The Defendants required Damas and the Class Members to work through rest
26 breaks because the Defendants understaffed their restaurants. The Defendants also failed to pay
27 premium wages for days on which they failed to authorize and permit Damas and all of the other
28 Class Members to take rest breaks as required by law.

 26. At all relevant times, the Defendants required Damas and all of the other Class
Members to incur certain business expenses in the course of performing their duties. The
Defendants required Damas and all of the other Class Members to supply mobile phones,



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1 transportation between work sites to perform their job duties. However, the Defendants did not
2 provide these items and did not reimburse Damas and the other Class Members for these items.
3 The Defendants required Damas and the Class Members to travel in their automotive vehicles to
4 pick up supplies and chicken. The Defendants did not reimburse Damas and the Class Members
5 for mileage they incurred in such travel. The Defendants required Damas and the Class Members
6 to use their personnel mobile phones to communicate with management for work. The Defendants
7 did not reimburse Damas and the Class Members for such cell phone use or provide them with an
8 alternative to using their personal mobile phones. The Defendants required Damas and the Class
9 Members to use knives they purchased to perform their job duties. The Defendants did not
10 reimburse Damas and the Class Members for such knives. The Defendants required Damas and
the Class Members to wear uniforms and pay for replacement uniform items when they wore out.

11 27. At all relevant times, the Defendants failed to issue to Damas and all of the other
12 Class Members complete and accurate wage statements that state all hours worked at the correct
13 rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on
14 the wage statements they issued to Damas and all of the other Class Members the unpaid wages
15 discussed above. The wage statements fail to state all minimum wages earned, all regular wages
16 earned, all overtime wages earned, all meal period premium wages earned, all rest break premium
17 wages earned, and related information. The Defendants also failed to state the correct name of the
employer on the wage statements, instead stating “Just Wing In It, Inc.”

18 28. At all relevant times, the Defendants also failed to timely pay Damas and all of the
19 other Class Members all earned wages as described above during and at the conclusion of
20 employment.

21 29. At all relevant times, the Defendants failed to maintain accurate employee records
22 of Damas and all of the other Class Members.

23 30. For the reasons stated herein, Plaintiff alleges that as a result of Defendants’
24 unlawful practices and policies, Plaintiff and the Class Members were:

- 25 A. Not provided with all off duty meal periods;
- 26 B. Not authorized and permitted to take all rest break periods;
- 27 C. Not paid one hour’s pay for each workday in which Defendants failed to
28 authorize and permit them to take one or more timely rest periods;

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

3 E. Not paid all wages earned, including, but not limited to, minimum, regular,
4 overtime, and doubletime wages for work performed while clocked out;

5 F. Not indemnified for all necessary business expenditures incurred during
6 the discharge of their duties;

7 G. Not provided with accurate and complete wage statements; and

8 H. Not timely paid all earned and unpaid wages at the time their employment
9 ended.

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PAY ALL WAGES AT THE CORRECT RATES**

12 **Lab. Code §§ 510, 1194, 1197, and 1198**

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

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

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

17 **A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT**
18 **THE CORRECT RATES OF PAY**

19 33. Section 2 of the Wage Order defines "hours worked" as "the time during which an
20 employee is subject to the control of an employer, and includes all the time the employee is
21 suffered or permitted to work, whether or not required to do so."

22 34. Section 3 of the Wage Order states:

23 (A) Daily Overtime - General Provisions

- 24 (1) The following overtime provisions are applicable to
25 employees 18 years of age or over and to employees 16 or
26 17 years of age who are not required by law to attend
27 school and are not otherwise prohibited by law from
28 engaging in the subject work. Such employees shall not be
employed more than eight (8) hours in any workday or
more than 40 hours in any workweek unless the employee
receives one and one-half (1 ½) times such employee's
regular rate of pay for all hours worked over 40 hours in
the workweek. Eight (8) hours of labor constitutes a day's



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work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

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

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

36. Labor Code section 510 states:

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

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



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

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

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

11 41. At all relevant times during the applicable limitations period, Defendants failed to
12 compensate Plaintiff and the Class Members for all hours worked, including, but not limited to
13 minimum, regular, overtime and doubletime wages for all minimum, regular, overtime and
14 doubletime hours, respectively, that they worked at the correct rates of pay.

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

19 **SECOND CAUSE OF ACTION**

20 **FAILURE TO PROVIDE MEAL PERIODS**

21 **Lab. Code §§ 226.7 and 512**

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

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

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

27 45. In relevant part, California Labor Code § 1198 states:

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



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

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

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

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

15 **Meal Periods**

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

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

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

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

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

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

21 50. Defendants intentionally failed to provide Plaintiff and the Class Members with
22 all required 30-minute duty free meal periods in accordance with the Wage Order. The Defendants
23 frequently interrupted the meals periods of Damas and the Class Members, though they would
24 not pay wages to Damas and the Class Members for time spent in such meal periods clocked out.
25 The Defendants required Damas and the Class Members to work through meal periods because
26 the Defendants understaffed their restaurants.

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

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



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1 periods required by California law.

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

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

8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

10 **Lab. Code § 226.7**

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

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

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

16 57. In relevant part, California Labor Code § 1198 states:

17 The maximum hours of work and the standard conditions of labor
18 fixed by the commission shall be the maximum hours of work and
19 the standard conditions of labor for employees. The employment
20 of any employee for longer hours than those fixed by the order or
21 under conditions of labor prohibited by the order is unlawful.

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

23 **Rest Periods**

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

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

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

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

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

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

61. Defendants intentionally failed to authorize and permit Plaintiff and the Class Members to take all 10-minute rest periods free from any work duties in accordance with the Wage Order.

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

63. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. Defendants did not seek an exemption from the rest period protections of the



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1 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
2 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed
3 to authorize and permit them to take 10-minute rest periods every four hours worked or major
4 fraction thereof.

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

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

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

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

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

26 **FOURTH CAUSE OF ACTION**

27 **FAILURE TO INDEMNIFY**

28 **Lab. Code § 2802**

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

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

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

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

5 A. Gross wages earned;

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

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

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

13 E. Net wages earned;

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

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

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

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

22 77. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
23 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
24 the employer fails to provide accurate and complete information as required by California Labor
25 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
26 alone one or more of the following:

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

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



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

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

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

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

11 79. As alleged herein, at all relevant times during the applicable limitations period,
12 Defendants violated California Labor Code section 226 because they did not properly and
13 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
14 the corresponding number of hours worked at each rate by the employee and other requirements
15 of California Labor Code section 226. Defendants failed to state in the wage statements they
16 issued to Plaintiff and the other Class Members all their hours worked and wages earned,
17 including, but not limited to, regular and overtime wages for work they performed off-the-clock
18 after clocking-out (as described above). Defendants knowingly and intentionally did not issue
19 either as a detachable part of the check, draft, or voucher paying the employee’s wages, or
20 separately if wages are paid by personal check or cash, statements to Plaintiff and the Class
21 Members that state all minimum wages earned, all regular wages earned, all overtime wages
22 earned, all meal period premium wages earned, all rest break premium wages earned, and related
23 information. The defendants also failed to state the correct name of the employer on the way to
24 statements, instead stating “Just Wing In It, Inc.”

25 80. Defendants’ failure to provide Plaintiff and the other Class Members with accurate
26 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
27 the other Class Members with accurate wage statements but intentionally provided wage
28 statements that Defendants knew were not accurate.

81. As a result of being provided with inaccurate wage statements by Defendants,
Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
wage statements were violated and they were misled about the amount of wages they had actually



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1 earned and were owed. In addition, the absence of accurate information on their wage statements
2 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
3 and mathematical computations to determine the amounts of wages owed, has caused difficulty
4 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
5 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
6 and the other Class Members were not able to ascertain from the wage statements whether
7 Defendants complied with their obligations under California Labor Code section 226(a).

8 **SIXTH CAUSE OF ACTION**

9 **WILLFUL FAILURE TO TIMELY PAY FINAL WAGES**

10 **Lab. Code §§ 201, 202, and 203**

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

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

13 83. At all relevant times during the applicable limitations period, Plaintiffs and the
14 Class have been non-exempt employees of Defendants and entitled to the benefits and protections
15 of California Labor Code §§ 201, 202, and 203, and the Wage Order.

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

18 85. Labor Code § 202 provides that all earned and unpaid wages of an employee who
19 quits after providing at least 72-hours notice before quitting are due and payable at the time of
20 quitting and that all earned and unpaid wages of an employee who quits without providing at least
21 72-hours notice before quitting are due and payable within 72 hours.

22 86. The Defendants failed to pay Damas and all of the other Class Members whose
23 employment ended all of the earned but unpaid wages described above by the conclusion of their
24 employment with Damas, including minimum wages, regular wages, overtime wages, unprovided
25 meal period premium wages, unprovided rest break premium wages, and related compensation.

26 87. By failing to pay such earned wages to Plaintiff and the Class Members,
27 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
28 § 201 or § 202.

88. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
and the Class Members all of their earned and unpaid wages (described above) have been willful
in that, at all relevant times, Defendants have deliberately maintained policies and practices that



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25th Floor
Los Angeles, CA 90067

1 violate the requirements of the Labor Code and the Wage Order, even though at all relevant times,
2 they have had the ability to comply with those legal requirements.

3 89. Pursuant to Labor Code § 203, Plaintiffs seeks waiting time penalties on behalf of
4 themselves and the Class, in amounts subject to proof not to exceed 30 days of waiting time
5 penalties for each Class Member.

6 **SEVENTH CAUSE OF ACTION**

7 **UNFAIR COMPETITION**

8 **Bus. & Prof. Code §§ 17200, *et seq.***

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

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

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

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

19 93. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
20 Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class
21 Members were deprived of minimum wages, regular wages, overtime wages, missed meal period
22 premium wages, missed rest period premium wages, uniform expense, phone expenses, telecom
23 expenses, mileage expenses, the costs for knives, and comparable money and property.

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

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

///



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EIGHT CAUSE OF ACTION

CIVIL PENALTIES

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

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

97. The “Aggrieved Employees” are all members of the Class defined above who Defendants employed during the period beginning September 12, 2021 and ending on the date that final judgment is entered in this action.

98. Labor Code § 204 states

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

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

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

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

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

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



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

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

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

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

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

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

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

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

///



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

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

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

18 V. PRAYER FOR RELIEF

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

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

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

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

25 D. Unpaid wages, including minimum, regular, overtime, double-time, split
26 shift, vacation, missed meal period, missed rest period, nonproductive time, rest and recovery
27 time, and reporting time wages;

28 E. Liquidated damages;

F. Civil Penalties;



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- 1 G. Statutory penalties, including waiting time penalties;
2 H. Restitution;
3 I. Declaratory relief;
4 J. Actual damages;
5 K. Pre-judgment interest;
6 L. Costs of suit;
7 M. Reasonable attorneys' fees; and
8 N. Such other relief as the Court deems just and proper.

105. **DEMAND FOR JURY TRIAL**

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

11 Respectfully submitted,

12 THE SPIVAK LAW FIRM

13 Dated: March 23, 2023

14 By:



15 DAVID G. SPIVAK
16 MAYA CHEAITANI, Attorneys for
17 Plaintiff(s), AMBER ASHLEY
18 DAMAS, and all others similarly
19 situated
20
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PROOF OF SERVICE

State of California,
County of Los Angeles

I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 1801 Century Park East, 25th Floor, Los Angeles, CA 90067.

I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On March 23, 2023, I served the foregoing document described as **FIRST AMENDED CLASS ACTION COMPLAINT** on interested parties by placing a true and correct copy thereof enclosed in a sealed envelope, with postage fully prepaid, addressed as follows:

Sarkis A. Atoyan, Esq.
ATKINSON, ANDELSON, LOYA,
RUUD & ROMO
201 South Lake Avenue, Suite 300
Pasadena, California 91101
Sarkis.Atoyan@aalrr.com
Janine.Holman@aalrr.com

Michael J. O' Connor, Jr., Esq.
ATKINSON, ANDELSON, LOYA,
RUUD & ROMO
4275 Executive Square, Suite 710
La Jolla, CA 92037
Michael.OConnor@aalrr.com
Kaila.Simoneit@aalrr.com

____ (BY MAIL) I caused such an envelope to be mailed by placing it for collection and mailing, in the course of ordinary business practice, with other correspondence of The Spivak Law Firm, 1801 Century Park East, 25th Floor, Los Angeles, CA 90067.

XXXX (BY EMAIL) I caused the documents to be sent to the persons at the electronic service addresses listed above from my electronic service address stacy@spivaklaw.com.

EXECUTED on March 23, 2023, at Thousand Oaks, California.

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



STACY SUSSMAN



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EXHIBIT 6

**EXHIBIT OMITTED BY
PLAINTIFF**

EXHIBIT 7

EXHIBIT 8

41
FILED

Superior Court Of California
County Of Los Angeles

JUN 21 2012

John A. Clarke, Executive Officer/Clerk
BY Nancy Sandoval Deputy

Received
MAY 18 2012

Fax Filing

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

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

Plaintiffs,

vs.

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

Defendants.

Case No.: BC430633

**~~(PROPOSED)~~ JUDGMENT AGAINST
DEFENDANT RAMIL ABALKHAD**

Action filed: 01/28/2010
CMC: 09/29/2010, 8:30 a.m.
FSC: 04/09/2012, 8:30 a.m.
Trial: 04/09/2012, 8:30 a.m.
Dept: 41, Hon. Ronald M.
Sohigian

Plaintiffs Alina Ghrdilyan and Evgenia Sultanian ("Plaintiffs") filed a complaint Defendant RJ Financial, Inc., a California corporation, on January 28, 2010. On February 24, 2010, Plaintiffs filed a First Amended Complaint which added Ramil Abalkhad, an individual, as a defendant, and a claim against him for civil penalties under the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.* ("The PAGA"). In the First Amended Complaint, the Plaintiffs contended that Defendants violated Labor Code sections 226.7, 510, 512, 1194, 1197, and 1198 and Industrial Welfare Commission Wage Order 7-2001 and in so doing, was liable to the Plaintiffs and other aggrieved employees under the PAGA.

On July 26, 2011, the Court granted Plaintiffs' motion to compel further responses to deposition questions, and ordered Defendant Ramil Abalkhad to pay monetary sanctions to

1 Plaintiffs in the amount of \$2,700.00. Defendant Ramil Abalkhad has not paid such amount to
2 date.

3 On April 10 through 23, 2012, the case was tried in Department 41 of the above-entitled
4 court, the Honorable Ronald M. Sohigian, presiding. Defendant Ramil Abalkhad was present
5 throughout the trial. Plaintiffs Alina Ghrdilyan and Evgenia Sultanian appeared for the trial.
6 David Spivak of the Spivak Law Firm and Louis Benowitz of the Law Offices of Louis
7 Benowitz represented the Plaintiffs, Alina Ghrdilyan and Evgenia Sultanian, and the other
8 aggrieved employees. F. Michael Sabzevar of the Law Office of Michael Sabzevar represented
9 the Defendant Ramil Abalkhad.

10 Before the trial without a jury began, Defendant RJ Financial, Inc. petitioned for
11 bankruptcy protection. Pursuant to 11 U.S.C. section 362, the claims against RJ Financial, Inc.
12 were stayed, and the case proceeded to trial against Defendant Ramil Abalkhad only on the
13 claim for civil penalties under the PAGA.

14 The jury was waived. Testimony was heard and documentary evidence was admitted.
15 Following argument, the court considered the evidence. Only Plaintiffs requested a written
16 statement of decision, however, on April 23, 2012, the Court orally presented its tentative
17 statement of decision on the record.

18 **Plaintiff Alina Ghrdilyan**

19 In its tentative statement of decision, the Court awarded the following amounts to
20 Plaintiff Alina Ghrdilyan: (1) For violations of Labor Code sections 510 and 512, \$7,654.60
21 pursuant to Labor Code section 558; and (2) For violations of Labor Code sections 1198 and
22 Wage Order 7, \$14,218.00 pursuant to Labor Code section 1197.1. This totals \$21,872.60 for
23 Plaintiff Alina Ghrdilyan, of which \$4,572.60 is wages. Of the \$17,300.00 in civil penalties that
24 do not represent wages, twenty-five percent (25%), \$4,325.00, is awarded to Plaintiff Alina
25 Ghrdilyan, and the remaining seventy-five percent (75%), \$12,975.00, is awarded to the
26 California Labor & Workforce Development Agency pursuant to Labor Code § 2699(i).

27 **Plaintiff Evgenia Sultanian**

28 Additionally, the Court awarded the following amounts to Plaintiff Evgenia Sultanian:
(1) For violations of Labor Code sections 510 and 512, \$5,264.19 pursuant to Labor Code
section 558; and (2) For violations of Labor Code sections 1198 and Wage Order 7, \$13,936.50
pursuant to Labor Code section 1197.1. This totals \$19,200.69 for Plaintiff Evgenia Sultanian,

of which \$3,000.69 represents wages. Of the \$16,200.00 in civil penalties that do not represent wages, twenty-five percent (25%), \$4,050.00, is awarded to Plaintiff Evgenia Sultanian, and the remaining seventy-five percent (75%), \$12,150.00, is awarded to the California Labor & Workforce Development Agency pursuant to Labor Code § 2699(i).

Other Aggrieved Employees

Moreover, the Court awarded the following amounts to the other aggrieved employees:

(1) For violations of Labor Code sections 510 and 512, \$125,000.00 pursuant to Labor Code section 558; and (2) For violations of Labor Code sections 1198 and Wage Order 7, \$200,000.00 pursuant to Labor Code section 1197.1. This totals \$325,000.00 for the aggrieved employees. Of the \$325,000.00 in civil penalties, twenty-five percent (25%), \$81,250.00, is awarded to the aggrieved employees other than the two named-Plaintiffs, and the remaining seventy-five percent (75%), \$243,750.00, is awarded to the California Labor & Workforce Development Agency pursuant to Labor Code § 2699(i).

As part of its statement of decision, the Court stated that, in committing the acts that led to the Court's award, Defendant Ramil Abalkhad had "the intention simply of trying to run things through and get off as cheaply as he could while he was running his businesses."

After more than ten days had passed from the Court's tentative statement of decision, Defendant Ramil Abalkhad did not request a written statement of decision, object to the tentative statement of decision, nor specify omitted issues to be included in the statement of decision. The Court adopted that tentative statement of decision as its final statement of decision in the manner prescribed by Rule of Court 3.1590(c)(4).

In accordance with the court's Statement of Decision, it is hereby ORDERED, ADJUDGED AND DECREED:

~~1. Plaintiffs Alina Ghrdilyan and Evgenia Sultanian shall have judgment against Defendant Ramil Abalkhad in the amount of \$2,700.00 as sanctions against Defendant Ramil Abalkhad pursuant to the Court's July 26, 2011 decision on Plaintiffs' motion to compel.~~

1 Plaintiff Alina Ghrdilyan shall have judgment under the PAGA against Defendant Ramil Abalkhad in the amount of \$8,897.60.

2 Plaintiff Evgenia Sultanian shall have judgment under the PAGA against Defendant Ramil Abalkhad in the amount of \$7,050.69.

1 **43** The aggrieved employees shall have judgment under the PAGA against
2 Defendant Ramil Abalkhad in the amount of \$81,250.

3 **4** The California Labor & Workforce Development Agency shall have judgment
4 against Defendant Ramil Abalkhad in the amount of \$268,875.00.

5 The total amount awarded against Defendant Ramil Abalkhad, exclusive of interest,
6 attorneys' fees and costs, is ~~\$268,875.00~~ **\$366,073.29**

7 Defendant Ramil Abalkhad must pay the Plaintiffs and their attorneys on the First
8 Amended Complaint attorneys' fees in the amount of \$ **581,770.78** ^{TP} and costs in the amount
9 of \$ **21,272.88** ^{AP}

10 The total amount awarded against Defendant Ramil Abalkhad, inclusive of attorneys'
11 fees and costs, is \$ **969,116.95** ^{TP}, plus interest thereon at the legal rate of ten percent (10%)
12 per year.

13 IT IS SO ORDERED, ADJUDGED AND DECREED.

14 **JUNE 21, 2012**
15 DATE

Ronald M. Sohigian
16 THE HONORABLE RONALD
17 SOHIGIAN, JUDGE OF THE
18 SUPERIOR COURT
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1 PROOF OF SERVICE

2
3 State of California,
County of Los Angeles

4 1. I am a citizen of the United States and am employed in the County
5 of Los Angeles, State of California. I am over the age of 18 years, and not a
6 party to the within action. My business address is 9454 Wilshire Blvd., Suite
303, Beverly Hills, California 90212.

7 2. I am familiar with the practice of The Spivak Law Firm, for
8 collection and processing of correspondence for mailing with the United
9 States Postal Service. It is the practice that correspondence is deposited
with the United States Postal Service the same day it is submitted for
mailing.

10 On Friday, May 18, 2012, I served the foregoing document described as
11 [PROPOSED] JUDGMENT AGAINST DEFENDANT RAMIL ABALKHAD on interested parties by
placing a true and correct copy thereof enclosed in a sealed envelope, with
12 postage fully prepaid, addressed as follows:

13 F. Michael Sabzevar, Esq.
Law Ofc F Michael Sabzevar
16633 Ventura Blvd #555
14 Encino, CA 91436
msabzevar@aol.com

15
16 XXXX (BY MAIL) I caused such an envelope to be mailed by placing it for
collection and mailing, in the course of ordinary business practice, with
17 other correspondence of The Spivak Law Firm, 9454 Wilshire Boulevard, Suite
303, Beverly Hills, California 90212.

18
19 (BY PERSONAL SERVICE) My agent delivered such envelope by hand to the
home/offices of the addressee.

20 EXECUTED on Friday, May 18, 2012, at Beverly Hills, California.

21 XXXX (State) I declare under penalty of perjury under the laws of the State
22 of California that the above is true and correct.

23 (Federal) I declare that I am employed in the office of a member of the
bar of this court at whose direction the service was made.

24 
25 BROCK OYAMA

26
27
28
7/1/2012

EXHIBIT 9

1 DAVID G. SPIVAK, State Bar # 179684

2 THE SPIVAK LAW FIRM

3 9454 Wilshire Blvd.

4 Suite 303

5 Beverly Hills, CA 90212

6 Telephone (310) 499-4730

7 Facsimile (310) 499-4739

8 Email david@spivaklaw.com

9 Attorney for Plaintiffs,

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

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

12 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

13 **(UNLIMITED JURISDICTION)**

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

16 *Plaintiffs,*

17 vs.

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

21 *Defendants.*

Case No.: BC430633

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

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

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

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

25
26
27
THE
SPIVAK
LAW FIRM

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

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

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

4 INTRODUCTION

5 1. This action arises out of the allegedly unlawful labor practices of Defendants in
6 California. Through this class and collective action, Plaintiffs seek to represent the below-
7 defined classes and subclasses of persons who Defendants have allegedly committed labor law
8 violations against including, but not limited to, wage underpayments. As a result of the
9 allegedly unlawful labor conduct described herein, Plaintiffs now seek declaratory and
10 injunctive relief, damages, restitution, penalties, and other proper relief on behalf of himself and
11 other similarly situated persons.

12 PARTIES AND CONDUCT

13 A. Plaintiffs and Class Members

14 2. During the applicable time period, Plaintiff ALINA GHRDILYAN, an
15 individual, was employed in a position that she alleges Defendants have classified as non-
16 exempt from the overtime requirements of the California Labor Code and the applicable wage
17 order(s).

18 3. During the applicable time period, Plaintiff EVGENIA SULTANIAN, an
19 individual, was employed in a position that she alleges Defendants have classified as non-
20 exempt from the overtime requirements of the California Labor Code and the applicable wage
21 order(s).

22 4. At relevant times during the applicable limitations periods, Plaintiffs allege that
23 Defendants have failed to compensate them and Defendants’ other California employees for all
24 of the hours that they have worked, failed to compensate them for all of the overtime hours that
25 they have worked at overtime rates, failed to provide them with all required rest and meal
26 periods, failed to pay them additional required wages for rest and meal periods, improperly
27 denied earned wages that Defendants without authorization deducted from paychecks or
required reimbursement for, failed to indemnify for necessary expenditures, failed to timely pay

1 all final wages owed, caused them to forfeit vested vacation pay, and/or intentionally failed to
2 provide them with accurate written wage statements.

3 **B. Defendants**

4 5. Defendant RJ FINANCIAL, INC. is a corporation organized under the laws of
5 California. It was at all relevant times a “person” under Labor Code § 18.

6 6. Defendant RAMIL ABALKHAD (also known as Randy Abalkhad), an
7 individual residing in the County of Los Angeles, State of California, was at all relevant times
8 the chief executive officer of Defendant RJ FINANCIAL, INC. At all relevant times,
9 ABALKHAD acted on behalf of RJ FINANCIAL, INC. and oversaw RJ FINANCIAL, INC.’s
10 accounting and bookkeeping and all administrative functions, including payroll. The company
11 maintained books and records by staff members under his direction. At all relevant times,
12 ABALKHAD was a “person acting on behalf of an employer” (RJ FINANCIAL, INC. and the
13 Doe Defendants) who caused to be violated the provisions of the Labor Code regulating hours
14 and days of work in orders of the Industrial Welfare Commission as described below under
15 Labor Code § 558. Also, he was at all relevant times a “person” under Labor Code § 18.

16 7. Plaintiffs are ignorant of the true names, capacities, relationships, and extents of
17 participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but
18 are informed and believe and thereon allege that said defendants are legally responsible for the
19 wrongful conduct alleged herein and therefore sue these defendants by such fictitious names.
20 Plaintiffs will amend the complaint to allege the true names and capacities of the DOE
21 defendants when ascertained.

22 8. Plaintiffs are informed and believe and thereon allege that, at all relevant times
23 herein, all defendants were the agents, employees and/or servants, masters or employers of the
24 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
25 and scope of such agency or employment, and with the approval and ratification of each of the
26 other defendants.

27 9. At all relevant times, in perpetrating the acts and omissions alleged herein,
defendants, and each of them, acted pursuant to and in furtherance of a policy and practice of

1 not paying Plaintiffs and other members of the below-described classes in accordance with
2 applicable California labor laws as alleged herein.

3 10. Plaintiffs are informed and believe and thereon allege that each and every one of
4 the acts and omissions alleged herein were performed by, and/or attributable to, all defendants,
5 each acting as agents and/or employees, and/or under the direction and control of each of the
6 other defendants, and that said acts and failures to act were within the course and scope of said
7 agency, employment and/or direction and control.

8 **CLASS ACTION ALLEGATIONS**

9 11. Plaintiffs incorporate paragraphs 1 through 10 of this Complaint as if fully
10 alleged herein.

11 12. Plaintiffs bring this action on behalf of themselves and all others similarly
12 situated as a class action pursuant to California Code of Civil Procedure § 382. Plaintiffs seek to
13 represent the following classes and subclasses of current, future, and/or former employees of
14 Defendants defined below:

15 **Wages Class:** All persons employed by Defendants in California who
16 have not been paid for all hours worked during the period beginning four
17 (4) years prior to the filing of this action and ending on the date that final
18 judgment is entered in this action.

19 **Overtime Class:** All persons employed by Defendants in California who
20 have not been paid at the legally required overtime rates for all hours
21 worked in excess of eight (8) hours in one (1) day and/or forty (40) hours
22 in one (1) week during the period beginning four (4) years prior to the
23 filing of this action and ending on the date that final judgment is entered in
24 this action.

25 **Rest Periods Class:** All persons employed by Defendants in California
26 who were not provided with a net rest period of at least ten (10) minutes
27 per each four (4) hour work period, or major portion thereof, during the
28 period beginning four (4) years prior to the filing of this action and ending
29 on the date that final judgment is entered in this action.

30 **Meal Periods Class:** All persons employed by Defendants in California
31 who were not provided with uninterrupted thirty (30) minute meal periods
32 during each work period of five (5) or more hours during the period
33 beginning four (4) years prior to the filing of this action and ending on the

1 date that final judgment is entered in this action.

2 **Vacation Pay Class:** All persons employed by Defendants in California
3 who earned vested paid vacation days without receiving
4 compensation for each vested paid vacation day during the
5 period beginning four (4) years prior to the filing of this action
6 and ending on the date that final judgment is entered in this
7 action.

8 **Unauthorized Deduction Class:** All persons employed by Defendants in
9 California whose wages were deducted by Defendants without statutory
10 authority or written consent during the period beginning four (4) years
11 prior to the filing of this action and ending on the date that final judgment
12 is entered in this action.

13 **Inaccurate Wage Statement Class:** All persons employed by Defendants
14 in California, including but not limited to members of the **Wages Class,**
15 **Overtime Class, Rest Period Class, Meal Period Class, and/or**
16 **Unauthorized Deduction Class** during the period beginning four (4)
17 years prior to the filing of this action and ending on the date that judgment
18 is entered in this action.

19 **Former Employee Class:** All persons employed by Defendants in
20 California, including, but not limited to, members of the **Wages Class,**
21 **Overtime Class, Rest Period Class, Meal Period Class, Unauthorized**
22 **Deduction Class, and/or Inaccurate Wage Statement Class** whose
23 employment with Defendants ended during the period beginning four (4)
24 years prior to the filing of this action and ending on the date that final
25 judgment is entered in this action, who either: a) were discharged and not
26 paid all wages owed on or before the day of termination; or b) resigned
27 without notice and were not paid all wages owed within 72 hours of
resignation; or c) resigned with 72 hours notice and were not paid all
wages owed on or before the day of quitting.

Indemnification Class: All persons employed by Defendants in
California, including, but not limited to, members of the **Wages Class,**
Overtime Class, Rest Period Class, Meal Period Class, Unauthorized
Deduction Class, and/or Inaccurate Wage Statement Class, who
Defendants failed to indemnify for all necessary expenditures incurred by
such employees in direct consequence of the discharge of their duties
during the period beginning four (4) years prior to the filing of this action
and ending on the date that final judgment is entered in this action.

UCL Class: All persons who are members of the **Wages Class, Rest**
Period Class, Meal Period Class, Overtime Class, Inaccurate Wage
Statement Class, Former Employee Class, Unauthorized Deduction

1 **Class, and/or Indemnification Class**, who have been employed by
2 Defendants in California at any time during the period beginning four (4)
3 years prior to the filing of this action and ending on the date that final
4 judgment is entered in this action.

5 **All-Inclusive Class:** All members of the **Wages Class, Overtime Class,**
6 **Rest Periods Class, Meal Periods Class, Inaccurate Wage Statement**
7 **Class, Unauthorized Deduction Class, Former Employee Class, and/or**
8 **Indemnification Class.**

9 13. This action has been brought and may be maintained as a class action pursuant to
10 California Code of Civil Procedure § 382 because there is a well-defined community of interest
11 among the persons who comprise readily ascertainable class.

12 14. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
13 management of this case as a class action.

14 15. The class members are so numerous that the individual joinder of each individual
15 class member is impractical. While Plaintiffs do not currently know the exact number of class
16 members, Plaintiffs are informed and believe and thereon allege that the actual number of class
17 members exceeds the minimum number required for numerosity purposes under California law.

18 16. Common questions of law and fact exist as to all class members and predominate
19 over any questions which affect only individual class members. These questions include, but are
20 not limited to:

21 A. Do Defendants maintain policies or practices that systematically cause
22 the **Wages Class** not to be paid for all hours worked?

23 B. Have members of the **Overtime Class** been paid at the legally required
24 overtime rates for all hours worked in excess of eight (8) hours in one (1) day?

25 C. Do Defendants maintain policies or practices that systematically cause
26 the **Overtime Class** not to be paid at overtime rates for all overtime hours worked?

27 D. Did Defendants fail to provide members of the **Rest Period Class** with
all legally required rest periods in violation of California law?

 E. Did Defendants fail to provide members of the **Meal Period Class** with
all legally required meal periods in violation of California law?

 F. Did Defendants fail to pay members of the **Rest Period Class** the

1 additional wages required for rest periods that were not provided?

2 G. Did Defendants fail to pay members of the **Meal Period Class** the
3 additional wages required for meal periods that were not provided?

4 H. Did Defendants deduct wages from the paychecks of members of the
5 **Unauthorized Deduction Class** without written consent?

6 I. Did Defendants intentionally fail to provide members of the **Inaccurate**
7 **Wage Statement Class** with accurate written wage statements?

8 J. Did Defendants intentionally fail to indemnify members of the
9 **Indemnification Class** for all necessary expenditures incurred by the members of the class in
10 direct consequence of the discharge of their duties?

11 K. Are the vacation days received by members of the **Vacation Pay Class**
12 subject to forfeiture?

13 L. Did Defendants fail to timely pay **Former Employee Class** all final
14 wages owed following termination or discharge?

15 M. Are Defendants liable to members of the **Former Employee Class** for
16 continuation wages under California Labor Code § 203?

17 N. Did Defendants engage in unfair competition within the meaning of
18 California Business & Professions Code §§ 17200, *et seq.*, with respect to members of the **UCL**
19 **Class**?

20 O. Are class members entitled to prejudgment interest?

21 P. Are class members entitled to attorneys' fees?

22 17. Plaintiffs' claims are typical of the other class members' claims. Plaintiffs are
23 informed and believe and thereon allege that Defendants have a policy or practice of failing to
24 comply with the California Labor Code and the California Business and Professions Code as
25 alleged herein.

26 18. Plaintiffs will fairly and adequately represent and protect the interests of the
27 other class members. Plaintiffs have no interests adverse to the interests of the other class
members. In addition, Plaintiffs are represented by counsel experienced in wage and hour class

1 action cases.

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

12 **FIRST CLAIM FOR RELIEF**

13 **FAILURE TO PAY ALL EARNED HOURLY WAGES IN VIOLATION OF THE**
14 **CALIFORNIA LABOR CODE**

15 **(By Plaintiffs, the Wages Class, and the Overtime Class)**

16 20. Plaintiffs incorporate paragraphs 1 through 19 of the Complaint as if fully
17 alleged herein.

18 21. At all relevant times, Plaintiffs and the other members of the **Wages Class** and
19 the **Overtime Class** have been entitled to the protections of the California Labor Code,
20 including California Labor Code §§ 204, 510, and applicable Wage order(s). These protections
21 include the rights to be timely paid all wages earned at the legally required rates for all hours
22 worked.

23 22. California Labor Code § 510(a) requires employers to compensate employees at
24 one and one-half times their regular rates of pay for:

- 25 A. All hours worked in excess of eight hours in one workday;
26 B. All hours worked in excess of forty hours in one workweek; and,
27 C. The first eight hours worked on a seventh consecutive workday during a
workweek.

1 226.7 and 512, and Wage order 11.

2 29. Pursuant to the applicable wage order(s), Defendants are required to provide
3 Plaintiffs and the other members of the **Rest Period Class** with net rest periods of a least ten
4 (10) minutes for each four (4) hour work period, or major portion thereof, during any given
5 workday.

6 30. Pursuant to California Labor Code § 226.7, Defendants are required to pay
7 Plaintiffs and the other members of the **Rest Period Class** one (1) additional hour of wages for
8 each rest period not provided in accordance with the applicable wage order(s).

9 31. During the applicable limitations period, Defendants failed to provide Plaintiffs
10 with net rest periods of at least ten (10) minutes for every four (4) hours work period, or major
11 portion thereof, and failed to pay them the required additional wages for rest periods not
12 provided to her.

13 32. Plaintiffs are informed and believe and thereon allege that Defendants maintain a
14 policy or practice of failing to provide other members of the **Rest Period Class** with net rest
15 periods of at least ten (10) minutes for every four (4) hours worked and of failing to pay them
16 the required additional wages for rest periods not provided to them.

17 33. Pursuant to California Labor Code § 512 and Industrial Welfare Commission
18 Order 7-2001, Defendants are required to provide Plaintiffs and the other members of the **Meal**
19 **Period Class** with an uninterrupted thirty (30) minute meal period for each five (5) hour work
20 period during any given workday.

21 34. Pursuant to California Labor Code § 226.7, Defendants are required to pay
22 Plaintiffs and the other members of the **Meal Period Class** one (1) additional hour of wages for
23 each meal period not provided in accordance with Wage order 11.

24 35. During the applicable limitations period, Defendants failed to provide Plaintiff
25 with an uninterrupted thirty (30) minute meal period for each five (5) hour work period,
26 including a second uninterrupted thirty (30) minute meal period on days he worked more than
27 ten (10) hours, and failed to pay him the required additional wages for rest periods not provided
to her.

1 36. Plaintiffs are informed and believe and thereon allege that Defendants maintain a
2 policy or practice of failing to provide other members of the **Meal Period Class** with
3 uninterrupted thirty (30) minute meal periods for each five (5) hour work period, including
4 second uninterrupted thirty (30) minute meal periods on days they worked more than ten (10)
5 hours, and failed to pay him the required additional wages for meal periods not provided to her.

6 37. Plaintiffs on behalf of themselves and the other members of the **Rest Period**
7 **Class** and the **Meal Period Class**, seeks declaratory and injunctive relief, damages for unpaid
8 wages owed, interest thereon and costs of suit pursuant to California Labor Code § 218.6, and
9 reasonable attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

10 **THIRD CLAIM FOR RELIEF**

11 **FORFEITURE OF VACATION PAY**

12 **(By Plaintiffs and the Vacation Pay Class)**

13 38. Plaintiffs incorporate paragraphs 1 through 37 of the Complaint as if fully
14 alleged herein.

15 39. Under California Labor Code § 227.3 and applicable case law, vested paid
16 vacation benefits and other similar forms of paid time off that earned based on labor performed
17 are considered wages and cannot be subject to forfeiture without providing compensation for
18 forfeited days at the applicable rates required by law.

19 40. Pursuant to written company policies, members of the **California Vacation Pay**
20 **Class** have earned vested paid vacation days, including, but not limited to, "Personal Holidays"
21 and/or "Management Recognition Days," that are explicitly subject to unpaid forfeiture
22 pursuant to written company policies if they are not used within specified time periods.

23 41. During the applicable limitations period, Plaintiff has earned vested paid
24 vacation days, including, but not limited to, "Personal Holidays" and "Management Recognition
25 Days," without being compensated by Defendants for each vested paid vacation day.

26 42. Plaintiff is informed and believes and thereon alleges that Defendants have
27 maintained policies or practices of causing members of the **California Vacation Pay Class** to
forfeit vested paid vacation days, including, but not limited to, "Personal Holidays" and/or

1 "Management Recognition Days," without compensating them for each vested paid vacation
2 day.

3 43. As a result of the above, Plaintiff seeks declaratory and injunctive relief,
4 damages for unpaid wages owed, interest thereon and costs of suit pursuant to California Labor
5 Code § 218.6, and reasonable attorney's fees pursuant to California Code of Civil Procedure §
6 1021.5.

7 **FOURTH CLAIM FOR RELIEF**

8 **FAILURE TO PROVIDE ACCURATE, WRITTEN WAGE STATEMENTS**

9 **(By Plaintiffs and the All-Inclusive Class)**

10 44. Plaintiffs incorporate paragraphs 1 through 43 of the Complaint as if fully
11 alleged herein.

12 45. At all relevant times, Plaintiffs and the other members of the **All-Inclusive Class**
13 have been employees of Defendants entitled to the benefits and protections of California Labor
14 Code § 226. Pursuant to California Labor Code § 226(a), Plaintiffs and the other class members
15 were entitled to receive, semimonthly or at the time of each payment of wages, an accurate
16 itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable
17 hourly rates in effect during the pay period; and d) the corresponding number of hours worked
18 at each hourly rate by the employee.

19 46. Defendants failed to provide Plaintiffs accurate itemized statements in
20 accordance with California Labor Code § 226(a) because Plaintiffs' wage statements did not,
21 among other things, accurately reflect all of the hours that they actually worked, the descriptions
22 for all of the hours they actually worked, and the corresponding rates of pay for all of the hours
23 they actually worked.

24 47. Plaintiffs are informed and believe and thereon allege that, at all relevant times
25 during the applicable limitations period, Defendants maintained a policy or practice of not
26 providing the other members of the **All-Inclusive Class** wage statements did not, among other
27 things, accurately reflect all of the hours that they actually worked, the descriptions for all of the
hours they actually worked, and the corresponding rates of pay for all of the hours they actually

1 worked.

2 48. Defendants' failure to provide Plaintiffs and the other members of the **All-**
3 **Inclusive Class** with accurate wage statements was knowing and intentional. Defendants had
4 the ability to provide Plaintiffs and the other class members with accurate wage statements but
5 intentionally provided wage statements that Defendants knew were not accurate.

6 49. As a result of being provided with inaccurate wage statements by Defendants,
7 Plaintiffs and the other members of the **All-Inclusive Class** have suffered an injury. Their legal
8 rights to receive accurate wage statements were violated and they were misled about the amount
9 of wages they had actually earned and were owed. In addition, the absence of accurate
10 information on their wage statements prevented immediate challenges to Defendants' unlawful
11 pay practices, has required discovery and mathematical computations to determine the amounts
12 of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay
13 records, and/or has led to the submission of inaccurate information about wages and amounts
14 deducted from wages to state and federal government agencies.

15 50. Pursuant to California Labor Code § 226(e), Plaintiffs and the other members of
16 the **All-Inclusive Class** are entitled to recover the greater of actual damages, or penalties of fifty
17 dollars (\$50) for the initial pay period in which a violation of California Labor Code § 226(a)
18 occurred and one hundred dollars for each violation of California Labor Code § 226(a) in a
19 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per
20 class member, and are also entitled to an award of costs and reasonable attorney's fees.

21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

23 **(Cal. Lab. Code §§ 201-203)**

24 **(By Plaintiffs and the Former Employee Class)**

25 51. Plaintiffs incorporate paragraphs 1 through 50 of the Complaint as if fully
26 alleged herein.

27 52. At all relevant times, Plaintiffs and the members of the **Former Employee Class**
were employees of Defendants covered by California Labor Code § 201 or California Labor

1 Code § 202. Pursuant to California Labor Code § 201 or California Labor Code § 202, Plaintiffs
2 and the members of the **Former Employee Class** were entitled to payment of all wages earned
3 and unpaid prior to the termination of their employment. Members of the **Former Employee**
4 **Class** who are discharged employees were entitled to payment of their earned and unpaid wages
5 no later than the day on which their employment was terminated. Members of the **Former**
6 **Employee Class** who resigned were entitled to payment of their earned and unpaid wages
7 within 72 hours after giving notice of resignation or, if they had given at least 72 hours previous
8 notice, no later than the day their employment terminated.

9 53. Defendants failed to timely pay Plaintiffs all final wages earned and unpaid prior
10 to the termination of his employment with Defendants, including, but not limited to, additional
11 earned wages for rest and meal periods not provided to them, and earned wages in the forms of
12 vested paid vacation time and unlawfully deducted wages, in accordance with California Labor
13 Code § 201. Plaintiffs are informed and believe and thereon allege that, at relevant times during
14 the applicable limitations period, Defendants maintained a policy or practice of not providing
15 members of the **Former Employee Class** with a final paycheck encompassing all wages owed
16 upon termination or discharge of employment, including, but not limited to, additional earned
17 wages for rest and meal periods not provided to them, and/or earned wages in the forms of
18 vested paid vacation time and/or unlawfully deducted wages, in accordance with California
19 Labor Code § 201 or California Labor Code § 202.

20 54. Defendants' failure to pay Plaintiffs and members of the **Former Employee**
21 **Class** all wages earned prior to termination in accordance with California Labor Code § 201 or
22 California Labor Code § 202 was willful. Plaintiffs are informed and believe and thereon allege
23 that Defendants had the ability to pay all wages earned by members of the **Former Employee**
24 **Class** prior to termination in accordance with California Labor Code § 201 or California Labor
25 Code § 202, but intentionally adopted policies or practices incompatible with the requirements
26 of California Labor Code § 201 or California Labor Code § 202.

27 55. Pursuant to California Labor Code § 201 or California Labor Code § 202,
Plaintiffs and the members of the **Former Employee Class** are entitled to all wages earned

1 prior to the termination of their employment that Defendants did not pay them as well as
2 continuations of their wages, from the days they earned and unpaid wages were due upon the
3 termination of their employment until paid, up to a maximum of thirty (30) days, in amounts
4 subject to proof.

5 56. Accordingly, Plaintiffs and the members of the **Former Employee Class** are
6 entitled to recover the full amount of their unpaid wages and interest thereon pursuant to
7 California Labor Code § 218.6, continuation wages under California Labor Code § 203,
8 reasonable attorney's fees, and costs of suit.

9 **SIXTH CLAIM FOR RELIEF**

10 **UNAUTHORIZED DEDUCTIONS**

11 **(By Plaintiffs and the Unauthorized Deductions Class)**

12 57. Plaintiffs incorporate paragraphs 1 through 56 of the Complaint as if fully
13 alleged herein.

14 58. California Labor Code §§ 221 and 224 prohibit an employer from taking
15 deductions from an employee's wages without the employee's express written consent or other
16 legal authority for doing so.

17 59. At relevant times during the applicable limitations period, Defendants deducted
18 wages from Plaintiffs' paychecks without their express written consent or other legal authority
19 for doing so. Plaintiffs are informed and believe and thereon allege that, at relevant times during
20 the applicable limitations period, Defendants deducted wages from the paychecks of members
21 of the **Unauthorized Deduction Class** without their express written consent or other legal
22 authority for doing so.

23 60. By reason of the above, Plaintiffs and the members of the **Unauthorized**
24 **Deductions Class** are entitled to restitution for all unpaid amounts due and owing to within four
25 years (4) of the date of the filing of the Complaint until the date of entry of judgment. Further,
26 Plaintiffs, on behalf of themselves and the members of the **Unauthorized Deductions Class**,
27 seek interest thereon pursuant to California Labor Code § 218.6, costs pursuant to California
Labor Code § 218.6, and reasonable attorney's fees pursuant to California Code of Civil

1 Procedure § 1021.5.

2 **SEVENTH CLAIM FOR RELIEF**

3 **FAILURE TO INDEMNIFY**

4 **(By Plaintiffs and the Indemnification Class)**

5 61. Plaintiffs incorporate paragraphs 1 through 60 of the Complaint as if fully
6 alleged herein.

7 62. In pertinent part, California Labor Code § 2802(a) states, "An employer shall
8 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in
9 direct consequence of the discharge of his or her duties." California Labor Code § 452 of the
10 Labor Code authorizes employers to prescribe the weight, color, quality, texture, style, form,
11 and make of uniforms required to be worn by their employees. However, the Wage Orders
12 impose an obligation on an employer that requires uniforms to be worn by its nonexempt
13 employees as a condition of employment to provide and maintain such uniforms, regardless of
14 the amount of the employees' compensation. The applicable wage order states, "When uniforms
15 are required by the employer to be worn by the employee as a condition of employment, such
16 uniforms shall be provided and maintained by the employer. The term "uniform" includes
17 wearing apparel and accessories of distinctive design or color." If the employer does not choose
18 to maintain employees' uniforms itself where it is required to do so, the Division of Labor
19 Standards Enforcement takes the position that the employer may pay each affected employee a
20 weekly maintenance allowance of an hour's pay at the state minimum wage rate (\$7.50 as of
21 January 1, 2007, and \$8.00 as of January 1, 2008) in lieu of maintaining the uniforms, assuming
22 that an hour is a realistic estimate of the time involved in maintaining the uniforms. The term
23 "uniform" is defined to include wearing apparel and accessories of distinctive design or color.

24 63. At relevant times during the applicable limitations period, Defendants required
25 Plaintiffs and the members of the **Indemnification Class** to purchase and maintain uniforms
26 and apparel unique to Defendants at their expense. Defendants failed to indemnify Plaintiffs and
27 the members of the **Indemnification Class** for such expenditures.

64. By reason of the above, Plaintiffs and the members of the **Indemnification Class**

1 are entitled to restitution for all unpaid amounts due and owing to within four years (4) of the
2 date of the filing of the Complaint until the date of entry of judgment. Further, Plaintiffs, on
3 behalf of themselves and the members of the **Indemnification Class**, seeks interest thereon
4 pursuant to California Labor Code § 218.6, costs pursuant to California Labor Code § 218.6,
5 and reasonable attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

6 **EIGHTH CLAIM FOR RELIEF**

7 **UNFAIR COMPETITION**

8 **(By Plaintiffs and the California All-Inclusive Class)**

9 65. Plaintiffs incorporate paragraphs 1 through 64 of the Complaint as if fully
10 alleged herein.

11 66. The unlawful conduct of Defendants alleged herein amounts to and constitutes
12 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
13 *seq.* California Business & Professions Code §§ 17200, *et seq.*, protects against unfair
14 competition and allows a person who has suffered an injury-in-fact and has lost money or
15 property as a result of an unfair, unlawful, or fraudulent business practice to seek restitution on
16 her own behalf and on behalf of other similarly situated persons in a class action proceeding.

17 67. As a result of Defendants' violations of the California Labor Code as during the
18 applicable limitations period as alleged herein, Plaintiffs have suffered an injury-in-fact and
19 have lost money or property in the form of earned wages. Specifically, Plaintiffs have lost
20 money or property as a result of not being paid for hours worked, not being paid at legal
21 overtime rates for all overtime hours worked, not being paid additional required wages for rest
22 and meal periods not provided to them, being provided with inaccurate written wage statements
23 that have had the effect of concealing other wage underpayments, Defendants' improper
24 deductions, and Defendants' failure to reimburse for necessary expenditures, and Defendants'
25 failure to timely pay all wages due or owed upon termination or resignation.

26 68. Plaintiffs are informed and believe that other similarly situated persons have
27 been subject to the same unlawful policies or practices of Defendants, including not being paid
for all wages earned, not being paid at overtime rates for all overtime hours worked, not being

1 paid additional required wages for rest and meal periods not provided to them, being provided
2 with inaccurate written wage statements that have had the effect of concealing other wage
3 underpayments, Defendants' improper deductions, and Defendants' failure to reimburse for
4 necessary expenditures, and/or Defendants' failure to timely pay all wages due or owed upon
5 termination or resignation.

6 69. Due to its unfair and unlawful business practices in violation of the California
7 Labor Code as alleged herein, Defendants have gained a competitive advantage over other
8 comparable companies doing business in the State of California that comply with their legal
9 obligations to compensate employees for all earned wages and to provide them with reasonable
10 means of verifying that they have been paid all earned wages with accurate written wage
11 statements.

12 70. Pursuant to California Business & Professions Code § 17203, Plaintiffs, on
13 behalf of themselves and the other members of the **All-Inclusive Class**, seek declaratory and
14 injunctive relief, and restitution of all monies rightfully belonging to them that Defendants did
15 not pay them or otherwise retained by means of its unlawful and unfair business practices.

16 71. Plaintiffs and the other members of the **All-Inclusive Class** are entitled to
17 recover reasonable attorney's fees in connection with their unfair competition claims pursuant
18 to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the
19 common fund doctrine.

20 **NINTH CLAIM FOR RELIEF**

21 **CIVIL PENALTIES**

22 **(By Plaintiffs and the All-Inclusive Class)**

23 72. Plaintiffs incorporate paragraphs 1 through 71 of the Complaint as if fully
24 alleged herein.

25 73. During the applicable time period, Defendants violated California Labor Code §§
26 204, 223, 226(a), 226.7, 227.3, 510, 512, and 1194.

27 74. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
behalf of himself and other current or former employees, to bring a civil action to recover civil

1 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

2 75. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiffs and the other
3 aggrieved employees of Defendants are entitled to recover civil penalties for Defendants'
4 violations of California Labor Code §§ 200, 201, 202, 203, 204, 224, 226(a), 226.7, 227.3, 510,
5 512, 1194 and 2802 during the applicable limitations period in the following amounts:

6 A. For violations of California Labor Code §§ 200, 201, 202, 203, 224,
7 226.7, 1194, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay
8 period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee
9 per pay period for each subsequent violation (penalty amounts established by California Labor
10 Code § 2699(f)(2));

11 B. For violations of California Labor Code § 204, one hundred dollars
12 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
13 (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount
14 unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional
15 violation (penalty amounts established by California Labor Code § 210);

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

20 D. For violations of California Labor Code §§ 510 and 512, fifty dollars
21 (\$50.00) for each aggrieved employee for each initial violation for pay period for which the
22 employee was underpaid in addition to an amount sufficient to recover unpaid wages and one
23 hundred dollars (\$100.00) for each underpaid employee for each pay period for which the
24 employee was underpaid in addition to an amount sufficient to recover unpaid wages (penalty
25 amounts established by California Labor Code § 558).

26 76. Plaintiffs have complied with the procedures for bringing suit specified in
27 California Labor Code § 2699.3. By letters dated January 8 and February 19, 2010, Plaintiffs
gave written notice by certified mail to the Labor and Workforce Development Agency

1 (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to
2 have been violated, including the facts and theories to support the alleged violations. Plaintiffs
3 anticipate that the LWDA will soon provide Plaintiffs with written notice that it does not intend
4 to investigate the violations of the California Labor Code alleged herein.

5 77. Pursuant to California Labor Code § 2699(g), Plaintiffs and the other members of
6 the **All-Inclusive Class** are entitled to an award of reasonable attorney’s fees and costs in
7 connection with their claims for civil penalties.

8 **PRAYER FOR RELIEF**

9 78. WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly
10 situated, prays for relief and judgment against Defendants as follows:

11 A. An order that the action be certified as a class action with respect to
12 Plaintiffs’ claims for violations of California law;

13 B. An order that Plaintiffs be appointed class representatives;

14 C. An order that counsel for Plaintiffs be appointed class counsel;

15 D. Declaratory relief;

16 E. Injunctive relief;

17 F. Actual damages;

18 G. Liquidated damages;

19 H. Restitution;

20 I. Civil penalties;

21 J. Statutory penalties;

22 K. Pre-judgment interest;

23 L. Costs of suit;

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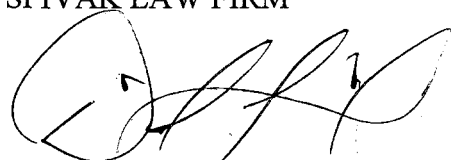
- M. Reasonable attorney's fees; and
- N. Such other relief as the Court deems just and proper.

Respectfully submitted,

THE SPIVAK LAW FIRM

Date: February 23, 2010

By:



DAVID G. SPIVAK, Attorney for
Plaintiff, ALINA GHRDILYAN,
EVGENIA SULTANIAN, and all others
similarly situated

EXHIBIT 10

1 CASE NUMBER: BC430633
2 CASE NAME: ALINA GHRDILYAN, ET AL., VERSUS
3 RJ FINANCIAL, ET AL.,
4 LOS ANGELES, CALIFORNIA MONDAY, APRIL 23, 2012
5 DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE
6 APPEARANCES: (SEE TITLE PAGE.)
7 REPORTER: ANGELA Z. PARADELA, CSR NO. 9659
8 TIME: A.M. SESSION
9

10 (THE FOLLOWING PROCEEDINGS WERE HELD IN
11 OPEN COURT:)

12
13 THE COURT: OKAY. THANK YOU VERY MUCH. I'M GOING
14 TO ASK YOU LAWYERS TO WAIT FOR JUST A MOMENT.

15 AS YOU CAN PROBABLY TELL, FROM THE QUESTIONS
16 AND THE WAY I'VE BEEN TAKING NOTES, SO FORTH, I HAVE A CASE
17 IN MIND AND I HAVE BEEN WORKING ON IT BOTH WHILE YOU'VE BEEN
18 WITH ME AND DURING THE RECESSES LIKE WEEKENDS AND NIGHTS.
19 JUST A SECOND. I HAVE TWO MORE THINGS I HAVE TO BRING OUT.
20 I WILL DO SOME MORE WORK WITH YOU.

21 (A PAUSE IN THE PROCEEDINGS.)

22 THE COURT: OKAY. YOU PROBABLY ALREADY GOT THE
23 IMPRESSION THAT I AM A JUDGE WHO TRIES TO DOCUMENT AND SHOW
24 THE LEGAL PREMISES FOR PROCEDURAL STEPS WE TAKE, AND I INTEND
25 TO DO THAT. I JUST WANT TO TELL YOU WHAT I'M GOING TO DO
26 HERE AND I GUESS I WILL START THIS WAY.

27 I SAID I AM GOING TO BRING OUT TWO THINGS. I
28 BROUGHT OUT ONLY ONE.

1 (A PAUSE IN THE PROCEEDINGS.)

2 THE COURT: THE -- I'M GOING TO CALL YOUR ATTENTION
3 TO SOME CASES THAT HAVEN'T BEEN CITED. I'M GOING TO DEAL
4 WITH THE MERITS OF YOUR CLIENTS'S CASE. SO HERE WE GO.

5 UNDER CALIFORNIA CONSTITUTION ARTICLE VI,
6 SECTION 6 AND GOVERNMENT CODE 68070(B) AND 68603(A), THE
7 CALIFORNIA JUDICIAL COUNCIL HAS CONSTITUTIONALLY GRANTED AND
8 LEGISLATIVELY AFFIRMED POWER TO ADOPT RULES, REPORT
9 ADMINISTRATION PRACTICE AND PROCEDURE THAT ARE CONSISTENT
10 WITH STATUTES. THE CALIFORNIA RULES OF COURT HAVE THE FORCE
11 OF LAW AND BINDING AS PROCEDURAL STATUTES AS LONG AS THEY ARE
12 CONSISTENT WITH LEGISLATIVE ENACTMENTS AND CONSTITUTIONAL
13 GUARANTEES.

14 I WILL CITE YOU THREE CASES WHERE THAT POINT
15 IS MADE. THEY ARE IN RE JUAN -- THAT'S J-U-A-N -- C.,
16 (1993), 20 CALIFORNIA APPELLATE 4TH, 748, PARTICULARLY AT
17 PAGES 752 TO 753; ALICIA T. VERSUS COUNTY OF LOS ANGELES,
18 (1990), 222 CALIFORNIA APPELLATE 3D 869 AT 884, AND OATS
19 VERSUS OATS. OATS IS SPELLED O-A-T-S, (1983) 14 CALIFORNIA
20 APPELLATE 3D 416 AT 420. THIS IS HOW THE OATS VERSUS OATS
21 COURT EXPRESSED THIS VIEW.

22 RULES OF COURT HAVE THE FORCE OF POSITIVE LAW.
23 THEY ARE AS BINDING ON THIS COURT AS PROCEDURAL STATUTES
24 UNLESS THEY TRANSCEND LEGISLATIVE ENACTMENTS OR
25 CONSTITUTIONAL GUARANTEES.

26 SO THE HIERARCHY THEN WOULD BE CONSTITUTION,
27 STATUTES AND CALIFORNIA RULES OF COURT, AND THEN CASE LAW.

28 I SAY THAT BECAUSE THE CASE OF WHITTINGTON

1 VERSUS MCKINNEY -- WHITTINGTON IS SPELLED

2 W-H-I-T-I-N-G-T-O-N, VERSUS MCKINNEY, CAPITAL M, C, CAPITAL
3 K, I-N-N-E-Y, (1991), 234 CALIFORNIA APPELLATE 3D 123 --
4 CRITICIZED THE CONDUCT OF A NOW FORMER JUDGE, I BELIEVE, AT
5 THE ORANGE COUNTY SUPERIOR COURT, WHO ANNOUNCED A DECISION,
6 GAVE A STATEMENT OF DECISION ORALLY AND SAID IF YOU WANTED A
7 WRITTEN STATEMENT OF DECISION, YOU COULD MAKE REFERENCE TO
8 THE COURT TRANSCRIPT. THAT CASE, WHITTINGTON VERSUS MCKINNEY
9 WAS, AS I SAY, DECIDED IN 1991.

10 IN 2010, EFFECTIVE JANUARY 1, 2010, THE
11 CALIFORNIA RULES OF COURT WERE AMENDED WITH RESPECT TO, AMONG
12 OTHER PROVISIONS OF THE CALIFORNIA RULES OF COURT, RULE
13 3.1590 HAVING TO DO WITH ANNOUNCEMENT OF TENTATIVE DECISION
14 AND STATEMENT DECISION AND JUDGMENT.

15 THE (C) SUBSECTION OF RULE 15 -- RULE 3.1590
16 WAS AMENDED BY THE ELIMINATION OF SOME PROVISIONS AND BY
17 BEING INSERTION OF OTHER PROVISIONS. I'M GOING TO REFER TO
18 THE (C) SUBSECTION.

19 IT READS NOW, (READING:)

20 THE COURT IN ITS TENTATIVE DECISION MAY:
21 STATE THAT IT IS THE COURT'S PROPOSED
22 STATEMENT OF DECISION, SUBJECT TO A PARTY'S
23 OBJECTION UNDER SUBSECTION (G);

24 (2) INDICATE THAT THE COURT WILL PREPARE
25 A STATEMENT OF DECISION;

26 (3) ORDER A PARTY TO PREPARE A STATEMENT
27 OF DECISION; OR

28 (4) DIRECT THAT THE TENTATIVE DECISION

1 WILL BECOME THE STATEMENT OF DECISION UNLESS,
2 WITHIN 10 DAYS AFTER ANNOUNCEMENT OR SERVICE
3 OF THE TENTATIVE DECISION, A PARTY SPECIFIES
4 THOSE PRINCIPAL CONTROVERTED ISSUES AS TO
5 WHICH THE PARTY IS REQUESTING A STATEMENT OF
6 DECISION OR MAKES PROPOSALS NOT INCLUDED IN
7 THE TENTATIVE DECISION.

8 NOW, I WILL NOT USE METHOD TWO. THAT'S THE
9 COURT WILL PREPARE A STATEMENT OF DECISION. I WILL USE
10 EITHER (1), (3), OR (4) EITHER SAYING THAT THIS IS A PROPOSED
11 STATEMENT OF DECISION SUBJECT TO OBJECTIONS UNDER SUBSECTION
12 (G), OR ORDER A PARTY TO PREPARE A STATEMENT OF DECISION, OR
13 DIRECT THAT THE TENTATIVE DECISION WILL BECOME THE STATEMENT
14 OF DECISION UNLESS WITHIN TEN DAYS A PARTY SPECIFIES
15 PRINCIPAL CONTROVERTED ISSUES AS TO WHICH THE PARTY IS
16 REQUESTING A STATEMENT OF DECISION OR MAKES PROPOSALS NOT
17 INCLUDED IN THE TENTATIVE DECISION.

18 I WOULD LIKE TO HEAR FROM BOTH SIDES NOW
19 CONCERNING WHICH OF THREE ALTERNATIVES WHICH I PROPOSED THEY
20 PREFER, AND THEN I WILL MAKE THE DECISION CONCERNING THAT
21 THAT IS PROPER. LET'S START WITH THE DEFENSE. DEFENDANT?

22 MR. SABZEVAR: YOUR HONOR, I PREFER THAT THE COURT
23 ISSUES A STATEMENT OF DECISION ITSELF AND NOT LEAVE IT TO THE
24 PARTIES OR TEN DAYS.

25 THE COURT: I TOLD YOU I'M NOT GOING TO PREPARE A
26 STATEMENT OF DECISION. I'M GOING TO USE EITHER METHOD (1),
27 (3), OR (4). (1) IS THIS IS THE PROPOSED STATEMENT OF
28 DECISION SUBJECT TO OBJECTIONS UNDER (D). (3) IS ORDER A

1 PARTY TO PREPARE A STATEMENT OF DECISION; OR (4), DIRECT THAT
2 THE TENTATIVE DECISION WILL BECOME THE STATEMENT OF DECISION
3 UNLESS WITHIN TEN DAYS AFTER ANNOUNCEMENT OR SERVICE OF THE
4 TENTATIVE DECISION, THE PARTY SPECIFIES THOSE PRINCIPAL
5 CONTROVERTED ISSUES AS TO WHICH THE PARTY IS REQUESTING A
6 STATEMENT OF DECISION OR MAKES PROPOSALS NOT INCLUDED IN THE
7 TENTATIVE DECISION.

8 MR. SABZEVAR: DEFENSE PREFERENCE IS NUMBER ONE.

9 THE COURT: STATE THAT THIS IS THE COURT'S
10 STATEMENT OF DECISION SUBJECT TO A PARTY'S OBJECTION UNDER
11 (G)?

12 MR. SABZEVAR: YES, YOUR HONOR.

13 THE COURT: PLAINTIFF?

14 MR. SPIVAK: WE PREFER TO WRITE THE DECISION, YOUR
15 HONOR, ONCE THE COURT HAS MADE ITS POSITION KNOWN.

16 THE COURT: ALL RIGHT.

17 MR. SPIVAK: BY "WE" I MEAN WE BELIEVE IT SHOULD BE
18 PREVAILING PARTY.

19 THE COURT: UH-HUH. I'M GOING TO USE -- I
20 APPRECIATE -- I'M GOING TO USE METHOD (4). THIS TENTATIVE
21 DECISION WILL BECOME THE STATEMENT OF DECISION UNLESS WITHIN
22 TEN DAYS AFTER ANNOUNCEMENT, AND SO FORTH. THAT'S
23 3.1590(C)(4).

24 SO WHAT I'M GOING TO DO NOW IS ANNOUNCE A
25 TENTATIVE WHICH, AS YOU CAN SEE, IS ALSO A CONDITIONAL
26 STATEMENT OF DECISION.

27 THIS CASE CAME BEFORE ME PRESIDING IN THIS
28 DEPARTMENT 41 ON THE 10TH OF APRIL, 2012, FOR TRIAL WITHOUT

1 JURY. DAVID G. SPIVAK, STATE BAR 179684, APPEARED AS
2 ATTORNEY FOR PLAINTIFFS ALINA GHRDILYAN AND EVGENIA
3 SULTANIAN, AND F. MICHAEL SABZEVAR, STATE BAR 172312 APPEARED
4 AS ATTORNEY FOR DEFENDANT, RAMIL ABALKHAD.

5 THE CASE WAS SUBMITTED FOR DECISION TODAY, THE
6 23RD OF APRIL, 2012.

7 IN THIS CASE, TWO PLAINTIFFS CLAIM THAT
8 DEFENDANT ABALKHAD IS LIABLE TO THEM ON VARIOUS
9 EMPLOYMENT-DERIVED THEORIES INCLUDING AND ESPECIALLY FOR
10 PENALTIES AND THAT THEY CAN ENFORCE VARIOUS REMEDIES AGAINST
11 THEM UNDER THE LABOR CODE PRIVATE ATTORNEY GENERAL ACT, WHICH
12 IS AT LABOR CODE 2698, AND FOLLOWING.

13 IN OPEN COURT ON THE 10TH OF APRIL, 2012, THE
14 ATTORNEYS CONFIRMED THAT THE OPERATIVE PLEADINGS ARE THE
15 PLAINTIFFS'S FIRST AMENDED COMPLAINT, ET CETERA, FILED
16 FEBRUARY 24, 2010, AND THE DEFENDANT'S ANSWER TO THEIR FIRST
17 AMENDED COMPLAINT FILED SEPTEMBER 13, 2010. I WILL MAKE A
18 COUPLE OF QUICK COMMENTS ABOUT THOSE TWO DOCUMENTS NOW.

19 THE FULL NAME OF THE PLAINTIFFS'S OPERATIVE
20 PLEADING IS FIRST AMENDED COMPLAINT FOR -- AND THEN THERE ARE
21 NINE THEORIES LISTED: FAILURE TO COMPENSATE EMPLOYEES FOR
22 ALL HOURS WORKED; NUMBER TWO IS FAILURE TO PROVIDE BOTH REST
23 AND MEAL PERIODS; NUMBER THREE IS FORFEITURE OF VESTED
24 VACATION BENEFITS; NUMBER FOUR IS FAILURE TO PROVIDE ACCURATE
25 WRITTEN WAGE STATEMENTS; NUMBER FIVE IS FAILURE TO TIMELY PAY
26 ALL FINAL WAGES; NUMBER SIX IS UNAUTHORIZED DEDUCTIONS;
27 NUMBER SEVEN IS FAILURE TO INDEMNIFY; NUMBER EIGHT IS UNFAIR
28 COMPETITION; AND NUMBER NINE IS CIVIL PENALTIES.

1 THE DEFENDANT'S ANSWER TO THE FIRST AMENDED
2 COMPLAINT WAS ON A JUDICIAL COUNCIL FORM PLEADING.

3 INSOFAR AS IT'S PERTINENT TO THIS PORTION OF
4 MY ANALYSIS, LABOR CODE 2699 READS, (READING:)

5 SUBSECTION (A), NOTWITHSTANDING ANY OTHER
6 PROVISION OF LAW, ANY PROVISION OF THIS CODE
7 THAT PROVIDES FOR A CIVIL PENALTY TO BE
8 ASSESSED AND COLLECTED BY THE LABOR AND
9 WORKFORCE DEVELOPMENT AGENCY OR ANY OF ITS
10 DEPARTMENTS, DIVISIONS, COMMISSIONS, BOARDS,
11 AGENCIES, OR EMPLOYEES FOR A VIOLATION OF THIS
12 CODE MAY, AS AN ALTERNATIVE, BE RECOVERED
13 THROUGH A CIVIL ACTION BROUGHT BY AN AGGRIEVED
14 EMPLOYEE ON BEHALF OF HIMSELF OR HERSELF AND
15 OTHER CURRENT OR FORMER EMPLOYEES PURSUANT TO
16 THE PROCEDURES SPECIFIED IN SECTION 2699.3.

17 THE PLAINTIFFS HAD ORIGINALLY DENOMINATED THIS
18 CASE AS A CLASS ACTION AND THEY CONTINUED THAT DESIGNATION
19 THROUGH VARIOUS OTHER FILINGS, BUT THEY HAVE NEVER OBTAINED
20 AN ORDER CERTIFYING THE CLASS. THEY CLAIM, THOUGH, THAT THEY
21 ARE ENTITLED TO PROCEED ON BEHALF OF OTHERS PURSUANT TO THE
22 CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL ACT AS TO
23 DEFENDANT ABALKHAD.

24 THE PLAINTIFFS HAD TRIED THIS CASE BEFORE ME
25 SOLELY AS TO CAUSE OF ACTION NINE. THEY CONCEDE THAT THIS
26 CASE IS STAYED IN THIS COURT IN PART BECAUSE OF THE FACT THAT
27 DEFENDANT RJ FINANCIAL, INC., ORIGINALLY THE ONLY NAMED
28 DEFENDANT, BUT BY VIRTUE OF THE FIRST AMENDED PLEADING, A

1 CODEFENDANT, THAT CORPORATION IS A DEBTOR IN CHAPTER 11
2 PROCEEDING, WHICH IS STILL PENDING.

3 PURSUANT TO 11 U.S.C. 362, THIS CASE WOULD BE
4 STAYED AS TO THAT PARTY. BUT MR. ABALKHAD HAS NOT BEEN SHOWN
5 TO BE A DEBTOR IN A BANKRUPTCY PROCEEDING AND DURING CLOSING
6 ARGUMENT OF THE 17TH OF APRIL, 2012, MR. SPIVAK CONFIRMED HIS
7 CLIENTS HAVE CLAIMS PENDING IN THE BANKRUPTCY CASE. THAT
8 WILL MEAN THAT THE CASE CAN PROCEED AND HAS PROCEEDED ON THE
9 BASIS PLEADED AGAINST MR. ABALKHAD AS AN INDIVIDUAL.

10 ALTHOUGH BECAUSE OF 11 U.S.C. 362, IT IS STAYED AS TO THE
11 CORPORATION.

12 THE PERSONS WHO GAVE TESTIMONY AT THE TRIAL
13 WERE JOSEPH HARSANY, H-A-R-S-A-N-Y, AN EMPLOYEE OF PAYROLL
14 CHECK WRITING SERVICE USED BY THE DEFENDANTS; BREK OYAMA --
15 BREK IS SPELLED B-R-E-K; AND OYAMA IS O-Y-A-M-A, MR. SPIVAK'S
16 PARALEGAL; RAMIL ABALKHAD, ONE OF THE DEFENDANTS, THE
17 PRESIDENT AND CHIEF EXECUTIVE OFFICER OF DEFENDANT RJ
18 FINANCIAL AND, INDEED, THAT -- APPARENTLY THAT COMPANY'S ONLY
19 OFFICER AND ONLY DIRECTOR. THE FOURTH WITNESS WAS ALINA
20 GHRDILYAN, ONE OF THE PLAINTIFFS, AND THE FIFTH WAS EVGENIA
21 SULTANIAN, ONE OF THE PLAINTIFFS, THE OTHER PLAINTIFF.

22 I'M GOING TO REFER TO THE LABOR CODE PRIVATE
23 ATTORNEY GENERAL ACT IN THE WAY THE ATTORNEYS HAVE -- IT
24 SEEMS TO ME TO BE SERVICEABLE -- AND I'M GOING TO REFER --
25 I'M GOING TO USE THE ACRONYM PAGA, P-A-G-A.

26 PAGA ACTIONS DO NOT HAVE BEEN MAINTAINED AS
27 CLASS ACTIONS. THEY CAN BE, BUT THEY ARE NOT REQUIRED TO BE.
28 THE AUTHORITY ON THAT IS ARIAS VERSUS SUPERIOR COURT, (2009),

1 46 CALIFORNIA 4TH, 969, 981 TO 982.

2 WE WILL GO INTO RECESS NOW. COME BACK AT
3 1:30, PLEASE.

4 (AT 11:58 A.M., A LUNCH RECESS WAS TAKEN.)

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(THE FOLLOWING PROCEEDINGS WERE HELD AT 1:47 P.M.)

THE COURT: NOW, WE WILL GO BACK TO THE GHRDILYAN
AGAINST RJ CASE.

OKAY. WHEN WE LEFT, I HAD, I THINK, TALKED
ABOUT SOME GENERAL POINTS OF LAW HAVING TO DO WITH PAGA
ACTIONS, AND I WILL JUST OVERLAP SLIGHTLY.

I WAS SAYING THAT PAGA ACTIONS DO NOT HAVE TO
BE HAVE MAINTAINED AS CLASS ACTIONS. THEY CAN BE, BUT ARE
NOT REQUIRED TO BE. AND ONE OF AUTHORITIES ON THAT IS ARIAS,
A-R-I-A-S, VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH
969 FROM PAGES 981 TO 982. PAGA IS NOT THE EMPLOYEE'S
EXCLUSIVE REMEDY. THEY MAY SEPARATELY OR CONCURRENTLY SEEK
OTHER REMEDIES. LABOR CODE 2699(G) AND CALIBER BODY WORKS
VERSUS SUPERIOR COURT, (2005) 134 CALIFORNIA APPELLATE 4TH
365 AT 375.

THE KINDS OF PENALTIES THAT PAGA PLAINTIFFS
CAN SEEK TO RECOVER, ASSUMING THAT THE FACTS SUPPORT IT, ARE
THOSE FOR FAILURE TO PAY STATUTORILY PRESCRIBED WAGES --
THAT'S LABOR CODE 210 -- UNLAWFULLY WITHHELD WAGES -- THAT'S
LABOR CODE 225.5 -- OR FOR VIOLATING, FOR EXAMPLE, AN
INDUSTRIAL WELFARE COMMISSION ORDER -- THAT'S LABOR CODE 558.
AN AGGRIEVED EMPLOYEE -- THAT WOULD MEAN ANYONE EMPLOYED BY
THE ALLEGED VIOLATOR AND AGAINST WHOM ONE OR MORE VIOLATIONS
WAS COMMITTED -- AND I PICKED UP THAT DEFINITION FROM LABOR
CODE 2699(C) AND FROM THE COMMENTS IN AMALGAMATED TRANSIT
UNION VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH 993 AT
1004 TO 1005 -- AN AGGRIEVED EMPLOYEE CAN SUE TO RECOVER
CIVIL PENALTIES FOR VIOLATIONS OF THE LABOR CODE ON BEHALF OF

1 HIMSELF, OR HERSELF, AND OTHER CURRENT OR FORMER EMPLOYEES
2 AGAINST WHOM ONE OR MORE OF THE ALLEGED VIOLATIONS WAS
3 COMMITTED. THAT'S LABOR CODE 2699(G)(1).

4 THE ATTORNEYS HAVE FROM TIME TO TIME REFERRED
5 TO WHAT THEY HAVE CALLED THE BRINKER CASE.

6 NOW, WHAT THEY ARE REFERRING TO IS THE CASE
7 ENTITLED BRINKER RESTAURANT CORPORATION VERSUS SUPERIOR
8 COURT, REAL PARTY IN INTEREST, HOHNBAUM H-O-H-N-B-A-U-M. THE
9 VERSION OF THAT THAT I HAVE USED IN MY ANALYSIS AND
10 PREPARATION IS THE VERSION THAT WAS PRINTED AT 2012 DAILY
11 JOURNAL, DAILY APPELLATE REPORT, PAGE 4615, AND FOLLOWING.

12 I HAVE BEEN REQUIRED TO EVALUATE THE TESTIMONY
13 OF THE PARTY WITNESSES IN THIS CASE, THAT IS, MS. GHRDILYAN,
14 MS. SULTANIAN, AND MR. ABALKHAD WITH SOME CAUTION AND
15 RESERVATIONS. THOSE THREE PERSONS IN THEIR CAPACITIES AS
16 WITNESSES ARGUED AND 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 11

OCT 24 2017

Sherri R. Carter, Executive Officer/Clerk
By: V. Jaime, Deputy

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

Jon N. Shields, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

Security Paving Company, Inc.,

Defendant.

Case No. BC492828

Proposed Statement of Decision

Having concluded the trial, the Court now issues a Proposed Statement of Decision.

Pursuant to CCP Section 632 and Cal. Rules of Court 3.1590 (g), the parties shall have fifteen days from the issuance of this decision to object, concur or correct the Proposed Statement of Decision.

The Court shall hold a hearing on the objections on November 17, 2017 at 11:00 a.m.

1 I. BACKGROUND

2 On September 26, 2012, plaintiff filed an individual and class action against Security Paving
3 Company, Inc. ("Security Paving"), a licensed contractor that performs construction work on
4 public works projects throughout California.
5

6 The operative First Amended Complaint alleges a class action and representative action for
7 violations of the California Labor Code and Wage Order 16, breach of contract and a violation of
8 the Business and Professions Code arising from Security Paving's operations.¹
9

10 In 2016, the Court denied plaintiff's motion to certify the class. The case proceeded solely on the
11 individual claims of plaintiff Jon Shields and a representative action under PAGA brought by
12 Shields as an aggrieved employee.
13

14 In August 2017, the Court granted the defendant's motion for summary adjudication as to the
15 PAGA claim for failure to provide meal periods, but denied the motion as to the PAGA claim
16 based on the defendant's alleged failure to provide rest breaks.
17

18 In that decision, the court considered whether Labor Code §512(e), which became effective on
19 January 1, 2011, exempted Security Paving from meal period requirements. The court found that
20 Security Paving was exempted from the meal period requirements as a union-signatory
21 construction contractor. Further, the court concluded that because plaintiff's PAGA claim is
22 subject to a one-year statute of limitations and covers the period from September 26, 2011 onward
23 only,² it could not include challenges based on meal-period violations.³
24

25
26 ¹ The plaintiff abandoned his cause of action for breach of contract at closing argument.

27 ² This date is one year prior to the September 26, 2012 filing date of the original complaint.

28 ³ PAGA claims are subject to CCP §340(a)'s one-year statute of limitations period governing "actions for a penalty or forfeiture."

1 As for the PAGA claim for rest break violations, the court considered whether Wage Order 16
2 barred that claim and concluded that it did not. Under section 11(D) of that Wage Order, in cases
3 where a valid collective bargaining agreement provides a final and binding mechanism for
4 resolving disputes regarding rest breaks, the collective bargaining agreement shall prevail. But,
5 under section 11(E) of that order, the collective bargaining agreement exemption shall not apply
6 unless the collective bargaining agreement provides "equivalent protection" to Wage Order 16.
7 The Court found that the collective bargaining agreements at issue in this case did not afford the
8 same protection as the three-year statute of limitations period to recover premium pay for missed
9 rest periods. The court also found that the collective bargaining agreements did not expressly
10 provide for the one-hour premium pay for missed rest breaks. They are either silent on this issue
11 or they provide for pay "at the rate of two times the standard straight-time and overtime" rates.
12 Accordingly, the court denied summary adjudication on the rest period portion of plaintiff's PAGA
13 claim.

14
15 The Court also denied the defendant's motion for summary adjudication on plaintiff's individual
16 claims for failure to provide meal periods,⁴ failure to authorize and permit rest breaks, breach of
17 contract, unfair business practices and failure to provide accurate itemized wage statements.

18
19 A court trial on these causes of action began on September 19, 2017 and concluded on October 2,
20 2017.⁵ The parties filed post-trial briefs on October 16, 2017. The defendant, thereafter, filed a
21 motion to strike the plaintiff's pre-trial brief on October 18, 2017. The plaintiff filed an
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24 ⁴ The protections afforded under Labor Code §512(e) foreclose the individual meal period claim for a small
25 period of plaintiff's individual three-year meal break claim. It would exempt only the period of after January 1, 2011
26 (i.e., Labor Code §512(e)'s effective date). As defendant's argument under Section 512(e) did not dispose of the
plaintiff's individual meal period claim, it could not be resolved by way of a motion for summary adjudication. CCP
§437c(f)(1).

27 ⁵ The Court reserved ruling on the defendant's motion for judgment, which Security Paving filed at the close of the
28 plaintiff's case, and declined to render any judgment until all evidence was presented. *See Watt v. Kantel* (1970) 13
Cal. App. 3d 249, 253. For the reasons set forth in this decision, that motion is denied.

1 opposition to that motion on October 23, 2017. Thereafter, the Court took the matter under
2 submission and now renders a proposed statement of decision.

3 4 II. OUTLINE OF ISSUES DECIDED AT TRIAL

5
6 The Court begins by setting forth the issues to be decided in this trial:

- 7 (1) Did defendant violate the Labor Code by failing to authorize and permit rest breaks to
8 the representative plaintiff and other aggrieved employees for the period from
9 September 2011 to the present? If so, what penalties are owed under the PAGA cause
10 of action as a result of these violations?
- 11 (2) Did defendant violate Labor Code sections 226.7 and 512 by failing to provide plaintiff
12 Jon Shields meal periods for the period September 26, 2009 until December 31, 2010?
13 If so, what unpaid wages are owed to Jon Shields for missed meal periods?
- 14 (3) Did defendant violate Labor Code sections 226.7 by failing to authorize and permit rest
15 breaks to Jon Shields? If so, what unpaid rest break premiums for the period from
16 September 26, 2009 until September 26, 2012 are owed to Jon Shields?
- 17 (4) Did defendant violate Labor Code Section 226 by failing to provide Jon Shields with
18 accurate wage statements for the period from September 26, 2009 until September 26,
19 2012? If so, what penalties are owed to Jon Shields?
- 20 (5) Is Jon Shields owed "waiting time" penalties under Labor Code §§ 201-203?
- 21 (6) Is plaintiff entitled to any relief based on his claim that defendant violated Business
22 and Professions Code Section 17200 *et seq.* If so, what is an appropriate remedy?

23 24 III. PAGA REST BREAK CLAIMS

25 Jon Shields, as a representative plaintiff for himself and other aggrieved employees, alleges that
26 Security Paving violated the law by failing to afford certain of its crewmembers the rest periods
27 mandated by the applicable Wage Order. The plaintiff's PAGA rest break claim covers the period
28 September 2011 through the present.⁶

⁶ Jon Shields began working for Security Paving in late 2008. (Trial Exhibit ("Exh.") 506 at 14-16). The defendant terminated his employment in October 2011 (Exh. 506 at 17). At closing, the Court inquired of plaintiff's counsel whether an employee who did not work for the defendant during a substantial portion of the relevant period of the PAGA claim was properly characterized as an aggrieved employee. Certainly, in a class action setting, such a representative might be challenged on the basis of his adequacy to testify accurately and competently regarding the

1 A. Labor Code Provisions and Wage Order 16

2
3 Labor Code section 226.7 prohibits employers from requiring employees to work during any rest
4 period mandated by a Wage Order. It establishes a premium if an employer fails to provide
5 employees a meal or rest period required by the Wage Orders. Under the rule, employers must
6 pay employees one additional hour's pay for failure to provide one or more rest periods. The
7 employer must pay the premium in addition to the compensation owed for the worked time,
8 including time worked during a missed meal or rest period.

9
10 The applicable Wage Order in this case -- Wage Order 16 -- provides that "[e]very employer *shall*
11 *authorize and permit* all employees to take rest periods, which insofar as practicable, shall be in
12 the middle of each work period The authorized rest period shall be based on the total hours
13 worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major
14 fraction thereof." Wage Order 16-2001, § 11(A)(emphasis added).

15
16 Work Order 16 -- covering the construction industry -- contains a measure of flexibility regarding
17 rest breaks not found in other wage orders. (See Exhibit 513 at 7). Employers in the construction
18 industry may stagger rest periods to avoid interruption in the flow of work and to maintain
19 continuous operations, or may schedule rest periods to coincide with breaks in the flow of work
20 that occur in the course of a workday. Rest periods are to take place at designated areas, which
21 may include or be limited to the employees' immediate work area. Rest periods need not be
22 authorized in limited circumstances when the disruption of continuous operations would
23 jeopardize the product or process of the work. However, the employer shall make up the missed
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27 defendant's practices during much of the relevant period. PAGA, however, does not impose class action requirements
28 on its representatives. *Arias v. Superior Court* (2009) 46 Cal.4th 969, 985. Further, the testimony of other witnesses,
including the defendant's witnesses, supported the finding that in certain settings -- most specifically in crews working
on overnight road paving projects with required lane closures -- the defendant's rest break practices were the same in
2015 as they were in 2011.

1 rest period within the same workday or compensate the employee for the missed ten minutes of
2 rest time at his regular rate of pay within the same pay period.⁷

3
4 A rest period -- whenever it is authorized and wherever it occurs -- must be "duty-free."
5 *Faulkinbury v. Boyd & Associates, Inc.* (2013) 216 Cal.App.4th 220, 237. In 2016, the Supreme
6 Court in *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, clarified the rest period
7 obligations. It explained that employers must relieve employees of all duties and relinquish any
8 control over how employees spend their time during rest periods. However, the Division of Labor
9 Standards Enforcement will not find a rest period violation where an employee who is authorized
10 and permitted to take a rest period freely chooses, without any coercion or encouragement, to
11 forego or waive it. In *Augustus*, the court also explained that circumstances may occasionally
12 arise that prevent employees from taking a rest period at a scheduled time or cause an interruption
13 in a rest period. If this occurs, employers can reschedule rest periods when the need arises, or if
14 they interrupt employees during a rest period, provide them another rest period to replace the one
15 that was interrupted.

16
17 If an employer fails to provide an employee a rest period in accordance with the applicable
18 provisions of the wage order, "the employer shall pay the employee one (1) hour of pay at the
19 employee's regular rate of compensation for each work day that the rest period is not provided."
20 (Wage Order 16-2001 §11(D); Cal. Lab. Code § 226.7).

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25 ⁷ As for timing, California Wage Orders require employers to authorize and permit rest periods for non-exempt
26 employees whose total daily work time is at least 3 and a half hours. The mandatory rest periods must be, insofar as is
27 practicable, in the middle of each work period and must be at the minimum rate of ten consecutive minutes for each
28 four hours or major fraction thereof. The employer must count rest periods as working time and, accordingly, must
pay for such periods. For a shift longer than 3 and a half hours and less than six hours, a ten minute rest break is
required. For a shift over six hours and up to ten hours, twenty minutes of rest is required. For a shift of over ten up
to fourteen hours, thirty minutes of rest is mandated. The Wage Orders do not mandate when the breaks are taken,
only that they fall in the middle of work periods "insofar as practicable."

1 B. The Credible Evidence Establishes that Defendant Did Not "Authorize and Provide"
2 Duty-Free Rest Breaks During Production Downtimes to Nighttime Road Repair and
3 Replacement Crews.

4 At closing argument, plaintiff's counsel confusingly conceded, then repudiated, then later
5 conceded after questioning by the court, that the focus of the plaintiff's PAGA claim was not
6 directed at the defendant's employees who worked on daylight crews in those locations where
7 there were no time-pressures associated with lane closures. Rather, the crux of the challenged
8 practice in this case was directed at defendant's failure to afford employees working on nighttime
9 road paving and replacement crews rest breaks in which they were relieved of all duties and in
10 which management relinquished all control.⁸

11 Both plaintiff and defense witnesses testified that during these nighttime road replacement jobs --
12 which generally entail time-limited lane closures -- workers do not receive fixed rest breaks at
13 defined intervals during the shift.⁹ Instead, Security Pacific expected that rest breaks could be
14 accomplished by having their crews take breaks during downtimes in the overnight construction
15 process.¹⁰

16
17 ⁸ In the post-trial brief, plaintiff once again attempted to re-define its "aggrieved employees" group to extend
18 beyond the defendant's nighttime freeway paving operations employees. Defendant objected strenuously to this
19 "about face" by the plaintiff. (See Defendant's Motion to Strike Plaintiff's Post Trial Brief at 3). The Court agrees
20 with the defendant. After five years of litigation and nine years of trial, and two recesses for the plaintiff's counsel
to confer during their closing statement and rebuttal, the plaintiff identified a representative group upon which the
action was asserted. This decision cannot be revisited two weeks after the close of the case.

21 ⁹ Defendant's witness Jeremy Strobl testified that the defendant's rest break policies were no different on the lane-
22 closure road replacement jobs than on jobs where lane closures were not required. That testimony was flatly
23 contradicted by defendant's witnesses Shane Hunter and Ray Guillen, both of whom supervised night crews on Cal
Trans road replacement policies. Unlike many defense witnesses, these supervisors testified that break times were
24 not fixed and that employees were told and were expected to take their breaks during "downtimes" in the
25 production process. This admitted practice stands in stark contrast -- and contradicts -- the testimony of many of the
defendant's witnesses who worked almost exclusively on day shifts that they were authorized and permitted to take
fixed and regular rest periods.

26 ¹⁰ As for this group, the credible testimony provided by both plaintiff's and defendant's witnesses clearly supports
27 that roadway replacement and repair crews, who operated largely overnight and subject to Cal Trans lane closures,
generally did not receive fixed rest breaks but, instead, were instructed by their supervisors to use "downtime" for
meal and rest breaks. This evidence provides a basis upon which the plaintiff can claim a shared employment
28 practice by Security Paving -- at least as to a cognizable group of employees -- upon which a representative action
can be based. Cf. *Bronco Wine Co. v. Frank A. Logoluso Farms* (1989) 214 Cal.App.3d 699, 720.

1 According to the defense witnesses, during these downtimes, employees were free to leave their
2 equipment, leave the location and otherwise absent themselves from the immediate vicinity in
3 order to take a legally compliant rest period during which they would not be subject to managerial
4 control.

5
6 The credible testimony at trial clearly failed to corroborate the defendant's version of how
7 downtimes were, in fact, used by nighttime construction crews. The credible testimony of a
8 number of witnesses established that a heavy equipment worker was not free to leave his vehicle
9 or that laborers performing traffic control could not abandon their positions during "downtimes" in
10 order to receive a legally compliant – management control-free – rest period. Carpenters were not
11 allowed to simply stop working on pouring forms in order to take a ten-minute break. Credible
12 and compelling testimony from a number of foremen and crewmembers supports the court's
13 finding that workers were instructed to "stay busy" during downtimes. In fact, on more than one
14 occasion, Jon Shields was "written up" for sleeping in his truck during a downtime. If, as
15 defendant argues, an employee was free of management control during this period, why would the
16 defendant have written him up for the exercise of that autonomy?

17 The credible testimony of a number of witnesses called by both plaintiff and defendant establishes
18 by a preponderance of the evidence that Security Paving did not relinquish control over these
19 employees at any time once they arrived at nighttime road paving worksites.¹¹ Throughout these
20 shifts, the various trades were performing interrelated and time-critical functions. Supervisorial
21 control over their activities – including being directed by walkie-talkie – was continuous.

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25 ¹¹ Darrel Matheson, a foreman for Security Paving for four years, credibly testified that during the "set up work" part
26 of a paving process -- which accounted for about 20 percent of his shift working on highway projects -- you could take
27 a meal or rest break, but that after the "pour" started -- usually about 80 percent of the shift time -- you could not take
28 any breaks. Work during that part of the shift continued without interruption. As he explained, when you are pouring
concrete, "it's not stopping . . . because you can't have a cold joint on your concrete slab you're pouring." To afford the
crew a break (even of ten minutes) would mean that "all your concrete is going to be hard behind you by the time you
take off again." And, while authorized or permitted breaks would have been possible had additional "relief"
crewmembers been provided, Security Paving did not typically structure its crews with relief workers.

1 Moreover, the credible testimony of a number of workers on these nighttime paving crews
2 corroborated that they were expressly told by their foremen to stay busy at all times. To quote one
3 witness who patiently tried to correct defense counsel during cross-examination: "You're not
4 understanding, sir. There's no rest breaks. It's not a matter of taking one. You don't get them.
5 They're not there." Dennis Hake, who worked as a grading foreman, was instructed by his
6 superintendent to have the crewmembers work through meal breaks.

7
8 Plaintiff's witnesses credibly testified that they were not free to use pauses in the production
9 process to rest. In fact, one witness credibly testified that the company's reputation was that if you
10 couldn't work and eat at the same time, you didn't eat. While waiting their turn to perform a task,
11 workers were instructed to stay busy – sweeping, chipping the cement trucks, cleaning the interior
12 – any number of tasks. Credible testimony established that if you didn't stay busy or if you left
13 even for the minute or two it would take to relieve yourself, you might find yourself out of a job.

14
15 Ryan Tevelde, a heavy equipment operator called by the defense, credibly testified that he never
16 believed that he could walk away from the equipment during "downtime." Shane Hunter, another
17 of the defendant's witnesses, testified that although he expected employees to use a slow period
18 for breaks, he also talked to them during their breaks and wanted them to stay busy removing
19 cement from their vehicles and standing by their trucks while waiting in the line for the cement
20 pour.¹² Hunter complained that he caught Jon Shields napping while waiting in line to pour
21 concrete – without ever ascertaining whether Shields was, in fact, taking a rest break.

22
23 John Guerra testified credibly about once trying to take a break during one such "downtime."
24 While waiting for dowel bars as part of a cement road replacement job, he bent down to take a

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26
27 ¹² A compelling piece of testimony by Dennis Hake underscores that "downtimes" were not duty-free. When he got
28 "mad," Hake would instruct his crew that they were taking a lunch break today – and during that period of time, they
would be duty-free. When he wasn't fed up with the company, however, he followed his bosses' instruction and
instructed his crews to "work through."

1 rock out of his shoe and reached into his lunch box and took out a Gatorade and drank it. During
2 that brief moment, his Superintendent Shane Hunter, pulled up in his truck and instructed him to
3 get to work. As Guerra testified (in a version where the language had been cleaned up for court),
4 he was told by Shane that "there's something for you to do -- do it." As shown by this testimony
5 and that of other plaintiff's witnesses, even during downtimes, these crewmembers were told to
6 keep busy.

7
8 The Court finds, based on this credible testimony, that production "downtimes" were not free of
9 supervisory control. In fact, the named plaintiff and aggrieved employee, Jon Shields, testified
10 about the practical limitations on affording rest breaks (in which supervisory control was
11 surrendered) given the size of the crews and the amount of work undertaken by Security Paving
12 during any one shift. As he credibly and competently described, the process of removing and
13 replacing highway surfaces is a continuous one.¹³ The workers operate, essentially a train, of
14 complementary and interconnected tasks. Each one of which is dependent on the "just in time"
15 presence of the next step. As a member of a cement paving crew, the pour required continuous
16 and uninterrupted work. And, supervisors ensured that continuity by ongoing and constant
17 supervision and control. While it might have been possible to hire relief workers to allow these
18 breaks to occur, Security Paving did not do so. Nor did they pay these workers premiums when
19 the nature of the work occasioned missed rest breaks.¹⁴

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24 ¹³ Exacerbating the continuous nature of the construction work being performed by pavement crews was the additional
25 pressure of Cal Trans' lane closure rules. As credibly testified to by Darren Jones, the closure time of a freeway lane
is limited. The work to be done has to be completed in a short period of time. "Once we got started, we didn't stop
until we were -- the job was finished for the night."

26 ¹⁴The only evidence showing the payment of premium pay was for the period after January 2015 and shows only 19
27 premiums paid for the entire two and a half year period. Darren Jones credibly testified that in his experience if a rest
28 break could not be afforded, they were entitled to compensation for those missed breaks. He never received extra pay
from Security Paving for those missed rest breaks. Dennis Hake also credibly testified that neither he nor his crew
received premiums for missed rest breaks.

1 The company also monitored its crews to ensure that the workers kept busy all the time. Hake
2 testified that his Superintendent – who was Security Paving’s owner’s son Jason – would sit in a
3 pick-up truck across from work sites and monitor the crews to ensure that they remained busy at
4 all times. As Hake described it, he was "bird-dogged" by Jason to ensure that his crew did not
5 take breaks.

6
7 On occasion, especially at the beginning of a shift during which the project was being set up,
8 workers might be able to take a single rest break during which they were not subject to the control
9 of their supervisors. For example, on a night paving project, the volumetric truck drivers might be
10 able to take a ten-minute break on their way to the freeway location after filling up their truck.
11 Once they arrived at the work site, however, there were no periods of time in which they were free
12 to leave their vehicles, or even take a nap while in their vehicles. Second rest breaks during an
13 eight-hour shift did not occur.

14
15 A number of these witnesses credibly testified that they were either expressly told or were led to
16 believe that you would be fired if you requested or took a rest break. Darren Jones testified that
17 "we knew we weren't allowed to [take a rest break]." And, that if you tried to take a break or
18 lunch, then there was a good chance you probably weren't going to work the next night. John
19 Guerra credibly testified that when workers complained about the absence of breaks, they would
20 not be working at the job site the next day.

21
22 The absence of any written policy or any means by which the company could verify that
23 employees were receiving their required rest breaks further supports the Court’s finding that
24 legally compliant rest breaks were neither authorized nor permitted. Although there was a
25 contention by the defendant that it orally described its meal and rest break policy at every
26 “tailgate” safety meeting and obtained signed statements from employees attesting to that fact, the
27 Court believes the credible testimony that such presentations did not occur. According to the
28 credible testimony of a former foreman for Security Paving, Darrel Matheson, he never spoke with

1 management regarding any rest break policy and he irregularly attended or conducted tailgate
2 meetings. He estimated that he had maybe 15 or 20 of such meetings during his four-year tenure
3 at Security Paving. And, at those meetings, he never discussed rest breaks. Rather, as makes
4 sense, he discussed the work that they were to be performing that week and any unique safety
5 concerns posed by that work. Matheson also credibly testified to handing out multiple, blank
6 forms to his crews to sign before they could receive their paychecks.¹⁵

7
8 Nor did complaints made by these workers as to the unavailability of rest breaks to their unions
9 obtain needed redress. As credibly testified to by several of the plaintiff's witnesses, they told
10 business agents and union officials that they were not getting bargained for rest breaks. But, those
11 complaints were not acted upon.¹⁶ For a significant portion of the relevant period, the economy
12 and construction industry were in steep decline. Work was scarce. Unions were unwilling to
13 lodge complaints against contractors when "we just started to get work again." The unions were
14 unwilling to "piss off" Security Paving – a large employer -- by lodging a complaint about missed
15 rest breaks. And, employees were concerned that if they complained about missed breaks, that
16 they would be "blackballed" at the union hiring hall. As John Guerra reminded everyone, "I
17 wanted just to work, man . . . I lost everything in 2009, you know. I was just getting on my feet
18 again. I was just happy to be working." When Bret Leutzinger complained to his union, he was

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22 ¹⁵ Being handed blank forms to have their crews sign was also testified to credibly by Hake. He also recalled being
handed "stacks of sheets" by his superintendents when they were trying to catch up on their paperwork.

23 ¹⁶ The court finds entirely not credible the testimony of a number of union representatives called by the defendant as
24 witnesses. Unlike the characterization of these witnesses as disinterested, they clearly had an interest in appearing to
25 have performed their role as protecting their members. And, surprisingly, one representative in particular, testified as
26 if he currently worked for Security Paving. His testimony was remarkably similar to answers given by current
27 employees of the firm, even though he hadn't worked at the company in some time. The union reps claimed to have
28 never heard a complaint; claimed that their business agents routinely monitored working conditions at these worksites
and generally testified to policies at Security Paving for which they had no personal knowledge. Their demeanor
while testifying was hostile and defensive and they expressed no real concern about the possibility that their union
members had received unfair treatment by an employer. They appeared to be entirely captured by a large employer
who afforded their members regular and high-paying work. The court affords the testimony of these witnesses no
weight.

1 told that there were over 500 operators on the union hall hiring list and that he was lucky to have a
2 job.

3
4 Providing the plaintiff's witnesses with an extra measure of credibility is the fact that the testimony
5 that these witnesses provided at this trial is potentially adverse to their financial interests. These
6 workers work for a number of different contractors and remain busy by moving from one project
7 to the next. It is not without considerable risk to future employment that a worker comes forward
8 to report the types of violations testified about in this case. That they were willing to do so, and
9 that they did so in such a credible fashion, gives even more weight to this testimony.¹⁷

10
11 The witnesses called by Security Paving to rebut the aggrieved employee's claims fell into two
12 general groups -- union officials who had every reason to deny ever hearing or grieving a
13 complaint about missed breaks, and current employees, who also had financial and employment
14 reasons to testify as they did.¹⁸ Every single defense witness who worked for Security paving
15 testified that he had not missed a single rest or meal break (although it might have been briefly
16 postponed for less than ten minutes) or, if he had, he had been paid a premium.

17
18 These witnesses and their testimony were neither credible nor was the testimony corroborated by
19 contemporaneous employment or payroll records. Despite testimony that missed rest breaks were
20 recorded by foremen on timesheets, the defendant failed to mark or admit as a separate exhibit
21
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23 ¹⁷ By contrast, the defendant's current employees uniformly sponsored the wholly incredible testimony that they were
24 indifferent to losing their jobs -- all of which were incredibly high-paying positions. These defense witnesses had an
25 obvious and clear financial motive to testify in a way to assist the company. When each and every one of them
26 testified that they were indifferent to the possibility of losing their six-figure salaries, they lost a good deal of
credibility. Equally problematic to their credibility was the recurrent admission that they'd spoken with defense
counsel and had been told what questions to expect to be asked.

27 ¹⁸ The union witnesses -- all of whom uniformly testified to hearing nothing and knowing nothing -- were entirely not
28 credible. They actually testified to rest period practices at Security Paving despite their testimony that they personally
had not investigated any complaints nor had they regularly visited Security Paving work sites.

1 even one of those handwritten, amended timesheets.¹⁹ Nor did the company produce any evidence
2 of the premium payments made for most of the relevant period for these missed breaks. The
3 payroll system evidence of premium payments showed 19 missed rest periods since January 2015
4 -- a remarkably small number in light of the company's 500 or more employees and the nature of
5 the work being performed.²⁰

6
7 Many of the witnesses called by the defendant did not work on projects that involved lane closures
8 or night work. Jeremy Strobl rarely worked on freeway repair and panel replacement. Kenneth
9 Dahlke worked at the concrete plant. Charles Graham and Jose Munoz both worked day shifts as
10 carpenter journeymen and carpenter foremen. Robert Walsh worked as a laborer on day shifts.
11 Ryan Tevelde, Chris Manoukian, Abel Lemus, Raymond Reames, Eduardo Castaneda, Kamran
12 Sepanlou and Dan Jelenicki predominantly worked on day shifts at locations where there were no
13 temporary lane closures.

14
15 Of those witnesses who worked day shifts, their testimony was inconsistent and failed to establish
16 defendant's claim that it had a consistent and enforced policy of authorizing and permitting two
17 rest periods -- one in the morning and one in the afternoon. Many of these defense witnesses
18 testified to different rest break practices in key aspects. Graham's crew had fixed rest and meal
19 breaks and would be required to ask permission if they wanted to take a break at a different time.
20 Jose Munoz, also a carpenter foreman, instructed his crew when to take their breaks. Walsh took
21 his breaks at fixed times and never deviated from that schedule for "any reason." Ryan Tevelde,
22 an equipment operator, took regular breaks but would deviate from a fixed schedule if necessitated
23 by the work being performed without asking permission.

24
25
26 ¹⁹ In defendant's post-trial brief, defendant drew the court's attention to two pages of an admitted exhibit of hundreds
27 of certified payroll records -- an exhibit that was so voluminous that it was submitted in the form of a thumb drive.
(Exh. 55). The absolutely scarcity of such examples supports the conclusion that, in the vast, vast, vast majority of
occasions, missed rest break premiums were not paid by the defendant.

28 ²⁰ Until 2015, defendant did not have a time-keeping system that was capable of capturing or preserving this
information.

1 Only five of the defendant's nineteen witnesses worked on the types of shifts that are being
2 challenged by these aggrieved employees -- overnight road replacement and paving shifts
3 involving lane closures during which work assignments for lane removal and replacement had to
4 be performed within a relatively short time period. As to the small number of defense witnesses
5 who had worked on night shifts, they did not testify consistently or credibly as to whether and
6 when rest breaks were provided during those assignments. As discussed above, two defense
7 witnesses testified that they instructed their crews to use "downtimes" for meal and rest breaks.
8 Tevelde testified that he took breaks and he never believed that he could walk away from the
9 equipment during "downtime." Abel Lemus testified that he took his breaks during downtime.
10 But, Kamran Sepanlou, testified that he took breaks whenever he wanted to and he was free to
11 take a break and walk away from his equipment during a cement pour if he wanted and no
12 questions would be asked.

13
14 Other of these defense witnesses were impeached by prior testimony or appeared during their
15 testimony as evasive, defensive and not credible. Michael Rodriguez, the defendant's "PMQ" was
16 entirely not credible. His demeanor while testifying was hostile and defensive. His testimony, in
17 critical aspects, defied common sense. For example, although he testified that there was no
18 record-keeping by the defendant regarding rest breaks until 2015, he was confident that before this
19 change in 2015 employees had been paid premiums "many times" for missed rest breaks.²¹ This
20 testimony was contradicted by his deposition testimony. At his deposition, he testified that he was
21 not aware of employees being paid a one-hour penalty for rest breaks.²² He also incredibly
22 testified that meal and rest breaks were discussed at *every* tailgate meeting, even though he was
23 personally present at only maybe 20 of the more than 2000 weekly meetings held over his seven-

24
25
26 ²¹ The documents show that Security Paving has only paid 19 hours of missed rest periods since the new program was introduced in January 2015.

27 ²² Equally incredible was defendant's witnesses' claim that Wage Order 16 was prominently posted at all the
28 overnight road paving job sites. There was no fixed location based on the nature of these projects at which such a posting could have been provided. The credible testimony of plaintiff's witnesses is that they never saw any postings because they worked hours in which the main offices were closed.

1 year employment history at Security Paving. His most incredible testimony was his claim that the
2 2015 improvement in record-keeping at Security Paving had nothing to do with this lawsuit,
3 despite a complete lack of foundation as to that question because he admitted that he'd never
4 attended a meeting during which the lawsuit was discussed.

5
6 Shane Hunter, a superintendent for Security Paving, provided some of the most unbelievable
7 testimony at the trial. He acknowledged that the road replacement crews were expected to
8 complete a target of pavement removed and pavement replaced for each shift. He also testified
9 that Cal Trans lane closure requirements and stipulated time for completion in contracts are factors
10 in making work schedules. He then, however, went on to testify that these conditions have no
11 effect on the pace at which work is performed and whether breaks are authorized and permitted.
12 He admitted that even though there are liquidated damages as much as \$30,000 per hour, the
13 workers would never work through lunch or breaks for the sake of contract completion. He then,
14 amended his testimony and admitted that although he did discuss daily project completion
15 deadlines with the foremen who reported to him, he never discussed project completion targets
16 with them. How one can discuss one without discussing the other was never made apparent. His
17 inconsistent testimony severely affected the credibility of his testimony regarding whether rest
18 breaks were authorized and permitted by the defendant.

19
20 The defense witness who offered the most unbelievable testimony was Ray Guillen, the foreman
21 who worked, at least for some relevant period, with plaintiff Jon Shields. Guillen was sullen,
22 defensive and avoidant while testifying. His posture and attitude revealed an unbelievable
23 antipathy for the plaintiff. Like other defense witnesses, Guillen started answering questions
24 before defense counsel even finished asking them -- showing that he clearly had been told what
25 questions would be asked and had prepared answers with the assistance of someone else. During
26 cross-examination, Guillen was visibly angry with plaintiff's counsel.

1 Moreover, Guillen's testimony made no sense. His version of Bret Leutzinger's complaint about
2 the absence of breaks is one example. Why would an employee voluntarily retreat from a
3 complaint about receiving breaks -- as Guillen testified? The only logical explanation -- which
4 was proffered by Leutzinger himself -- would be that the employee believed that he would be
5 retaliated against if he continued to complain.

6
7 Another incredible part of Guillen's testimony is that he told his crews -- each and every week at
8 every single tailgate meeting -- about the company's meal and rest break policies. And, what
9 would he have told them? According to him, crews were to take breaks while there was
10 "downtime." The problem with that testimony is that when Jon Shields took a nap during such a
11 "downtime" break, he was written up -- twice. So, if you are disciplined for taking a nap during
12 downtime, how can you take a break during which you are free from management control? How
13 does a foreman know if the nap you are taking is your break or not? How can you be relieved of
14 all responsibility, and yet be disciplined for taking a nap during the same downtime?

15
16 That the defendant is subject to oversight by Cal Trans and other regulatory agencies does not
17 persuade the court that duty-free rest breaks during downtime were authorized and permitted. It
18 would be virtually impossible for the intermittent presence of government representatives during a
19 nighttime road replacement operation -- who would be focused on progress of the task,
20 engineering/plans or questions of safety compliance -- to detect the absence of rest breaks and/or
21 the failure to pay a premium wage for those missed breaks. Even the occasional business agent of
22 the unions failed to detect the defendant's non-compliance. As credibly testified to by a number of
23 plaintiff's witnesses, employees were too scared to complain and business agents were too
24 captured by the employer to investigate. Again and again, the absence of a complaint was
25 considered by the union to be a reason not to investigate.

26
27 Nor does the existence of a number of collective bargaining agreements -- all of which were
28 admitted as exhibits during the defendant's case -- exonerate or excuse the failure by Security

1 Paving to authorize and permit nighttime road repair and replacement crews to take legally
2 compliant rest breaks. While the defendant may have believed that it provided a complete defense
3 for the workplace practices it engaged in, it does not – as a matter of law – provide that protection.
4 And, that the company was required to pay for an eight-hour shift, even if the shift workers
5 completed their tasks before eight hours elapsed does not provide an excuse or defense to the
6 company’s failure to authorize and permit employees to take rest periods, or to pay premiums for
7 missed periods.²³

8
9 In conclusion, the plaintiff has met his burden of proving that the defendant failed to comply -- at
10 least with regard to nighttime road replacement and repair crews -- with the Labor Code's
11 requirements with regard to rest breaks.

12
13 C. The Petersen Survey and Damage Study Are Entitled to No Weight

14
15 Having established the factual existence of a violation of the labor laws based on Security
16 Paving’s failure to afford nighttime road repair and replacement crews legally compliant rest
17 breaks, the next question is how many aggrieved employees on how many shifts failed to receive a
18 legally compliant rest break?

19
20 Under Labor Code Section 2699(a), aggrieved employees can initiate actions to recover civil
21 penalties for Labor Code violations that may be recovered by the Labor and Workforce
22 Development Agency (“LWDA”) or any of its departments, divisions or employees. To prevail in
23 his representative claims, Plaintiff must prove Labor Code violations with respect to each and
24 every individual on whose behalf plaintiff seeks to recover civil penalties under PAGA. *See*
25 *Hibbs-Rines v. Seagate Tech., LLC* (N.D. Cal. Mar. 2, 2009) 2009 WL 513496, at *4.

26
27 ²³ Although one or two witnesses testified to leaving early on those days when rest breaks were missed, the vast
28 majority of the witnesses for both sides testified to working an eight-hour shift and remaining at work until the end of
the shift.

1
2 Such actions are fundamentally law enforcement actions, with the aggrieved employee acting as a
3 private attorney general to collect penalties from employers who violate labor laws. *Esparza v. KS*
4 *Industries* (2017) 13 Cal.App.5th 1240-1241 (the employee plaintiff represents the same legal right
5 and interest as the LWDA). In a PAGA representative action, the government enforcement entity
6 is “always the real party in interest in the suit.” This is an important distinction between civil
7 penalties and statutory damages. *Id.* at 1241.

8
9 To establish the number of Security Paving employees who were not afforded and permitted a
10 legally compliant rest break during the PAGA period, plaintiff proffered a survey and report
11 prepared by Dr. Jeffrey Petersen. This survey was undertaken to measure how many aggrieved
12 employees during the PAGA period missed a legally compliant rest break and to compute their
13 unpaid wage amounts, penalties and interest.²⁴

14
15 As a preliminary matter, Dr. Petersen received from plaintiff’s counsel a list (“the July 2017 list”)
16 of individuals provided by the defendant as part of a “contact list” process. Of the 1013 names on
17 that list, 858 of these individuals had phone numbers. If an individual did not have a phone
18 number, he or she would be excluded from consideration for the survey.²⁵

19
20 Dr. Petersen then randomly ordered the remaining names from the July 2017 contact list provided
21 by the defendant and identified the first 400 persons on this list.²⁶

22
23 ²⁴ Before trial began, defendant moved to exclude Dr. Petersen’s survey as unsupported by general scientific theory
24 and having been conducted using improper scientific survey techniques. *See Sargon Enterprises, Inc. v. University of*
25 *Southern California* (2012) 55 Cal.4th 747, 772. Although the court denied that motion, it did so with the
understanding that the weight to be given to the plaintiff’s evidence would be independently evaluated after the
conclusion of all the testimony. *Cf. Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1, 60.

26 ²⁵ Although Dr. Petersen testified that the elimination of employees without phone numbers would have no effect on
27 the survey results because whether or not an individual has a working phone number is not likely a source of bias, his
only authority for this proposition was an article that he wrote. (Exh. 41 at 3, n.12).

28 ²⁶ Dr. Petersen testified that he believed that 400 was a sufficient size for his survey based on his “pilot study” that he
claims to have performed previously. Dr. Petersen did not perform a pilot for his 2017 survey. The survey that he

1 Dr. Petersen then contacted Susan Allman to survey these persons. Ms. Allman is a CPA and is
2 his business partner's daughter-in-law. Ms. Allman has received no formal training in survey
3 techniques; but she conducted two other surveys for Dr. Petersen. Dr. Petersen gave Ms. Allman
4 instructions on the telephone as to the "proper survey protocol."²⁷ Dr. Petersen instructed Ms.
5 Allman to keep a call log to detail her interaction with potential survey participants, including
6 whether she was able to validate that the phone numbers belonged to the people on the random
7 list.

8
9 Ms. Allman attempted to call each individual on the list of 400 four times. Out of the 400, 162
10 had valid phone numbers and 91 participated in the survey.²⁸

11
12 In the survey that Dr. Petersen prepared, he asked the participants whether they had *received* rest
13 breaks, which he defined as a ten-minute period where they were relieved of their job
14 responsibilities.²⁹ (Exh. 41 at 22 (emphasis added)).

15
16 If the participant provided an answer, such as "everyday" or "always," the survey would conclude.

17
18 submitted to the court for purposes of the 2016 motion for class certification was not a "pilot" for this survey – despite
19 his testimony to the contrary. The declaration filed by Dr. Petersen in support of the 2016 survey did not mention nor
20 did it describe the survey conducted in 2016 as a "pilot" survey. Further, the 2016 survey asked different questions
21 than those posed in the 2017 survey. Dr. Petersen's testimony where he claimed that the 2016 survey was a pilot for
22 the 2017 survey is wholly not credible and generally (adversely) affected his credibility with regards to his entire
23 testimony.

24
25 ²⁷ That protocol and the particular training received by Ms. Allman was not described in Dr. Petersen's report, other
26 than by citing to a chapter in a book written by Robert Groves. Ms. Allman was not given scripts regarding certain
27 responses to particular inquiries by the participants; she was told only to refer questions to Dr. Petersen. Ms. Allman
28 was not told to make her phone calls during identified times of the day, nor was she instructed on how to record
information provided by the participants fully and accurately. At the time that she conducted the survey, Ms. Allman
was aware of the lawsuit, the company and that the survey sought to obtain information regarding the participant's
employment.

²⁸ Listed employees who spoke Spanish were eliminated from participation in the survey because Ms. Allman did not
speak Spanish. (Exh. 41-1).

²⁹ Specifically, the survey asked each participant: "[t]hinking about your entire employment period at Security
Paving and all the different projects you worked on; if you worked a five day work week, how many of those days
would you receive a 10 minute paid rest break for every four hours worked, on average?"

1 For all other respondents, the survey asked each participant to estimate the exact number of days
2 that they had *received* a rest break. (Id.)

3
4 Then, the survey presented the participants with an open-ended question: “What was the reason,
5 or reasons, you did not receive the rest breaks?” (Id.)

6
7 If the participant reported that they did not receive a rest break, the survey then asked whether
8 they’d received a payment for their missed rest break time. (Id.)

9
10 The survey also asked the participants if the frequency regarding receiving rest breaks changed
11 depending on the project and they were asked, by year, to estimate for each year worked how
12 many rest breaks they received, on average. (Id.)

13
14 The potential survey participants knew about the litigation-related purpose of the survey in
15 advance of receiving a phone call. In a letter sent by plaintiff’s counsel to those employees on the
16 July 2017 list in advance of the survey being conducted, the plaintiff’s counsel told the potential
17 interviewees that they were “potentially” aggrieved employees. (Exh. 41 at 4, 25). In the event a
18 survey participant didn’t read or forgot about the letter, Ms. Allman reminded the participants that
19 they were potentially interested parties in a lawsuit: “[w]e have been asked by the lawyers who
20 seek to represent employees who performed work for Security Paving in a collective action
21 lawsuit to conduct a survey.” (Exh. 41 at 21).

22
23 The survey was conducted over a very brief period of time – during approximately six days in late
24 August 2017. (Exh. 41-1 (Excel spreadsheet of Allman call-log contained on disc attached to the
25 hard copy portion of Exhibit 41)).

1 For those persons who participated in the survey, their responses to the open-ended question 6
2 were recorded by Ms. Allman.³⁰ These answers were provided to Dr. Petersen who reviewed and
3 coded the information obtained in the survey. Specifically, Dr. Petersen took these answers to the
4 open-ended question 6 asking the participant to explain why a rest break had not been provided
5 and then assigned either a 1 or 0 to those responses. A 1 was used to signify that a break had been
6 provided and a 0 was used to show that a legally-compliant break had not been received. (See CD
7 attached as part of Exhibit 41 at Excel Tab Analy L2). Thus, coding was used by Dr. Petersen to
8 interpret answers to the open-ended question 6 ("What was the reason, or reasons, you did not
9 receive the rest breaks?") to determine how frequently a violation occurred.

10
11 Dr. Hildreth, defendant's expert, challenged certain of the coding decisions made by Dr. Petersen.
12 For example, he declined to agree with Dr. Petersen that an answer of "Don't know just went
13 along with the program" should be counted as a rest break violation. Another example, "pouring
14 concrete they would leave early" was also recorded as a violation, even though the employee can
15 elect to take their rest break at the end of the shift by leaving early.

16
17 When asked to explain the methodology that he used in assigning a violation to an explanation,
18 Dr. Petersen vaguely testified that these answers didn't "indicate any personal choice to me." As
19 he explained further why he coded certain answers as violations:

20
21 "Well, they were just – the situation, as I understood it, is they're just out there working
22 and they didn't get a break, so they don't know why they didn't get a break. It just didn't
23 happen."

24
25
26
27
28 ³⁰ An additional four responses were included by Dr. Petersen in his report, but they were obtained in an earlier survey
conducted by him as part of plaintiff's class certification motion.

1 Based on this coding, Dr. Petersen then computed the percentage of survey participants who stated
2 that they did not receive all of their required rest breaks due to reasons other than personal choice
3 and computed PAGA penalties based upon this information.
4

5 Dr. Hildreth, who testified for the defendant, criticized a number of errors in the design and
6 implementation of this survey and further challenged the conclusions reached by Dr. Petersen.
7

8 The Court finds the testimony of Dr. Hildreth very credible and adopts, as findings, many of his
9 conclusions with regard to the unscientific nature of Dr. Petersen's survey.
10

11 First, the sample employed by Dr. Petersen was self-selected and biased. Before the survey
12 process even began, the plaintiff's law firm sent a letter out to persons on the 2017 contact list to
13 inform them of the impending survey contact and questionnaire. The letter explicitly stated the
14 plaintiff's law firm was preparing for trial and that, although none of them would be required to
15 appear or attend the trial, they were potentially aggrieved employees. In this way, the letter
16 entreated future participants in the upcoming survey by a promise of potential financial gain.³¹
17 (Exh. 41 at 25). Similarly, the interviewer in this case also knew about the lawsuit. Thus both
18 respondents and interviewer were on notice of the possibility of financial gain associated with
19 certain answers to the questions that were to be posed. This survey design is clearly contrary to
20 the "double blind" standard methods of scientific survey research.³²
21

22 The survey letter and script also allowed participants to believe that their answers would not
23 subject them to legal process, thus providing them with a degree of anonymity. These notices
24

25
26 ³¹ In the event that survey participants had not received the letter or had forgotten its contents, they were reminded as
27 part of the telephone script that "this survey is part of a collective action lawsuit." While an advance letter may have
been useful to improve respondent cooperation, Dr. Hildreth competently testified that these should be written without
mentioning the purpose or the sponsor of the survey.

28 ³² Although Dr. Petersen (again citing only to his own article) opined that double-blind surveys were impossible in
wage and hour cases, he cited no factual basis for that conclusion.

1 gave the impression that any information the survey provided would be anonymous. As Dr.
2 Petersen himself acknowledged in one of his articles, the promise of anonymity increases bias
3 because the participants will exaggerate their reported harm. Both the letter and the survey taker's
4 remarks in this case alerted and informed a specific sub-section of the sample that they were
5 aggrieved and could exaggerate their alleged harms without consequence.

6
7 Second, the sample size selected by Dr. Petersen was too small to obtain the 95 percent confidence
8 estimates sponsored by Dr. Petersen. Moreover, the reason provided by Dr. Petersen to support
9 his decision to limit the sample size to 400 (i.e., that a pilot study was performed previously and
10 supported this sample size) is found by the court to be factually untrue.

11
12 Third, even if the survey methodology were proper, the survey questions themselves failed to
13 elicit how often a violation of the relevant Labor Code rest break provisions had occurred. By
14 asking whether they received breaks, employees were incorrectly directed to report every instance
15 in which a rest break was not 'received,' not whether the employer authorized or permitted such
16 breaks – which is what the law requires.³³

17
18 Fourth, the use of an open-ended question failed to convert the improper "received" breaks
19 question into one that discovered whether employees were "authorized and permitted" but simply
20 elected not to take breaks. Dr. Petersen coded answers from respondents in a biased and
21 unscientific manner, thus rendering the survey's conclusion as to the frequency of violations
22 invalid. A number of Dr. Petersen's coding decisions demonstrate his partisan viewpoint and his
23 lack of objectivity – taking this survey well outside the bounds of proper scientific study.³⁴

24
25 ³³ An employer is obligated only to authorize and permit rest breaks; it has no obligation to ensure that employees take
26 rest breaks. *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1033. Employees are free to decline rest
27 breaks. *Id.* Thus, the survey (which inquires as to whether a rest break was received in four separate questions) did
28 not gather relevant information regarding the defendant's liability.

³⁴ Another example of Dr. Petersen's embroilment in this litigation is his computation of the margin of error, which he
admitted was underestimated. Performing the correct scientific calculations and accepting Dr. Petersen's 95%
confidence level, the relative margin of error using a t-distribution (due to the small sample size) was 23.7%. In other

1 Fifth, Dr. Petersen's damages analysis, based on his survey results, failed to utilize rates of pay of
2 specific employees to calculate the amounts due for allegedly unpaid premiums for missed rest
3 breaks. Instead he impermissibly used a 'blended' rate averaging the pay rates of the entire
4 Security Paving workforce. This aggregation is legally impermissible for two reasons. By
5 looking at the entire workforce, Dr. Petersen failed to use the pay rates only of those nighttime
6 shift employees who suffered the violations. Secondly, this use of a blended average is flatly
7 contrary to the requirement of Labor Code section 226.7, which requires a premium be computed
8 as "one additional hour of pay *at the employee's* regular rate of compensation for each workday
9 that the . . . rest . . . period is not provided. *See Medlock v. Taco Bell Corp.* (E.D. Cal. Dec. 11,
10 2015) 2015 WL 10791410 at *5.

11
12 In short, the court concludes that the plaintiff's survey results cannot be used to identify each and
13 every employee who did not receive a legally compliant rest break, nor does it permissibly
14 compute back wages or PAGA penalties for aggrieved employees in this case.

15
16 D. If the Petersen Survey and Damage Study Are Entitled to No Weight, What Is the Effect of that
17 Failure of Proof?

18 The only evidence adduced by the plaintiff to quantify how frequently the defendant failed to
19 provide its nighttime road replacement and repair crews with legally compliant rest breaks was the
20 Petersen survey. The only evidence adduced by the plaintiff to quantify unpaid wages and
21 penalties for the aggrieved employees was the Petersen damage study.³⁵

22
23 words, to give an estimate of the proper penalty with 95 percent confidence, Dr. Petersen's estimate would have to
24 vary by almost a quarter from the lower end to the higher end. While this is, admittedly, better than the 49 percent
25 margin of error in the *Duran* case, it is substantially worse than the 5 or 10 margins of error that Dr. Hildreth testified
26 were found in well-performed statistical studies.

27 ³⁵ Although in his post-trial brief, plaintiff's counsel attempted to reopen the trial to adduce two more evidentiary
28 bases by which to identify the number of rest breaks missed by aggrieved employees, such evidence cannot be
"deduced" from Exhibit 55. Exhibit 55 is a "thumb drive" that holds pdf copies of thousands of handwritten
signatures on the bottom of numerous Security Paving "tail gate meeting" forms and other undifferentiated payroll
reports and business records. It is incapable – without considerable review, selection, computation and handwriting
discernment – of becoming the basis by which to "deduce" the basis for any employee's claim for rest break
violations. It is not, as plaintiff contends, nothing more than "simple math." Moreover, even if it were, defendant has

1 The individual plaintiff, Jon Shields, did not testify regarding the number of rest breaks (or meal
2 breaks) that he contended were not received. None of the witnesses from these crews called by the
3 plaintiff testified regarding the number of shifts they worked during the relevant period and how
4 often, once or twice per eight-hour shift, they were not afforded and provided a legally compliant
5 rest break. Nor did any of these witnesses testify as to their hourly or regular rate of pay.

6
7 Where, as here, the plaintiff has met his burden of proof of establishing the fact of a Labor Code
8 violation but has failed to answer by competent evidence how often that violation occurred, what
9 is the effect of that failure of proof?

10
11 Defendant contends that as plaintiff has failed to adduce any competent evidence as to the
12 measurement of how often the aggrieved employees suffered this violation, it should be granted
13 judgment in this case. In support of that contention, defendant cites a number of cases holding
14 that a plaintiff's failure to establish an amount of damage is fatal to the claim. *See, e.g., City of*
15 *Oakland v. Pacific Gas & Elec. Co.* (1941) 47 Cal.App.2d 444, 450; *Saunders v. Taylor* (1996) 42
16 Cal.App.4th 1538, 1543.

17
18 The court agrees that, in general except as otherwise provided by law, a party has the burden of
19 proof as to each fact the existence or non-existence of which is essential to the claim for relief or
20 defense that he is asserting. *Amaral v. Cintas* (2008) 163 Cal. App. 4th 1157, 1188. On occasion,
21 however, courts may alter the normal allocation of the burden of proof. *Id.* In determining
22 whether the normal allocation of proof should be altered, courts consider a number of factors: the
23 knowledge of the parties concerning the particular fact, the availability of the evidence to the

24
25 been deprived of the opportunity to question a witness who has conducted that mathematical analysis. Plaintiff's
26 attempt to reopen the trial at this late date to adduce alternative evidence to the Petersen survey violates due process
27 and shall not be considered by the Court. *See People v. Bolton* (1979) 23 Cal.3d 208, 213 n.2 (axiomatic that new
28 evidence cannot be adduced in closing argument."); *Garcia v. ConMed Corp.* (2014) 204 Cal.App.4th 144, 159.
Defendant Security Paving's motion to strike Exhibit A and B of Plaintiff's Post-Trial Brief. There is no basis upon
which to reopen the proceeding and to allow plaintiff to present new evidence that could have been presented at trial.
See Town of Atherton v. California High-Speed Rail Auth. (2014) 228 Cal.App.4th 314, 325.

1 parties, the most desirable result in terms of public policy in the absence of proof of a particular
2 fact, and the probability of the existence or nonexistence of the fact. *Id.*

3
4 A long-standing application of burden-shifting occurs in the wage and hour context when an
5 employer's compensation records are so incomplete or inaccurate that an employee cannot prove
6 his or her damages.³⁶ *Id.* Even when the records at issue are not legally required to be maintained,
7 the burden may be shifted. *Id.* at 1190 ("fundamental principle of American jurisprudence that for
8 every wrong there is a remedy, and that, unless countered by public policy, an injured party should
9 be compensated for all damage proximately caused by the wrongdoer.")

10
11 The problem in this case, however, is that the aggrieved plaintiff never argued for that burden-
12 shifting to be applied and defendant adduced no evidence whatsoever from which an estimate
13 could be made of the frequency of the violations or the employees on the nighttime road repair and
14 replacement crews who suffered them. Accordingly, while the lack of this evidence may not be
15 fatal to the plaintiff's PAGA case – as the burden had shifted to the defendant to provide this
16 critical, missing information – it still presents the problem that the Court does not have any
17 competent evidence by which to award unpaid wages or penalties to the aggrieved employees.

18
19 Where, as here, the fact that the defendant has failed to comply with the Labor Code's requirement
20 of authorizing and permitting rest breaks during which employees are free from supervisory
21 control has been established, but the frequency of occurrence of this violation and the employees
22 who suffered this deprivation cannot be identified, nominal damages should be available.

23 Nominal damages are granted neither to compensate the plaintiff nor punish the defendant.

24 Nominal damages can be awarded when the defendant has invaded a cognizable legal interest of
25 the plaintiff, *i.e.*, to be afforded legally compliant rest breaks, even when the plaintiff cannot prove

26
27
28 ³⁶ Outside of the wage and hour context, when the parties have unequal access to evidence necessary to prove a
disputed issue, the party who exclusively possesses facts essential to that claim bears the burden of going forward with
the evidence on the issue, although it is not the party asserting the claim. *See Amaral*, 163 Cal.App.4th at 1189-1190.

1 compensatory damages and sues only to establish a right or to obtain a ruling regarding the
2 defendant's conduct. *See Restatement 2d of Torts* § 907. The award of nominal damages in such
3 cases avoids allowing a wrongdoer to avoid punishment and furthers the public's interest in the
4 robust enforcement of the labor laws. Nominal damages are properly awarded when, although the
5 claimant has shown significant harm, its amount is not proved with sufficient certainty to entitle
6 him to an award of compensatory damages. *Id.*

7
8 In this case, therefore, the aggrieved employees have shown significant harm, but its amount has
9 not been proved with sufficient certainty to allow the court to compute or award civil penalties.
10 Accordingly, the court awards a nominal civil penalty assessment of \$50 for an initial violation of
11 Labor Code § 558.³⁷

12 IV. SHIELDS' INDIVIDUAL CLAIMS

13
14 Jon Shields also alleged individual causes of action for lost wages due to missed meal and rest
15 breaks, waiting period penalties and an individual claim for restitution and/or injunctive under the
16 UCL based on these statutory violations.

17 A. Meal and Rest Breaks

18
19 California's meal period rules are set forth in Labor Code Section 512 and the Wage Orders.
20 These rules generally prohibit employers from employing an employee for a work period of more
21 than five hours without providing a meal period of at least 30 minutes. As explained and
22

23 ³⁷ Injunctive relief is not available under PAGA. PAGA actions can recover only statutory penalties in fixed amounts
24 per violation. *Plaisted v. Dress Barn, Inc.* (C.D. Cal. Sept. 20, 2012) 2012 WL 4356158, *2). Moreover, even if such
25 relief were available, plaintiff adduced no evidence after March 27, 2015 with regard to Security Paving's rest break
practices. Thus, there is no basis to find an ongoing violation that would occasion the need for an injunction.

26 The court declines to award a separate PAGA statutory penalty in this case. PAGA is simply a procedural statute
27 allowing aggrieved employees to recover civil penalties for Labor Code violations. PAGA's plain language confirms
28 that the statute allows only civil penalties. The civil penalty awarded in this case of \$50 must be distributed 75% to
the Labor and Workforce Development Agency and 25% to the aggrieved employees. *See* Labor Code § 2699(i).
Where, as here, Labor Code Section 558 provides a civil penalty, PAGA does not allow a separate double penalty to
be imposed. *See Wert v. U.S. Bancorp* (S.D. Cal. Jun. 23, 2014) 2014 WL 2860287, *2-3.

1 examined in *Brinker Restaurant Corp. v. Superior Court*, (2012) 53 Cal.4th 1004, it is not a duty of
2 an employer to ensure that no work is performed. Rather, an employer satisfies its obligation if it
3 (1) relieves employees of all duties; (2) relinquishes control over their activities; (3) permits them
4 a reasonable opportunity to take a 30-minute break, and (4) does not discourage or impede them
5 from doing so.

6
7 Employers must also comply with the meal period timing rules when providing meal periods. In
8 the absence of a waiver, Labor Code Section 512 requires a first meal period no later than the end
9 of an employee's fifth hour of work, and a second meal period no later than the end of an
10 employee's tenth hour of work. This has been construed to mean that a meal break should be
11 afforded no later than the start of an employee's sixth hour of work and no later than what would
12 be the start of the 11th hour of work.³⁸

13
14 Shields' individual claim for missed rest breaks, as discussed *supra*, are controlled by Wage Order
15 16, which provides that "[e]very employer *shall authorize and permit* all employees to take rest
16 periods, which insofar as practicable, shall be in the middle of each work period The
17 authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes
18 net rest time for every four (4) hours worked, or major fraction thereof." Wage Order 16-2001, §
19 11(A).

20
21
22 ³⁸ The plaintiff -- at a very late point in the case -- asserted that his individual meal break claim could also be proved
23 based on the absence of potable water, soap and towels with which to wash his hands before eating. *See* Wage Order
24 Section 10(c). Defendant objects, understandably, to the lateness of these allegations. The plaintiff's complaint fails
25 to mention a claim for individual meal period violations pursuant to Section 10(c). Section 10(c) requires that
26 employers provide "an adequate supply of potable water, soap, or other suitable cleansing agent, and single use towels
27 for handwashing." There is nothing that requires the potable water to be provided at any particular location or to be
28 located proximately to the soap and towels. The credible testimony adduced from the witnesses proffered by both
plaintiff and defendant established that defendant's work sites had both potable water and separate wash stations with
soap and hand towels -- albeit at different locations. There was no testimony adduced by the plaintiff suggesting that it
was a problem for soap and towels to be taken over to the potable water for use in handwashing. Thus, it is not
necessary to rule on defendant's late objection to the claim because plaintiff failed to meet his burden of proving that
defendant violated 10(c).

1 Shields testified credibly that he had not been provided legally compliant meal and rest breaks
2 during the eight months that he drove a volumetric mixer for Security Paving as part of a night
3 roadway repair and replacement crews. He did not, however, quantify that claim. He did not
4 testify how often he missed his meal and/or rest breaks, how many shifts he worked for Security
5 Paving during the eight months that he worked on overnight road crews, what his regular or hourly
6 rate was, or any other fact upon which his individual losses could be calculated with reasonable
7 certainty.

8
9 Unlike the position that the PAGA aggrieved employees found themselves in, however, Shields
10 possessed all of the information required to perfect his individual claims. He testified that he
11 verified the hours appearing on his paychecks against his personally maintained work records and,
12 on occasion, brought errors to the attention of his employer.³⁹ Unlike the representative group of
13 employees, Shields as an individual plaintiff possessed the information from which a reasonable
14 estimate of missed meal and/or rest breaks during this eight-month period could have been
15 computed and sponsored at trial.⁴⁰ And, he testified that he knew the number of occasions for
16 which he had received premium pay for missed breaks. But, for reasons not entirely clear to the
17 court, he failed to provide any evidence concerning his damages at trial.

18
19 Where, as here, there is no basis to shift the burden of demonstrating damages to the defendant,
20 the plaintiff's failure to prove the amount of his loss is fatal to his individual meal and rest break
21 claims. *See City of Oakland*, 47 Cal.App.2d at 450.

22
23
24

³⁹ He further testified that he received premium payments for some missed meal periods during the time that he
25 worked on asphalt projects and could answer the question of how often by referring to his "notes." (Trial Transcript –
26 September 20, 2017 at 26:2-3).

27
28
⁴⁰ Jon Shields kept track of every hour that he worked for Security Paving and followed up with the company if his
records did not match the company records. (See Exh. 508 at 2.) The company also maintained payroll records to the
same effect for his days of employment. (Id. at 17-21.) The Court, however, declines to consider the plaintiff's late
interjection of this information – which has been extracted, manipulated and computed -- in the post-trial brief as
proof of individual damages for Jon Shields. *See supra* n. 35.

1
2 B. Derivative Wage Statement Claims and Waiting Time Penalties

3
4 Not only did plaintiff Jon Shields fail to adduce competent evidence with which to establish his
5 damages from missed meal periods and rest breaks during the time that he worked with nighttime
6 road paving crews, he adduced no evidence on either his derivative wage statement claim or his
7 cause of action for waiting time penalties.

8 C. UCL Claims

9
10 Jon Shields' final individual cause of action asserts a claim for restitution and injunctive relief
11 under the UCL. There is no evidence in this record as to the amount of any unpaid wages that
12 might be claimed by the individual plaintiff as restitution. Nor is there any basis for injunctive
13 relief presented in this case. Jon Shields was fired by Security Paving many years ago. A UCL
14 representative plaintiff who is no longer employed by or otherwise affiliated in any way with a
15 defendant-employer apart from a lawsuit lacks standing to pursue an injunction against his former
16 employer as he faces no "real and immediate threat of repeated injury from such practices."
17 *Cleveland v. Groceryworks.com LLC* (N.D. Cal. 2016) 200 F. Supp.3d 924, 961-962.

18
19 CONCLUSION

20
21 Shields, as an aggrieved employee on behalf of the representative group, shall receive a nominal
22 award in the amount of \$50. Defendant has prevailed on the remaining causes of action. Plaintiff
23 shall prepare a judgment consistent with this ruling.

24
25 DATED: *October 24, 2017*

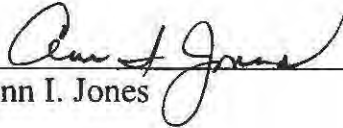
26 
Hon. Ann I. Jones

EXHIBIT 12

TSLF TIME EXHIBIT DAMAS

ATTORNEY/PARALEGAL	SUM OF HOURS (DECIMAL)	AVERAGE OF RATE	SUM OF PRE-MULTIPLIER LODESTAR
Daniela Linares (2nd Year Intake Assistant)	51.49	\$ 150.00	\$ 7,723.50
Henry Michael (1st Year Intern)	0.08	\$ 150.00	\$ 12.00
Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	51.43	\$ 200.00	\$ 10,286.00
Thalia Higgins (Formerly Employed 1st Year Paralegal)	2.47	\$ 150.00	\$ 370.50
Breck Oyama (15+ Year Paralegal)	13.06	\$ 300.00	\$ 3,918.00
David Spivak (28+ Year Attorney)	33.504	\$ 900.00	\$ 30,153.60
Emily Ly (3rd Year Paralegal)	1.75	\$ 150.00	\$ 262.50
Laura Solorzano (1st Year Intake Assistant)	1.91	\$ 150.00	\$ 286.50
Leah Tahmassian (Formerly Employed 1st Year Intern)	4	\$ 150.00	\$ 600.00
Maya Cheaitani (Formerly Employed 2nd Year Attorney)	57.24	\$ 250.00	\$ 14,310.00
Nora Greer (15+ Year Paralegal)	2.42	\$ 200.00	\$ 484.00
Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	31.33	\$ 200.00	\$ 6,266.00
Grand Total	250.684		\$ 74,672.60

Firm	Hours	Pre-Multiplier Lodestar
The Spivak Law Firm	250.68	\$ 74,672.60
United Employees Law Group	30.70	\$ 22,257.50
Grand Total	281.38	\$ 96,930.10

Attorneys' Fees Requested	\$78,333.00
Lodestar Multiplier	0.8

TSLF TIME EXHIBIT DAMAS

DATE	ATTORNEY/PARALEGAL	DESCRIPTION	HOURS (DECIMAL)	RATE	PRE-MULTIPLIER LODESTAR
6/15/2022	David Spivak (28+ Year Attorney)	Intake with client; set up file	0.83	\$900.00	\$ 747.00
7/21/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	LWDA searches; send results to DGS	0.42	\$200.00	\$ 84.00
7/21/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Send client social media preserv email, stages of lawsuit email, evidence preserv email, communicate with TSLF email	0.83	\$200.00	\$ 166.00
7/21/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	OSLE CPRA Records Request Submission	0.33	\$200.00	\$ 66.00
7/21/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Lexis search; send results to DGS	0.25	\$200.00	\$ 50.00
7/21/2022	Daniela Linares (2nd Year Intake Assistant)	email/case review	0.08	\$150.00	\$ 12.00
7/21/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Call and text client asking last day of employment	0.17	\$200.00	\$ 34.00
7/21/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Send FV email re evidence preservation duties	0.17	\$200.00	\$ 34.00
7/21/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Do background check on client and Defendant; save to file	0.33	\$200.00	\$ 66.00
7/25/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Email client re last date worked for defendant	0.08	\$200.00	\$ 16.00
7/26/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Calendar last date client worked for employer statute of limitations	0.25	\$200.00	\$ 50.00
7/28/2022	Breck Oyama (15+ Year Paralegal)	fwd emails to team, add SOL deadline chain	0.17	\$300.00	\$ 51.00
7/29/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Save emails and client docs to folder	0.25	\$200.00	\$ 50.00
7/29/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Send DGS Retainer for signature	0.17	\$200.00	\$ 34.00
7/29/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Download and save client documents to folder	0.33	\$200.00	\$ 66.00
8/1/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Send Jeff the fully executed Retainer Agreement	0.08	\$200.00	\$ 16.00
8/1/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Send client the fully executed Retainer Agreement	0.25	\$200.00	\$ 50.00
8/5/2022	Daniela Linares (2nd Year Intake Assistant)	intake call w LT	0.08	\$150.00	\$ 12.00
8/11/2022	Daniela Linares (2nd Year Intake Assistant)	sent client hightails link, email, training w LS and LT	0.33	\$150.00	\$ 49.50
8/25/2022	Daniela Linares (2nd Year Intake Assistant)	email to cl re hightail	0.08	\$150.00	\$ 12.00
9/10/2022	David Spivak (28+ Year Attorney)	Prepare notice to the Labor & Workforce Development Agency and Class Action complaint; instructions to staff	1.67	\$900.00	\$ 1,503.00
9/10/2022	Leah Tahmassian (Formerly Employed 1st Year Intern)	Intake interview, sorted notes, sent doc/witness request emails	4.00	\$150.00	\$ 600.00
9/12/2022	Nora Greer (15+ Year Paralegal)	Damas, sent intake notes to team	0.42	\$200.00	\$ 84.00
9/12/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Assist SGS with LWDA filing	1.00	\$200.00	\$ 200.00
9/12/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Meet w/NG re LWDA filing; file LWDA Notice; circulate to team; send for certified mailing	0.25	\$200.00	\$ 50.00
9/12/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Finalize lawsuit; send for filing with court	0.75	\$200.00	\$ 150.00
9/12/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Draft and finalize lawsuit; send to DGS for signature	0.33	\$200.00	\$ 66.00
9/14/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Circulate LetterStream confirmation LWDA ltr to team	0.17	\$200.00	\$ 34.00
9/14/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Circulate One Legal email to team	0.08	\$200.00	\$ 16.00
9/14/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Send lawsuit to client	0.25	\$200.00	\$ 50.00
9/14/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Calendar CMC deadlines	0.17	\$200.00	\$ 34.00
9/14/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Enter OneLegal invoices into FV and save to file	0.75	\$200.00	\$ 150.00
9/14/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Download lawsuit from court website; save to file; circulate to team	0.25	\$200.00	\$ 50.00
9/14/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Update case information on FV	0.17	\$200.00	\$ 34.00
9/14/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Save LetterStream invoice to file and FV; send to Amber	0.17	\$200.00	\$ 34.00
9/15/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Calendar deadlines	0.17	\$200.00	\$ 34.00
9/15/2022	Breck Oyama (15+ Year Paralegal)	review FV report, add deadline chain for cmc, email SGS re calendar	0.17	\$300.00	\$ 51.00
9/21/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Download and save POS of Summons/Complaint; calendar deadlines	0.42	\$200.00	\$ 84.00
9/21/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Forward One Legal emails to team	0.08	\$200.00	\$ 16.00
9/22/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	File POS of Summons/Complaint w/court; circulate to team	0.25	\$200.00	\$ 50.00
9/22/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Save and enter One Legal invoice to file and FV	0.08	\$200.00	\$ 16.00
9/22/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Download and save to file conformed POS of Summons/Complaint; circulate to team	0.15	\$200.00	\$ 30.00
9/22/2022	Breck Oyama (15+ Year Paralegal)	review emails/calendar, add deadline chains, email SGS tasks	0.17	\$300.00	\$ 51.00
9/23/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Save and enter One Legal invoice to file and FV	0.08	\$200.00	\$ 16.00
9/29/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Search court website to see if case is stayed	0.17	\$200.00	\$ 34.00
9/30/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Draft discovery docs	1.00	\$200.00	\$ 200.00
10/5/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Revise discovery/depo notices	0.50	\$200.00	\$ 100.00
10/5/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Update proof of service for discovery	0.15	\$200.00	\$ 30.00
10/6/2022	Breck Oyama (15+ Year Paralegal)	review emails/POS/files/calendar, email SGS tasks, update deadline chain	0.17	\$300.00	\$ 51.00
10/6/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Email client POS of Summons/Complaint	0.25	\$200.00	\$ 50.00
10/11/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Send DGS/MC discovery for review	0.25	\$200.00	\$ 50.00
10/21/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Review discovery	0.50	\$200.00	\$ 100.00
10/24/2022	Breck Oyama (15+ Year Paralegal)	review emails/FV/calendar	0.08	\$300.00	\$ 24.00
10/26/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Update OC info in FV/Case Summary and POS	0.33	\$200.00	\$ 66.00
10/27/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Email OC re date to discuss matter w/DGS	0.17	\$200.00	\$ 34.00

TSLF TIME EXHIBIT DAMAS

10/28/2022	Daniela Linares (2nd Year Intake Assistant)	emails	0.08	\$150.00	\$	12.00
10/28/2022	Breck Oyama (15+ Year Paralegal)	review emails/calendar	0.08	\$300.00	\$	24.00
10/31/2022	David Spivak (28+ Year Attorney)	Prepare for meeting confirm with opposing counsel for the upcoming status conference; meet and confer with opposing counsel, my phones; send notes and instructions to staff for follow up	0.92	\$900.00	\$	828.00
10/31/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Finalize mediation letters; send to DGS for signature	0.17	\$200.00	\$	34.00
10/31/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Prep all docs for service; draft N&A; send to DGS for signature; issue Summons; email OC lawsuit; mail lawsuit to OC; circulate finalized lawsuit to team	1.00	\$200.00	\$	200.00
10/31/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Finalize informal discovery letters; send to OC	0.25	\$200.00	\$	50.00
10/31/2022	David Spivak (28+ Year Attorney)	Prepare letters to opposing counsel concerning mediation	0.42	\$900.00	\$	378.00
10/31/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Draft N&A; send to DGS for signature	0.17	\$200.00	\$	34.00
11/1/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Review email from client; email client re status of case	0.08	\$200.00	\$	16.00
11/1/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Save and enter LetterStream invoice to file and FV; send to Amber	0.08	\$200.00	\$	16.00
11/2/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Emails w/client	0.17	\$200.00	\$	34.00
11/15/2022	Breck Oyama (15+ Year Paralegal)	check w/ team re 1AC/PAGA	0.08	\$300.00	\$	24.00
11/18/2022	Maya Cheaitani (Formerly Employed 2nd Year Attorney)	1ac prep/review file & emails	2.33	\$250.00	\$	582.50
11/21/2022	Daniela Linares (2nd Year Intake Assistant)	fv review. emails	0.17	\$150.00	\$	25.50
11/21/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Calendar deadlines	0.08	\$200.00	\$	16.00
11/21/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Finalize POS of Summons; serve to OC; file w/court	0.25	\$200.00	\$	50.00
11/21/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Draft POS of Summons; send to DGS for signature	0.42	\$200.00	\$	84.00
11/21/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Send f/u email to OC re N&A	0.08	\$200.00	\$	16.00
11/22/2022	Breck Oyama (15+ Year Paralegal)	review emails/FV, update litigation chain, email SGS re POS Summons, review calendar	0.17	\$300.00	\$	51.00
11/22/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Download and save conformed POS of Summons; circulate to team	0.08	\$200.00	\$	16.00
11/28/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Save and enter One Legal invoice to file and FV	0.08	\$200.00	\$	16.00
12/1/2022	Daniela Linares (2nd Year Intake Assistant)	review case, emails, tcw sgs, call to client lvm	0.17	\$150.00	\$	25.50
12/12/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Email DL re witnesses for depositions	0.08	\$200.00	\$	16.00
12/13/2022	Daniela Linares (2nd Year Intake Assistant)	emails, call w client, email to client	0.33	\$150.00	\$	49.50
12/13/2022	Daniela Linares (2nd Year Intake Assistant)	email rev, text to client	0.17	\$150.00	\$	25.50
12/14/2022	Daniela Linares (2nd Year Intake Assistant)	call to client, lvm. email	0.08	\$150.00	\$	12.00
12/15/2022	Daniela Linares (2nd Year Intake Assistant)	email from client, email response, tc w sgs	0.08	\$150.00	\$	12.00
12/15/2022	Daniela Linares (2nd Year Intake Assistant)	text to client	0.08	\$150.00	\$	12.00
12/15/2022	Daniela Linares (2nd Year Intake Assistant)	search for ees online, emails	0.33	\$150.00	\$	49.50
12/16/2022	David Spivak (28+ Year Attorney)	review and redline the arb agreement; email oc; instructions to staff	0.67	\$900.00	\$	603.00
12/19/2022	Daniela Linares (2nd Year Intake Assistant)	email rev, email call text to client	0.25	\$150.00	\$	37.50
12/20/2022	Maya Cheaitani (Formerly Employed 2nd Year Attorney)	client docs/review file & emails	1.00	\$250.00	\$	250.00
12/20/2022	Breck Oyama (15+ Year Paralegal)	review emails, check w/ team re 1AC	0.08	\$300.00	\$	24.00
12/20/2022	Daniela Linares (2nd Year Intake Assistant)	saved client docs	0.50	\$150.00	\$	75.00
12/22/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Serve to OC Change of Address; file w/court	0.42	\$200.00	\$	84.00
12/22/2022	Breck Oyama (15+ Year Paralegal)	fwf filing order to SGS	0.08	\$300.00	\$	24.00
12/22/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Draft Notice of Change of Address; send to DGS for signature	0.25	\$200.00	\$	50.00
12/27/2022	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Download, save and circulate conformed notice of change of address	0.17	\$200.00	\$	34.00
1/17/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Update calendar	0.08	\$200.00	\$	16.00
1/18/2023	David Spivak (28+ Year Attorney)	call with OC re arbitration agreement	0.25	\$900.00	\$	225.00
1/18/2023	Daniela Linares (2nd Year Intake Assistant)	text and call to client	0.08	\$150.00	\$	12.00
1/18/2023	Daniela Linares (2nd Year Intake Assistant)	email rev, email to team, called and texted client	0.17	\$150.00	\$	25.50
1/19/2023	Daniela Linares (2nd Year Intake Assistant)	calls to client, lvm, text to client. calls w client re arb agreement. email to team, text to client	1.67	\$150.00	\$	250.50
1/20/2023	Daniela Linares (2nd Year Intake Assistant)	review pf, emails, calls to client, lvm, text to client, email to team, call w client.	0.75	\$150.00	\$	112.50
1/23/2023	Daniela Linares (2nd Year Intake Assistant)	client docs	0.50	\$150.00	\$	75.00
1/25/2023	Daniela Linares (2nd Year Intake Assistant)	email to client	0.25	\$150.00	\$	37.50
1/26/2023	Daniela Linares (2nd Year Intake Assistant)	saved client docs	0.50	\$150.00	\$	75.00
1/26/2023	Daniela Linares (2nd Year Intake Assistant)	mtg w dgs, texts to cl	0.25	\$150.00	\$	37.50
1/27/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Emails w/DL	0.08	\$200.00	\$	16.00
1/27/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Review incomplete FV tasks	0.17	\$200.00	\$	34.00
1/27/2023	Daniela Linares (2nd Year Intake Assistant)	emails, tc w sgs, waiting for client.	0.25	\$150.00	\$	37.50
1/27/2023	Daniela Linares (2nd Year Intake Assistant)	email rev, text to client	0.17	\$150.00	\$	25.50
1/30/2023	Daniela Linares (2nd Year Intake Assistant)	call to client, tc w dgs, calendar entry, email to client	0.08	\$150.00	\$	12.00
1/31/2023	Daniela Linares (2nd Year Intake Assistant)	call w dgs waiting for cl, texts to cl	0.25	\$150.00	\$	37.50
1/31/2023	Daniela Linares (2nd Year Intake Assistant)	call and email to team	0.25	\$150.00	\$	37.50
2/1/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Update calendar	0.08	\$200.00	\$	16.00
2/1/2023	Daniela Linares (2nd Year Intake Assistant)	email rev, text to client, waiting in mtg for dgs and client, email reminders to dgs	0.42	\$150.00	\$	63.00
2/2/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Send reminder email to OC re dial-in info.	0.08	\$200.00	\$	16.00
2/2/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Email OC re call w/DGS	0.08	\$200.00	\$	16.00
2/2/2023	Daniela Linares (2nd Year Intake Assistant)	email rev	0.08	\$150.00	\$	12.00
2/2/2023	Daniela Linares (2nd Year Intake Assistant)	email rev	0.08	\$150.00	\$	12.00
2/3/2023	David Spivak (28+ Year Attorney)	Prepare for call and call with opposing counsel concerning the arbitration agreement and the potential for mediation	0.50	\$900.00	\$	450.00
2/3/2023	Daniela Linares (2nd Year Intake Assistant)	email rev, oc call notes	0.08	\$150.00	\$	12.00
2/8/2023	Daniela Linares (2nd Year Intake Assistant)	email rev	0.08	\$150.00	\$	12.00
2/8/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Email OC re extension; update calendar	0.08	\$200.00	\$	16.00
2/10/2023	Breck Oyama (15+ Year Paralegal)	review emails/FV, update deadline chain	0.17	\$300.00	\$	51.00
2/21/2023	Daniela Linares (2nd Year Intake Assistant)	email review, email answer to dgs,	0.17	\$150.00	\$	25.50
2/21/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Download and Save D's Mx Compel Arb; calendar all dates	0.17	\$200.00	\$	34.00

TSLF TIME EXHIBIT DAMAS

2/22/2023	Daniela Linares (2nd Year Intake Assistant)	email review, notes rev. tc w mc	0.33	\$150.00	\$	49.50
2/23/2023	Daniela Linares (2nd Year Intake Assistant)	renaming client docs	0.75	\$150.00	\$	112.50
3/6/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Look through and update FV; update calendar	0.25	\$200.00	\$	50.00
3/6/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Emails w/DGS; update FV re stay	0.08	\$200.00	\$	16.00
3/9/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Finalize Notice of Continued CMC; serve to OC; file w/court; circulate to team	0.25	\$200.00	\$	50.00
3/9/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Draft and finalize Notice of Continued CMC; send to DGS for signature	0.33	\$200.00	\$	66.00
3/9/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Download and save conformed doc; circulate to team	0.08	\$200.00	\$	16.00
3/10/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Save and enter One Legal invoice to file and FV	0.08	\$200.00	\$	16.00
3/10/2023	Maya Cheaitani (Formerly Employed 2nd Year Attorney)	arb prep/review emails/client docs/def docs	1.75	\$250.00	\$	437.50
3/10/2023	Daniela Linares (2nd Year Intake Assistant)	email review	0.08	\$150.00	\$	12.00
3/13/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Draft Notice of Posting Jury Fees; send to MC for signature	0.25	\$200.00	\$	50.00
3/13/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Finalize Notice of Posting Jury Fees; serve to OC; file w/court; circulate to team	0.25	\$200.00	\$	50.00
3/13/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Download and save conformed doc; circulate to team	0.17	\$200.00	\$	34.00
3/13/2023	Breck Oyama (15+ Year Paralegal)	review emails/FV/filing, update case summary and litigation chain re jury fee, check docket and email SGS re hearing/deadlines	0.25	\$300.00	\$	75.00
3/14/2023	Daniela Linares (2nd Year Intake Assistant)	org client docs	0.58	\$150.00	\$	87.00
3/14/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Save and enter One Legal invoice to file and FV	0.08	\$200.00	\$	16.00
3/20/2023	Maya Cheaitani (Formerly Employed 2nd Year Attorney)	prep opp/research/case review	3.00	\$250.00	\$	750.00
3/21/2023	Maya Cheaitani (Formerly Employed 2nd Year Attorney)	fill arbitration tab/prep opp/review emails/def docs/msg team	3.50	\$250.00	\$	875.00
3/22/2023	Maya Cheaitani (Formerly Employed 2nd Year Attorney)	draft 1ac	1.33	\$250.00	\$	332.50
3/22/2023	Maya Cheaitani (Formerly Employed 2nd Year Attorney)	draft opp mx compel arb	3.00	\$250.00	\$	750.00
3/22/2023	Daniela Linares (2nd Year Intake Assistant)	tc w mc	0.08	\$150.00	\$	12.00
3/23/2023	Daniela Linares (2nd Year Intake Assistant)	email rev, call to client lvm	0.17	\$150.00	\$	25.50
3/23/2023	Daniela Linares (2nd Year Intake Assistant)	rev emails, call and text to client. tc w mc	0.25	\$150.00	\$	37.50
3/23/2023	Daniela Linares (2nd Year Intake Assistant)	email review	0.08	\$150.00	\$	12.00
3/23/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Download and save filed 1AC; submit to LWDA; circulate to team	0.25	\$200.00	\$	50.00
3/23/2023	Daniela Linares (2nd Year Intake Assistant)	email rev	0.08	\$150.00	\$	12.00
3/23/2023	Daniela Linares (2nd Year Intake Assistant)	call w client, email rev, tc w mc. email to team.	1.08	\$150.00	\$	162.00
3/23/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Finalize 1AC; send to DGS for signature	0.25	\$200.00	\$	50.00
3/23/2023	Breck Oyama (15+ Year Paralegal)	review emails/FV/filing, email/task team re 1AC and missing exhibit	0.25	\$300.00	\$	75.00
3/24/2023	Daniela Linares (2nd Year Intake Assistant)	email review, tc w mc	0.08	\$150.00	\$	12.00
3/24/2023	David Spivak (28+ Year Attorney)	Review and revise opposition to motion to compel arbitration	0.50	\$900.00	\$	450.00
3/24/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Draft Notice of Errata; send to DGS for signature; finalize and serve OC; file w/court; circulate to team	0.83	\$200.00	\$	166.00
3/24/2023	Maya Cheaitani (Formerly Employed 2nd Year Attorney)	review & finalize opp/gather exhibits/review clean versions/msg team	3.50	\$250.00	\$	875.00
3/24/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Work on Opp Mx Compel Arb	1.50	\$200.00	\$	300.00
3/24/2023	Daniela Linares (2nd Year Intake Assistant)	text to client, tc w mc	0.08	\$150.00	\$	12.00
3/24/2023	Maya Cheaitani (Formerly Employed 2nd Year Attorney)	research client/msg DL/draft opp mx compel arb/declarations/email team	4.00	\$250.00	\$	1,000.00
3/24/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Save and enter One Legal invoice to file and FV	0.08	\$200.00	\$	16.00
3/26/2023	Breck Oyama (15+ Year Paralegal)	circulate opp TOA, check w/ team re errata	0.17	\$300.00	\$	51.00
3/27/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Continue and finalize working on TOA ISO Opp	1.50	\$200.00	\$	300.00
3/27/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Finalize and send DGS Decl for signature	0.17	\$200.00	\$	34.00
3/27/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Send draft Opp to BO for review	0.08	\$200.00	\$	16.00
3/27/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Download and save client's signed Decl	0.17	\$200.00	\$	34.00
3/27/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Download and save filed Notice of Errata; circulate to team	0.08	\$200.00	\$	16.00
3/27/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Download and save DGS signed Decl	0.08	\$200.00	\$	16.00
3/27/2023	Emily Ly (3rd Year Paralegal)	Helped SGS with TOC.	0.42	\$150.00	\$	63.00
3/27/2023	Breck Oyama (15+ Year Paralegal)	review TOA and email SGS	0.25	\$300.00	\$	75.00
3/27/2023	Daniela Linares (2nd Year Intake Assistant)	email review, decl rev, tc w mc	0.17	\$150.00	\$	25.50
3/27/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Finalize client's Decl ISO Opp; send to client for signature; email client re same	0.33	\$200.00	\$	66.00
3/27/2023	Breck Oyama (15+ Year Paralegal)	review emails/FV/filing, msg w/ SGS re TOC, review filings and e-filing	0.17	\$300.00	\$	51.00
3/27/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Work on TOA	1.50	\$200.00	\$	300.00
3/27/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Work through TOC w/EL	0.42	\$200.00	\$	84.00
3/27/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	RC messages w/DGS	0.08	\$200.00	\$	16.00
3/28/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Create proofs of service for Opp and Decis	0.42	\$200.00	\$	84.00
3/28/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Work on Opp TOA	0.25	\$200.00	\$	50.00
3/28/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Send client Opposition and Declarations	0.08	\$200.00	\$	16.00
3/28/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Download, save and circulate filed Opp and Decis	0.17	\$200.00	\$	34.00
3/28/2023	Breck Oyama (15+ Year Paralegal)	review/fwd filing	0.25	\$300.00	\$	75.00
3/28/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Meet w/EL; file Opp & Decis	0.25	\$200.00	\$	50.00
3/28/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Call w/BO; redact exhibits	0.25	\$200.00	\$	50.00
3/28/2023	Breck Oyama (15+ Year Paralegal)	review filing/exhibits, msgs w/ SGS	0.33	\$300.00	\$	99.00
3/28/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Save and enter One Legal invoice to file and FV	0.08	\$200.00	\$	16.00
3/28/2023	Breck Oyama (15+ Year Paralegal)	review TOC/TOA	0.83	\$300.00	\$	249.00
3/28/2023	Emily Ly (3rd Year Paralegal)	Helped SGS with filing	0.17	\$150.00	\$	25.50
3/28/2023	Breck Oyama (15+ Year Paralegal)	review exhibits, msg SGS re filing	0.17	\$300.00	\$	51.00

TSLF TIME EXHIBIT DAMAS

4/4/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Download and save Ntc Continue Mx Compel Arb; circulate to team; update calendar	0.08	\$200.00	\$	16.00
4/6/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Send Reply to client	0.08	\$200.00	\$	16.00
4/6/2023	Daniela Linares (2nd Year Intake Assistant)	email review	0.08	\$150.00	\$	12.00
4/6/2023	Breck Oyama (15+ Year Paralegal)	review emails, update deadline chain	0.08	\$300.00	\$	24.00
4/7/2023	Daniela Linares (2nd Year Intake Assistant)	email rev, email to client, email to team	0.17	\$150.00	\$	25.50
4/7/2023	Maya Cheaitani (Formerly Employed 2nd Year Attorney)	mx compel reply/review and email DGS/FV/calendar	2.00	\$250.00	\$	500.00
4/7/2023	Daniela Linares (2nd Year Intake Assistant)	email	0.08	\$150.00	\$	12.00
4/10/2023	Daniela Linares (2nd Year Intake Assistant)	email rev, saving client docs, emails to team	0.75	\$150.00	\$	112.50
4/11/2023	Maya Cheaitani (Formerly Employed 2nd Year Attorney)	client emails/review new docs/def reply/FV review/emails	2.00	\$250.00	\$	500.00
4/11/2023	Daniela Linares (2nd Year Intake Assistant)	save docs	0.17	\$150.00	\$	25.50
4/13/2023	Daniela Linares (2nd Year Intake Assistant)	saving docs, email to client	0.25	\$150.00	\$	37.50
4/17/2023	Breck Oyama (15+ Year Paralegal)	review emails/FV	0.08	\$300.00	\$	24.00
6/8/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Meet w/EL	0.08	\$200.00	\$	16.00
6/14/2023	Thalia Higgins (Formerly Employed 1st Year Paralegal)	reviewed TR and save to case file	0.17	\$150.00	\$	25.50
6/14/2023	Breck Oyama (15+ Year Paralegal)	review emails/FV, email TH task	0.08	\$300.00	\$	24.00
6/14/2023	Daniela Linares (2nd Year Intake Assistant)	email rev	0.08	\$150.00	\$	12.00
6/14/2023	David Spivak (28+ Year Attorney)	call with OC re tentative order on arb mx	0.17	\$900.00	\$	153.00
6/15/2023	Breck Oyama (15+ Year Paralegal)	mtg w/ TH re appearance info and hearing priority	0.17	\$300.00	\$	51.00
6/15/2023	Emily Ly (3rd Year Paralegal)	Messaged TH re hearing. Reviewed and replied to emails.	0.50	\$150.00	\$	75.00
6/15/2023	David Spivak (28+ Year Attorney)	Appear for hearing and prep	0.75	\$900.00	\$	675.00
6/15/2023	Daniela Linares (2nd Year Intake Assistant)	email rev	0.08	\$150.00	\$	12.00
6/16/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails.	0.08	\$150.00	\$	12.00
6/16/2023	Thalia Higgins (Formerly Employed 1st Year Paralegal)	Saved MO and circulated to team and client; calendared cont'd CMC; reviewed emails	0.42	\$150.00	\$	63.00
6/19/2023	Daniela Linares (2nd Year Intake Assistant)	email review	0.08	\$150.00	\$	12.00
6/26/2023	Emily Ly (3rd Year Paralegal)	Reviewed emails.	0.08	\$150.00	\$	12.00
6/27/2023	Thalia Higgins (Formerly Employed 1st Year Paralegal)	reviewed FV	0.08	\$150.00	\$	12.00
6/28/2023	Thalia Higgins (Formerly Employed 1st Year Paralegal)	review and reply to emails, email BO rqst to delete prior cmc calendar dates	0.08	\$150.00	\$	12.00
7/3/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Draft demand for arb form; send to DGS for review	0.75	\$200.00	\$	150.00
7/5/2023	Daniela Linares (2nd Year Intake Assistant)	email rev	0.17	\$150.00	\$	25.50
7/5/2023	Thalia Higgins (Formerly Employed 1st Year Paralegal)	follow up email to client	0.08	\$150.00	\$	12.00
7/5/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails. Edited arbitration demand.	0.25	\$150.00	\$	37.50
7/5/2023	Maya Cheaitani (Formerly Employed 2nd Year Attorney)	statement of claims prep/review model/review emails/case review	1.25	\$250.00	\$	312.50
7/5/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Emails w/EL; revise and finalize Arb Demand Form; start draft of Statement of Claims	1.00	\$200.00	\$	200.00
7/5/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Draft Statement of Claims; send redline to DGS for review	1.00	\$200.00	\$	200.00
7/10/2023	Stacy Sussman (Formerly Employed 10+ Year Legal Secretary)	Update Retainer FV tab	0.17	\$200.00	\$	34.00
7/11/2023	Maya Cheaitani (Formerly Employed 2nd Year Attorney)	proposed order review/oc emails/fv review	0.50	\$250.00	\$	125.00
7/12/2023	Daniela Linares (2nd Year Intake Assistant)	email review	0.08	\$150.00	\$	12.00
7/14/2023	Maya Cheaitani (Formerly Employed 2nd Year Attorney)	demand arb/review template/case history/FV email review	3.00	\$250.00	\$	750.00
7/17/2023	Maya Cheaitani (Formerly Employed 2nd Year Attorney)	prop order arb review	0.17	\$250.00	\$	42.50
7/24/2023	Daniela Linares (2nd Year Intake Assistant)	email rev	0.08	\$150.00	\$	12.00
7/25/2023	Maya Cheaitani (Formerly Employed 2nd Year Attorney)	proposed order mx compel arb review/oc emails/file review	0.50	\$250.00	\$	125.00
7/28/2023	Maya Cheaitani (Formerly Employed 2nd Year Attorney)	draft arb demand/review tentative ruling/case history/email team/revise demand	3.00	\$250.00	\$	750.00
8/2/2023	Maya Cheaitani (Formerly Employed 2nd Year Attorney)	arb demand review filing/emails/calendar/FV	1.33	\$250.00	\$	332.50
8/2/2023	Thalia Higgins (Formerly Employed 1st Year Paralegal)	updated pos re arb demand and reviewed docs in oh	0.17	\$150.00	\$	25.50
8/2/2023	Emily Ly (3rd Year Paralegal)	Reviewed and replied to emails.	0.25	\$150.00	\$	37.50
8/7/2023	Maya Cheaitani (Formerly Employed 2nd Year Attorney)	client emails review arb demand/fv	0.33	\$250.00	\$	82.50
8/8/2023	Daniela Linares (2nd Year Intake Assistant)	email rev	0.08	\$150.00	\$	12.00
8/9/2023	Thalia Higgins (Formerly Employed 1st Year Paralegal)	reviewed emails, left vm and emailed aaa re withdraw of demand	0.25	\$150.00	\$	37.50
8/11/2023	Daniela Linares (2nd Year Intake Assistant)	email rev, draft linkedin message, search for ees	0.25	\$150.00	\$	37.50
8/12/2023	David Spivak (28+ Year Attorney)	prepare mediation discovery requests; review file	0.25	\$900.00	\$	225.00
8/14/2023	Daniela Linares (2nd Year Intake Assistant)	emails	0.08	\$150.00	\$	12.00
8/14/2023	Daniela Linares (2nd Year Intake Assistant)	Saved client docs	0.08	\$150.00	\$	12.00
8/14/2023	Thalia Higgins (Formerly Employed 1st Year Paralegal)	reviewed emails	0.08	\$150.00	\$	12.00
8/14/2023	Thalia Higgins (Formerly Employed 1st Year Paralegal)	submitted arb dmd withdraw to specific email per AAA reply	0.08	\$150.00	\$	12.00
8/15/2023	Thalia Higgins (Formerly Employed 1st Year Paralegal)	reviewed email, circulated AAA reply to team	0.08	\$150.00	\$	12.00
8/16/2023	Thalia Higgins (Formerly Employed 1st Year Paralegal)	updated calendar	0.08	\$150.00	\$	12.00
8/16/2023	Daniela Linares (2nd Year Intake Assistant)	email rev and email to team re linkedin invite	0.17	\$150.00	\$	25.50
8/18/2023	Thalia Higgins (Formerly Employed 1st Year Paralegal)	reviewed emails, f/u on aaa withdrawal status	0.08	\$150.00	\$	12.00
8/18/2023	Breck Oyama (15+ Year Paralegal)	review emails/FV, update deadline chains	0.08	\$300.00	\$	24.00
8/23/2023	Thalia Higgins (Formerly Employed 1st Year Paralegal)	reviewed emails, circ'd status update re aaa withdraw	0.08	\$150.00	\$	12.00
8/23/2023	Thalia Higgins (Formerly Employed 1st Year Paralegal)	removed info from arb tab	0.08	\$150.00	\$	12.00
8/24/2023	Maya Cheaitani (Formerly Employed 2nd Year Attorney)	mediation brief prep/review case/FV/emails	1.17	\$250.00	\$	292.50
8/25/2023	Thalia Higgins (Formerly Employed 1st Year Paralegal)	review prior order and update calendar, review and reply to emails, calendar mediation	0.17	\$150.00	\$	25.50
8/28/2023	Daniela Linares (2nd Year Intake Assistant)	email rev. call to client, no answer	0.17	\$150.00	\$	25.50
8/31/2023	Thalia Higgins (Formerly Employed 1st Year Paralegal)	review emails, calendar mediation dates	0.08	\$150.00	\$	12.00
8/31/2023	Thalia Higgins (Formerly Employed 1st Year Paralegal)	review emails, save arb refund, update expense tab	0.08	\$150.00	\$	12.00
8/31/2023	Thalia Higgins (Formerly Employed 1st Year Paralegal)	reviewed emails, updated calendar, reply email/follow up w team	0.08	\$150.00	\$	12.00
9/1/2023	Daniela Linares (2nd Year Intake Assistant)	prep call w witness, call w pcm, autho sent	0.75	\$150.00	\$	112.50
9/1/2023	Daniela Linares (2nd Year Intake Assistant)	call and text to client. ee search	0.33	\$150.00	\$	49.50
9/5/2023	Daniela Linares (2nd Year Intake Assistant)	call to emergency contact, lvm	0.08	\$150.00	\$	12.00
9/5/2023	Daniela Linares (2nd Year Intake Assistant)	save signed autho and draft ev pres lt	0.17	\$150.00	\$	25.50
9/5/2023	Thalia Higgins (Formerly Employed 1st Year Paralegal)	review emails, save mediation invoice, call to jw, fwd invoice to db, review case file	0.25	\$150.00	\$	37.50
9/7/2023	Daniela Linares (2nd Year Intake Assistant)	call to client, email to client. fixed witness notes, draft ev pres lt	0.33	\$150.00	\$	49.50
9/11/2023	Daniela Linares (2nd Year Intake Assistant)	ee search	0.25	\$150.00	\$	37.50
9/13/2023	Daniela Linares (2nd Year Intake Assistant)	saved and finalized dgs red line	0.17	\$150.00	\$	25.50
9/14/2023	Daniela Linares (2nd Year Intake Assistant)	email to dgs	0.08	\$150.00	\$	12.00
9/18/2023	Daniela Linares (2nd Year Intake Assistant)	email rev, rev notes, email to team	0.17	\$150.00	\$	25.50
9/20/2023	Daniela Linares (2nd Year Intake Assistant)	emailed and mailed ev pres lt, email w dgs, call w new client - lvm	0.25	\$150.00	\$	37.50
9/20/2023	Breck Oyama (15+ Year Paralegal)	review emails/FV	0.08	\$300.00	\$	24.00
9/20/2023	Daniela Linares (2nd Year Intake Assistant)	sent ev pres lt for sig. edits	0.17	\$150.00	\$	25.50
9/20/2023	Daniela Linares (2nd Year Intake Assistant)	save ev pres lt, email to team	0.17	\$150.00	\$	25.50
9/25/2023	Daniela Linares (2nd Year Intake Assistant)	email rev, saved and entered expense	0.17	\$150.00	\$	25.50

TSLF TIME EXHIBIT DAMAS

10/1/2023	David Spivak (28+ Year Attorney)	review Johnson intake	0.08	\$900.00	\$	72.00
10/1/2023	David Spivak (28+ Year Attorney)	review and respond to ADR service re class action question	0.08	\$900.00	\$	72.00
10/4/2023	Daniela Linares (2nd Year Intake Assistant)	email rev, call w potential new client - lvm	0.08	\$150.00	\$	12.00
10/13/2023	Daniela Linares (2nd Year Intake Assistant)	email rev, email to team, saved doc, call to new client - lvm, call w client, email to team	0.25	\$150.00	\$	37.50
10/17/2023	Daniela Linares (2nd Year Intake Assistant)	drop it	0.08	\$150.00	\$	12.00
11/15/2023	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Sent email to controller re mediation invoice.	0.08	\$200.00	\$	16.00
11/21/2023	Daniela Linares (2nd Year Intake Assistant)	email rev, email to client, call to client - no answer, call to emergency contact - lvm	0.17	\$150.00	\$	25.50
11/22/2023	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Email from DGS re mediation docs.	0.08	\$200.00	\$	16.00
11/22/2023	Daniela Linares (2nd Year Intake Assistant)	email to team, call to emergency contact	0.17	\$150.00	\$	25.50
11/28/2023	Daniela Linares (2nd Year Intake Assistant)	email rev	0.08	\$150.00	\$	12.00
11/28/2023	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Email correspondence with DGS re brief.	0.08	\$200.00	\$	16.00
11/28/2023	Daniela Linares (2nd Year Intake Assistant)	email to team re client	0.08	\$150.00	\$	12.00
11/29/2023	Daniela Linares (2nd Year Intake Assistant)	email rev. tc w mc	0.17	\$150.00	\$	25.50
11/30/2023	Maya Cheaitani (Formerly Employed 2nd Year Attorney)	mediation brief prep/review doc production	3.67	\$250.00	\$	917.50
11/30/2023	Daniela Linares (2nd Year Intake Assistant)	email rev, tc w mc	0.17	\$150.00	\$	25.50
11/30/2023	Daniela Linares (2nd Year Intake Assistant)	email rev, email to team, tc w mc, ocr file - circulated, tc w NEB	0.50	\$150.00	\$	75.00
11/30/2023	Maya Cheaitani (Formerly Employed 2nd Year Attorney)	email OC/review mediation discovery	1.00	\$250.00	\$	250.00
11/30/2023	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Attempt to download file sent by OC; restart computer x2; email correspondence with team.	0.33	\$200.00	\$	66.00
12/1/2023	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	email correspondence	0.17	\$200.00	\$	34.00
12/1/2023	Daniela Linares (2nd Year Intake Assistant)	client background search.	0.17	\$150.00	\$	25.50
12/1/2023	Daniela Linares (2nd Year Intake Assistant)	calling been verified numbers	0.25	\$150.00	\$	37.50
12/4/2023	Daniela Linares (2nd Year Intake Assistant)	emails	0.17	\$150.00	\$	25.50
12/4/2023	Daniela Linares (2nd Year Intake Assistant)	email	0.08	\$150.00	\$	12.00
12/4/2023	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	email correspondence to team regarding analyst.	0.08	\$200.00	\$	16.00
12/5/2023	Daniela Linares (2nd Year Intake Assistant)	email to PI firm. email to team	0.08	\$150.00	\$	12.00
12/5/2023	Daniela Linares (2nd Year Intake Assistant)	email to PI firm	0.08	\$150.00	\$	12.00
12/6/2023	Breck Oyama (15+ Year Paralegal)	mtg w/ team re mediation	0.50	\$300.00	\$	150.00
12/6/2023	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Email review.	0.17	\$200.00	\$	34.00
12/6/2023	Daniela Linares (2nd Year Intake Assistant)	online search, emails, emails to tristar, team meeting, tc w mc	1.17	\$150.00	\$	175.50
12/6/2023	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Telephonic meeting with team re mediation and strategy.	0.42	\$200.00	\$	84.00
12/6/2023	David Spivak (28+ Year Attorney)	prepare mediation statement; review file and email history; instructions to staff	7.58	\$900.00	\$	6,822.00
12/6/2023	Daniela Linares (2nd Year Intake Assistant)	tc w team, f/u w DGS	0.08	\$150.00	\$	12.00
12/6/2023	Daniela Linares (2nd Year Intake Assistant)	email rev, email to tristar	0.17	\$150.00	\$	25.50
12/6/2023	Daniela Linares (2nd Year Intake Assistant)	email rev	0.08	\$150.00	\$	12.00
12/6/2023	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Send request for analysis to JT.	0.08	\$200.00	\$	16.00
12/7/2023	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	interoffice correspondence; various emails to data analyst, prepared data to send; messages w/ dgs; review and analyze file re class sample and report back to dgs; vm to oc re follow up to email q's.	2.00	\$200.00	\$	400.00
12/7/2023	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Email correspondence with JT re files, re save files and send sample.s	0.25	\$200.00	\$	50.00
12/7/2023	Daniela Linares (2nd Year Intake Assistant)	email to team re tristar	0.08	\$150.00	\$	12.00
12/7/2023	Daniela Linares (2nd Year Intake Assistant)	tc w NEB, docs	0.08	\$150.00	\$	12.00
12/8/2023	Daniela Linares (2nd Year Intake Assistant)	search emails, tc w neb	0.17	\$150.00	\$	25.50
12/8/2023	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Texts with MC re mediation confirmation; review and analyze file; review FV; ask DL for assistance; review emails in FV; report to MC; organize file.	0.58	\$200.00	\$	116.00
12/8/2023	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Receive email from OC discuss with team and strategy to respond.	0.17	\$200.00	\$	34.00
12/8/2023	Daniela Linares (2nd Year Intake Assistant)	calling numbers that tristar gave	0.25	\$150.00	\$	37.50
12/11/2023	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Receive and review Def mediation brief; save to file; circulate to team.	0.17	\$200.00	\$	34.00
12/11/2023	Maya Cheaitani (Formerly Employed 2nd Year Attorney)	prep mediation brief/review docs/fill tabs/email team	4.00	\$250.00	\$	1,000.00
12/11/2023	Daniela Linares (2nd Year Intake Assistant)	email rev, linkedin search. email to uelg re other clients	0.25	\$150.00	\$	37.50
12/12/2023	Daniela Linares (2nd Year Intake Assistant)	docs, tc w neb, call w lc re task, ocr, rev client docs and organize	1.25	\$150.00	\$	187.50
12/12/2023	Maya Cheaitani (Formerly Employed 2nd Year Attorney)	draft mediation brief/email dgs	5.50	\$250.00	\$	1,375.00
12/12/2023	Daniela Linares (2nd Year Intake Assistant)	docs org	0.67	\$150.00	\$	100.50
12/12/2023	Daniela Linares (2nd Year Intake Assistant)	email to tristar	0.08	\$150.00	\$	12.00
12/13/2023	Breck Oyama (15+ Year Paralegal)	research re amended complaint and mx compel arb	0.67	\$300.00	\$	201.00
12/13/2023	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Various emails, chats, file review, task LS with researching locations of defendants.	0.75	\$200.00	\$	150.00
12/13/2023	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Review and analyze file re 1AC vs Def MX Compel Arbitration; discuss with BO; report to dgs.	0.17	\$200.00	\$	34.00
12/13/2023	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Emails, chats, research client for previous cases; review file and intake; discuss with staff re possible work comp claim.	1.50	\$200.00	\$	300.00
12/13/2023	Breck Oyama (15+ Year Paralegal)	mtg w/ team re tasks	0.33	\$300.00	\$	99.00
12/13/2023	Breck Oyama (15+ Year Paralegal)	review/calculate SOL for arb and circulate w/ team	0.50	\$300.00	\$	150.00
12/13/2023	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Research 1AC/ARB question	0.83	\$200.00	\$	166.00
12/13/2023	Daniela Linares (2nd Year Intake Assistant)	emails, calling witnesses, interview, prep and sent autho, def search, tc w neb and team, calls to wc attny, call and email to tristar, client docs, mtg re def docs.	5.25	\$150.00	\$	787.50
12/13/2023	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Review mediation brief; update exhibits within brief; start pulling exhibits; report back to MC; save to file.	0.75	\$200.00	\$	150.00
12/13/2023	Laura Solorzano (1st Year Intake Assistant)	rc with NEB, review emails, email team, search for additional store locations, call with DL re additional store locations	1.33	\$150.00	\$	199.50
12/13/2023	Daniela Linares (2nd Year Intake Assistant)	tc w team	0.08	\$150.00	\$	12.00
12/13/2023	Breck Oyama (15+ Year Paralegal)	research and mtg w/ team	0.25	\$300.00	\$	75.00
12/13/2023	Breck Oyama (15+ Year Paralegal)	review emails	0.08	\$300.00	\$	24.00
12/14/2023	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Obtain Notice of Intent to Arbitrate from from Judicate West; rename file folder and report back to BO.	0.17	\$200.00	\$	34.00
12/14/2023	Laura Solorzano (1st Year Intake Assistant)	Call with DL re franchise	0.42	\$150.00	\$	63.00
12/14/2023	Maya Cheaitani (Formerly Employed 2nd Year Attorney)	revise mediation brief/gather exhibits/email team/msg	3.50	\$250.00	\$	875.00
12/14/2023	Daniela Linares (2nd Year Intake Assistant)	mediation exhibits	0.33	\$150.00	\$	49.50
12/14/2023	Daniela Linares (2nd Year Intake Assistant)	online search, f/u w wc attny	0.50	\$150.00	\$	75.00
12/14/2023	Nora Greer (15+ Year Paralegal)	Review brief, staff chats	0.17	\$200.00	\$	34.00
12/14/2023	Nora Greer (15+ Year Paralegal)	TC with NEB re Mediation expectations	0.67	\$200.00	\$	134.00
12/14/2023	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Finalize mediation brief and exhibits; confer w/ DL re exhibit 10 and 12.	2.00	\$200.00	\$	400.00
12/14/2023	Daniela Linares (2nd Year Intake Assistant)	saving sois	0.17	\$150.00	\$	25.50
12/14/2023	Daniela Linares (2nd Year Intake Assistant)	online search for tristar contacts, email to team, call w is re entities, tc w team, exhibit work w NEB	0.92	\$150.00	\$	138.00
12/14/2023	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Send brief to Mediator and client.	0.17	\$200.00	\$	34.00
12/15/2023	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Call with BO re time summary chart; create time summary chart; f/u with atty's re entering time entries.	0.33	\$200.00	\$	66.00

TSLF TIME EXHIBIT DAMAS

12/15/2023	Daniela Linares (2nd Year Intake Assistant)	chart for dgs, email rev, search online for possible shelters, tc w team, calls and emails with tristar, oh re chart task, email to team	2.33	\$150.00	\$	349.50
12/15/2023	Daniela Linares (2nd Year Intake Assistant)	email rev, rev been verified	0.25	\$150.00	\$	37.50
12/15/2023	Daniela Linares (2nd Year Intake Assistant)	tc w ls re ooo task	0.08	\$150.00	\$	12.00
12/16/2023	David Spivak (28+ Year Attorney)	prepare damaes estimates	0.75	\$900.00	\$	678.60
12/18/2023	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Prepare future costs chart w/ BO.	0.50	\$200.00	\$	100.00
12/18/2023	Laura Solorzano (1st Year Intake Assistant)	review emails	0.08	\$150.00	\$	12.00
12/18/2023	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Call w/ LRD re updated exhibits and changes to data chart re EX 4.	0.25	\$200.00	\$	50.00
12/18/2023	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Recdeive and review OC's email re pltf mediation brief; advise team of email.	0.08	\$200.00	\$	16.00
12/18/2023	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Enter Tristar estimate expense; finalize cost chart; save to pdf; update time summary chart.	0.33	\$200.00	\$	66.00
12/18/2023	Breck Oyama (15+ Year Paralegal)	review emails	0.08	\$300.00	\$	24.00
12/19/2023	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Check calendar for zoom link; email Maureen @Judicate west; f/u with DL re same.	0.08	\$200.00	\$	16.00
12/19/2023	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Call w/ Judicate West re Zoom link for mediation	0.17	\$200.00	\$	34.00
12/19/2023	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Rec'v invoice from JT; save to file; forward to controller for payment.	0.08	\$200.00	\$	16.00
12/19/2023	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Mediation	9.08	\$200.00	\$	1,816.00
12/19/2023	Laura Solorzano (1st Year Intake Assistant)	rc with dl	0.08	\$150.00	\$	12.00
12/19/2023	David Spivak (28+ Year Attorney)	prep for mediation and attend mediation	10.08	\$900.00	\$	9,072.00
12/19/2023	Daniela Linares (2nd Year Intake Assistant)	emails and calls w tristar, call wc attny, online searches for client	1.17	\$150.00	\$	175.50
12/19/2023	Daniela Linares (2nd Year Intake Assistant)	mediation	9.08	\$150.00	\$	1,362.00
12/19/2023	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	email correspondence with JW re forms needed to initiate ARB.	0.08	\$200.00	\$	16.00
12/19/2023	Nora Greer (15+ Year Paralegal)	Staff chats re Mediation, search ventura court for docs	0.33	\$200.00	\$	66.00
12/20/2023	Daniela Linares (2nd Year Intake Assistant)	email to dgs, calling hospitals	0.42	\$150.00	\$	63.00
12/20/2023	Daniela Linares (2nd Year Intake Assistant)	tc w team, email to tristar	0.17	\$150.00	\$	25.50
12/20/2023	Daniela Linares (2nd Year Intake Assistant)	tc w team, drafting letters to clients mother, tc w ng re edits, another prison search	0.67	\$150.00	\$	100.50
12/21/2023	Daniela Linares (2nd Year Intake Assistant)	Email rev, email to team, update contact card	0.17	\$150.00	\$	25.50
1/2/2024	Daniela Linares (2nd Year Intake Assistant)	email rev	0.17	\$150.00	\$	25.50
1/4/2024	Daniela Linares (2nd Year Intake Assistant)	westlaw expense	0.08	\$150.00	\$	12.00
1/9/2024	Henry Michael (1st Year Intern)	Entering Lexis expense	0.08	\$150.00	\$	12.00
1/11/2024	Daniela Linares (2nd Year Intake Assistant)	email	0.08	\$150.00	\$	12.00
1/16/2024	Daniela Linares (2nd Year Intake Assistant)	email rev, email to team, call w client	0.17	\$150.00	\$	25.50
2/8/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Update Statement of Claims, send to DGS for signature.	0.08	\$200.00	\$	16.00
2/13/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Email correspondence with DGS re ARB discovery.	0.08	\$200.00	\$	16.00
2/15/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Prepare cover letter; notice of intent to arbitrate, statement of claims, review JW website for instructions for submissions, create JW account	1.50	\$200.00	\$	300.00
2/15/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	call w/ NG re JW and notice of intent.	0.33	\$200.00	\$	66.00
2/15/2024	Nora Greer (15+ Year Paralegal)	TC with NEB re JW	0.33	\$200.00	\$	66.00
2/16/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Finalize arbitration packet, create pos, send for DGS signature; submit matter to JW portal; send email to JW and OC; send email to controller re filing fee.	1.08	\$200.00	\$	216.00
2/16/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Receive automatic email from OC regarding secretary no longer with that office, update pos and FV contacts; enter expense for JW filing fee.	0.08	\$200.00	\$	16.00
2/16/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	receive email from OC's secretary with updated service list information; update POS as well as FV contacts; reply email with our full team and emails.	0.17	\$200.00	\$	34.00
2/20/2024	Daniela Linares (2nd Year Intake Assistant)	email rev	0.08	\$150.00	\$	12.00
2/22/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Receive call from Judge Wagner re set up f/u call with DGS. Review calendar and discuss with DGS.	0.17	\$200.00	\$	34.00
2/22/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	receive and review email from Judicate West Case Manager; update ARB tab w/ CM contact info, prepare response to CM email	0.25	\$200.00	\$	50.00
2/23/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Email to Judge Wagner re set up call with DGS; update calendar.	0.08	\$200.00	\$	16.00
2/23/2024	Breck Oyama (15+ Year Paralegal)	review FV	0.08	\$300.00	\$	24.00
2/26/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	search related cases on LWDA for question on CMC Statement b/c last search was 07.21.2022)	0.17	\$200.00	\$	34.00
2/26/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	revise CMC Statement from BO edits/comments	0.17	\$200.00	\$	34.00
2/26/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	File CMC Statement.	0.75	\$200.00	\$	150.00
2/26/2024	Daniela Linares (2nd Year Intake Assistant)	call w client, email rev, tc w neb, calendar entry	0.17	\$150.00	\$	25.50
2/26/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Review Orders, prepare CMC Statement	1.50	\$200.00	\$	300.00
2/26/2024	Breck Oyama (15+ Year Paralegal)	review cmc statement and msg NEB	0.17	\$300.00	\$	51.00
2/27/2024	Breck Oyama (15+ Year Paralegal)	fwd filing, set up filter, review emails	0.17	\$300.00	\$	51.00
2/27/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Prepare Amended Proof of Service re CMC Statement, Serve to OC, send client copy of POS and CMC Statement, call w/ NG re filing code/classification, file document, update lit chain and send to team.	0.67	\$200.00	\$	134.00
2/28/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Prep for call with client.	0.17	\$200.00	\$	34.00
2/28/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	left vm for client and f/u text.	0.08	\$200.00	\$	16.00
2/29/2024	Daniela Linares (2nd Year Intake Assistant)	email text rev, tc w neb	0.17	\$150.00	\$	25.50
2/29/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Receive filed copy of CMC Statement from court, save to file, send to team.	0.08	\$200.00	\$	16.00
2/29/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	texts with client.	0.08	\$200.00	\$	16.00
3/4/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Receive email from mediator re bracket proposal, f/u with DGS and team re response.	0.17	\$200.00	\$	34.00
3/4/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Receive BMP and calendar response deadline; RC messages w/ team.	0.17	\$200.00	\$	34.00
3/12/2024	Daniela Linares (2nd Year Intake Assistant)	call w client. email to client, tc w team	0.17	\$150.00	\$	25.50
3/12/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	emails, RC chats re hearing.	0.08	\$200.00	\$	16.00
3/12/2024	Daniela Linares (2nd Year Intake Assistant)	call to client - lvm	0.08	\$150.00	\$	12.00
3/12/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	RC messages with team re hearing/stip.	0.17	\$200.00	\$	34.00
3/12/2024	Breck Oyama (15+ Year Paralegal)	save/circulate docs, update calendar, check docket, msgs w/ team	0.25	\$300.00	\$	75.00
3/12/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Receive MC hearing notes save to file, calendar cont hearing and related deadlines, update lit chain, text client f/u.	0.25	\$200.00	\$	50.00
3/13/2024	Daniela Linares (2nd Year Intake Assistant)	prep for call w client, r/s, text to client tc w team	0.17	\$150.00	\$	25.50
3/13/2024	Daniela Linares (2nd Year Intake Assistant)	email and text to client	0.17	\$150.00	\$	25.50
3/13/2024	Daniela Linares (2nd Year Intake Assistant)	call and text to client	0.08	\$150.00	\$	12.00
3/13/2024	Daniela Linares (2nd Year Intake Assistant)	call to client - lvm	0.08	\$150.00	\$	12.00
3/14/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	RC messages with team re status/case plan.	0.08	\$200.00	\$	16.00
3/14/2024	Daniela Linares (2nd Year Intake Assistant)	text to client	0.08	\$150.00	\$	12.00
3/14/2024	Daniela Linares (2nd Year Intake Assistant)	email and text to client, calendar	0.08	\$150.00	\$	12.00
3/15/2024	Daniela Linares (2nd Year Intake Assistant)	text from client, tc w team	0.08	\$150.00	\$	12.00
3/15/2024	Daniela Linares (2nd Year Intake Assistant)	call to client, email to team, tc w team	0.42	\$150.00	\$	63.00
3/15/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	call with client re settlement and class action process.	0.33	\$200.00	\$	66.00

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3/18/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	F/U with DGS re responsive brief to Judge.	0.08	\$200.00	\$	16.00
3/20/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Receive email from CM re questions and draft responses and send to dgs for review.	0.17	\$200.00	\$	34.00
3/21/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	f/u with attorneys re questions from CM and f/u re written discovery.	0.17	\$200.00	\$	34.00
3/21/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	sent email to JW CM to answer q's re arbitration.	0.08	\$200.00	\$	16.00
3/21/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Check Lexis for 03.12.2024 Min Order; save to file and circulate with team.	0.08	\$200.00	\$	16.00
3/22/2024	Maya Cheaitani (Formerly Employed 2nd Year Attorney)	strike list/TPA questions review/emails/msg team/MO	0.58	\$250.00	\$	145.00
3/22/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	send client copy of 03.12.2024 min order.	0.08	\$200.00	\$	16.00
3/25/2024	Daniela Linares (2nd Year Intake Assistant)	email rev	0.08	\$150.00	\$	12.00
3/26/2024	Daniela Linares (2nd Year Intake Assistant)	email rev	0.08	\$150.00	\$	12.00
3/26/2024	Maya Cheaitani (Formerly Employed 2nd Year Attorney)	strike & rank emails	0.33	\$250.00	\$	82.50
3/28/2024	Breck Oyama (15+ Year Paralegal)	review/snooze emails	0.08	\$300.00	\$	24.00
4/2/2024	Daniela Linares (2nd Year Intake Assistant)	email rev	0.08	\$150.00	\$	12.00
4/8/2024	Breck Oyama (15+ Year Paralegal)	review emails/FV	0.08	\$300.00	\$	24.00
4/8/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Emails; update arb tab re strike/rank list; draft strike/rank; calendar deadline; add arbitrator's contact info; email team	1.17	\$200.00	\$	234.00
4/9/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	email review/save dgs versio strike/rank list	0.08	\$200.00	\$	16.00
4/9/2024	David Spivak (28+ Year Attorney)	research rank and strike letter	0.25	\$900.00	\$	225.00
4/9/2024	Daniela Linares (2nd Year Intake Assistant)	saved and entered expense, email rev	0.17	\$150.00	\$	25.50
4/10/2024	Breck Oyama (15+ Year Paralegal)	review emails/status	0.08	\$300.00	\$	24.00
4/23/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Finalize Strike/Rank list, send for signature; email review.	0.08	\$200.00	\$	16.00
4/23/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	send strike/rank letter to case manager.	0.08	\$200.00	\$	16.00
4/24/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	email review/update arb tab re judge/cm.	0.17	\$200.00	\$	34.00
4/24/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Save ARB Services Agreement to file.	0.08	\$200.00	\$	16.00
4/24/2024	Daniela Linares (2nd Year Intake Assistant)	email	0.08	\$150.00	\$	12.00
4/30/2024	Nora Greer (15+ Year Paralegal)	Update negotiations spread sheet and fv	0.08	\$200.00	\$	16.00
5/1/2024	Breck Oyama (15+ Year Paralegal)	review file, email tasks	0.08	\$300.00	\$	24.00
5/7/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	email review; review calendar re arb cmc; save arb docs; email arb CM; confirm arb tab updated.	0.42	\$200.00	\$	84.00
5/7/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	continued emails with case manager re CMC	0.08	\$200.00	\$	16.00
5/9/2024	Daniela Linares (2nd Year Intake Assistant)	email rev, save docs	0.08	\$150.00	\$	12.00
5/16/2024	Breck Oyama (15+ Year Paralegal)	review emails	0.08	\$300.00	\$	24.00
6/11/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Email review/update calendar re ARB CMC.	0.08	\$200.00	\$	16.00
6/12/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Email review, save 'proposed scheduling order', save to file, calendar tent call for dgs.	0.25	\$200.00	\$	50.00
6/12/2024	David Spivak (28+ Year Attorney)	prep for hearing and hearing with arbitration - case management	1.75	\$900.00	\$	1,575.00
6/13/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	email review re arb orders and mediator proposal, rc chats	0.17	\$200.00	\$	34.00
6/14/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	email client PAGA settlement timeline/ fv tasks.	0.25	\$200.00	\$	50.00
6/14/2024	Daniela Linares (2nd Year Intake Assistant)	Email rev, update fv	0.17	\$150.00	\$	25.50
6/14/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	email review/staff chats re paga settlement q's.	0.17	\$200.00	\$	34.00
7/19/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	email review and update tasks	0.25	\$200.00	\$	50.00
7/29/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	email review	0.08	\$200.00	\$	16.00
8/7/2024	Breck Oyama (15+ Year Paralegal)	update settlement tab and email TPAs for bid requests	0.33	\$300.00	\$	99.00
8/8/2024	Breck Oyama (15+ Year Paralegal)	save/review TPA bids, email request, review costs for DGS	0.25	\$300.00	\$	75.00
8/9/2024	Breck Oyama (15+ Year Paralegal)	save/circulate TPA bids to OC	0.17	\$300.00	\$	51.00
8/9/2024	David Spivak (28+ Year Attorney)	review and revise settlement MOU	0.25	\$900.00	\$	225.00
8/9/2024	Breck Oyama (15+ Year Paralegal)	revise mou and email OC	0.25	\$300.00	\$	75.00
8/12/2024	Daniela Linares (2nd Year Intake Assistant)	email rev	0.17	\$150.00	\$	25.50
8/14/2024	Breck Oyama (15+ Year Paralegal)	save/circulate TPA bid, revise MOU and circulate w/ team and task to DL	0.17	\$300.00	\$	51.00
8/15/2024	Daniela Linares (2nd Year Intake Assistant)	email rev, sent doc for client sig, tc w bo	0.25	\$150.00	\$	37.50
8/15/2024	Breck Oyama (15+ Year Paralegal)	update FV and prep stip continue	0.75	\$300.00	\$	225.00
8/15/2024	Daniela Linares (2nd Year Intake Assistant)	email review	0.08	\$150.00	\$	12.00
8/16/2024	Breck Oyama (15+ Year Paralegal)	review emails	0.17	\$300.00	\$	51.00
8/16/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	continued email/calendar review; email correspondence with team and OC re MOU.	0.33	\$200.00	\$	66.00
8/16/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Email review/update tasks; finalize Notice of Settlement/Stip Continue and send to OC.	0.42	\$200.00	\$	84.00
8/18/2024	David Spivak (28+ Year Attorney)	prepare long form settlement agreement; instructions to staff	1.50	\$900.00	\$	1,350.00
8/19/2024	Daniela Linares (2nd Year Intake Assistant)	email rev, call to client - lvm	0.08	\$150.00	\$	12.00
8/19/2024	Breck Oyama (15+ Year Paralegal)	review emails/docs	0.08	\$300.00	\$	24.00
8/20/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	F/U with OC re Stip.	0.08	\$200.00	\$	16.00
8/20/2024	Daniela Linares (2nd Year Intake Assistant)	email review, emails to team, saved client signed MOU	0.08	\$150.00	\$	12.00
8/20/2024	Daniela Linares (2nd Year Intake Assistant)	call to client - email to team	0.08	\$150.00	\$	12.00
8/21/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Review redlines on Stip from OC, send to team.	0.17	\$200.00	\$	34.00
8/22/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	email review; prepare Stip for signature	0.17	\$200.00	\$	34.00
8/23/2024	Nora Greer (15+ Year Paralegal)	TC with NEB	0.17	\$200.00	\$	34.00
8/23/2024	Breck Oyama (15+ Year Paralegal)	mtg w/ NEB re filing	0.08	\$300.00	\$	24.00
8/23/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Finalize Stip for service and filing; call with NG,serve, file, save/enter expense, fwd to team, send copy to client.	0.75	\$200.00	\$	150.00
8/23/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	correspondence with team and client re MOU	0.08	\$200.00	\$	16.00
8/23/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	call with BO re filing.	0.08	\$200.00	\$	16.00
8/26/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Finalize updated Stip/Order for service/filing, update POS, serve, file, send to client	0.42	\$200.00	\$	84.00
8/26/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Receive rejected filing notice; update Stip and email OC re signature.	0.17	\$200.00	\$	34.00
8/28/2024	Daniela Linares (2nd Year Intake Assistant)	email review	0.08	\$150.00	\$	12.00
9/3/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	email review, finalize MOU for atty signatures.	0.33	\$200.00	\$	66.00
9/4/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Review docket/filing system for filed copy of stip/order; review docket re hearings; update calendar; receive WH sig re mou, combine and scrub MOU; send to OC;email review; update lit chains	0.58	\$200.00	\$	116.00
9/4/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	email correspondence with DGS re status of settlement agreement	0.08	\$200.00	\$	16.00
9/6/2024	Daniela Linares (2nd Year Intake Assistant)	emails	0.08	\$150.00	\$	12.00
9/12/2024	Breck Oyama (15+ Year Paralegal)	review emails/FV/calendar	0.08	\$300.00	\$	24.00
9/12/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	email review/save indiv SA, send to DGS, email OC	0.17	\$200.00	\$	34.00
9/15/2024	David Spivak (28+ Year Attorney)	review and revise confidential individual settlement agreement	0.58	\$900.00	\$	522.00
9/16/2024	Breck Oyama (15+ Year Paralegal)	check docket/calendar, post note re mxs	0.17	\$300.00	\$	51.00
9/27/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	review/respond to emails; emails with OC re paga SA; update signature line send to oc, review case notes on fv.	0.75	\$200.00	\$	150.00
9/29/2024	David Spivak (28+ Year Attorney)	review and revise OC changes to long form settlement and approval order	0.42	\$900.00	\$	378.00
9/30/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	f/u with OC re slight revision to individual SA.	0.08	\$200.00	\$	16.00

TSLF TIME EXHIBIT DAMAS

9/30/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	texts with client/call with client re settlement timing	0.25	\$200.00	\$	50.00
9/30/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	review/respond emails with OC re individual SA; prepare for client review/signature and send to UELG for signature.	0.58	\$200.00	\$	116.00
10/1/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	email review	0.08	\$200.00	\$	16.00
10/1/2024	Daniela Linares (2nd Year Intake Assistant)	email review	0.08	\$150.00	\$	12.00
10/16/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	review/respond to team emails	0.08	\$200.00	\$	16.00
10/22/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Review and analyze file/emails re defendant signatures on individual SA; email OC re same; save signed SA; send client PAGA agreement for signature; review calendar/court docket.	0.58	\$200.00	\$	116.00
10/22/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Email correspondence with client; resend SA for signature; save signed copy; send to DGS for signature; emails with DGS; send client copy of individual SA.	0.50	\$200.00	\$	100.00
10/22/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	review/respond to emails re renaming docs/ rename documents	0.08	\$200.00	\$	16.00
10/23/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	email correspondence with DGS re settlement tabs.	0.08	\$200.00	\$	16.00
10/24/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Review file, send paga SA to cc for signature.	0.17	\$200.00	\$	34.00
10/24/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	review emails/calendar; email dgs re cmc stmt; call with DGS re updated stip and settlement tab; revise stip and send to dgs.	0.25	\$200.00	\$	50.00
10/25/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	work on settlement tab, confer with CT and NG re same.	1.50	\$200.00	\$	300.00
10/27/2024	David Spivak (28+ Year Attorney)	prepare mx for approval of PAGA settlement; instructions to staff	3.25	\$900.00	\$	2,925.00
10/28/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Finalize PAGA SA and Stip; send to OC for review; send client courtesy copies; texts with client; begin filling in blanks to prelim mx	1.50	\$200.00	\$	300.00
10/28/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	serve/file stip; email team; save receipt	0.33	\$200.00	\$	66.00
10/28/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	review/respond to team emails/chat re prelim mx tasks	0.17	\$200.00	\$	34.00
10/28/2024	Breck Oyama (15+ Year Paralegal)	review emails, msgs w/ team re task for filing PAMx	0.17	\$300.00	\$	51.00
10/28/2024	Daniela Linares (2nd Year Intake Assistant)	tc w neb re task	0.08	\$150.00	\$	12.00
10/28/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Continue filing in blanks for prelim mx; confer with DL	0.75	\$200.00	\$	150.00
10/28/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Review PAGA SA, resend to client/dgs for signature; text client re same; combine document; review stip	0.58	\$200.00	\$	116.00
10/29/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Spell check, scrub moving papers, send to OC.	0.25	\$200.00	\$	50.00
10/29/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	discuss task re sending mx to OC with BO	0.08	\$200.00	\$	16.00
10/31/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	receive Lexis update; review, send to team; attempt to pull stip from court website; update calendar/lit chain.	0.25	\$200.00	\$	50.00
10/31/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Pull exhibits re mx; fill in decl with exhibit #'s; confer with DGS re OC not respond.	0.83	\$200.00	\$	166.00
11/6/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	mx.	1.50	\$200.00	\$	300.00
11/13/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Prepare email to DGS re co's redlines to mx; screenshot redlines and send email and mx to DGS.	0.42	\$200.00	\$	84.00
11/13/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	Receive/review OC's redlines to mx, email correspondence with OC re same	0.50	\$200.00	\$	100.00
11/13/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	review fv feed and update/add arb lit chain.	0.17	\$200.00	\$	34.00
11/13/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	(ARB) review email from ARB case manager re extension and continuance; review/update calendar; email CM.	0.17	\$200.00	\$	34.00
11/13/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	(ARB) receive/review appearance info for ARB CMC; update calendar, confirm arbitrator via JW portal.	0.08	\$200.00	\$	16.00
11/13/2024	Daniela Linares (2nd Year Intake Assistant)	email review	0.17	\$150.00	\$	25.50
11/13/2024	Nazie Baharloo (Formerly Employed 5+ Year Paralegal)	(ARB)review respond emails with OC re ARB CMC and continuance; fwd information to DGS and RC team chat re same.	0.25	\$200.00	\$	50.00
11/22/2024	Breck Oyama (15+ Year Paralegal)	mx settlement	0.33	\$300.00	\$	99.00
11/25/2024	Nora Greer (15+ Year Paralegal)	Watch how to vid, TC to Clerk, email to team	0.25	\$200.00	\$	50.00
11/25/2024	Breck Oyama (15+ Year Paralegal)	review OC revisions mx settlement, revise decls	0.67	\$300.00	\$	201.00
11/25/2024	Breck Oyama (15+ Year Paralegal)	mx paga settlement	1.25	\$300.00	\$	375.00
TOTAL PRE-MULTIPLIER AS OF 11/25/2024			250.68		\$	74,672.60

EXHIBIT 13

TSLF COST EXHIBIT DAMAS

Date	Expense Type	Expense Description	Expense Amount
8/1/2022	Lexis or Westlaw	Lexis usage July 2022	\$ 7.74
9/12/2022	Postage	LetterStream 6823974	\$ 13.38
9/12/2022	Attorney Service-Filing	One Legal 18900801	\$ 730.95
9/12/2022	LWDA Filing Fee	LWDA Notice	\$ 75.00
9/22/2022	Attorney Service-Filing	One Legal 18968749	\$ 72.07
9/22/2022	Attorney Service-Service	One Legal 18917218	\$ 109.90
10/31/2022	Postage	LetterStream Invoice 7049796	\$ 12.09
11/21/2022	Attorney Service-Filing	One Legal 19340252	\$ 72.07
3/9/2023	Attorney Service-Filing	One Legal Invoice 19981659	\$ 72.07
3/13/2023	Attorney Service-Filing	One Legal Invoice 19997611	\$ 226.49
3/24/2023	Attorney Service-Filing	One Legal Invoice 20071639	\$ 128.69
3/24/2023	Attorney Service-Filing	One Legal Invoice 20084989	\$ 128.69
8/2/2023	Arb Filing Fee	23.08.02 AAA DOCUMENT RECEIPT-012300034365	\$ 10.50
8/31/2023	Mediator Fees	23.08.31 Mediation Invoice	\$ 8,775.00
9/21/2023	Postage	23.09.21 Invoice_8465510	\$ 1.83
12/18/2023	Expert or Data Analysis	23.12.18 JCALCS INVOICE #231218	\$ 1,500.00
1/3/2024	Lexis or Westlaw	Westlaw Usage Dec 2023	\$ 579.52
1/9/2024	Lexis or Westlaw	Lexis usage Dec 2023	\$ 17.34
2/16/2024	Arb Filing Fee	24.02.16 Judicate West Filing Fee	\$ 500.00
3/7/2024	Lexis or Westlaw	Lexis Usages Feb 2024	\$ 4.22
4/2/2024	Lexis or Westlaw	Lexis usage Mar 2024	\$ 1.35
4/8/2024	Investigation	24.04.08 Tristar Invoice 24112	\$ 1,360.00
8/26/2024	Attorney Service-Filing	24.08.26 San Joaquin EPortal Receipt re Order# 37628773	\$ 21.00
TBD	Attorney Service- Court Filings	Estimated Attorney Service charges for efilng Stipulation to Continue / CMC Statement	\$ 21.00
TBD	Attorney Service- Court Filings	Estimated Attorney Service charges for efilng Stipulation to Continue / CMC Statement	\$ 21.00
TBD	Attorney Service- Court Filings	Estimated Attorney Service charges for efilng for PAGA Approval Supplemental Briefing	\$ 63.00
TBD	Attorney Service- Court Filings	Estimated Attorney Service charges for efilng Notice of Entry of Order	\$ 1.00
TBD	Attorney Service- Court Filings	Estimated Attorney Service charges for efilng Declaration regarding Final Accounting	\$ 1.00
TBD	Attorney Service- Court Filings	Estimated Attorney Service charges for efilng Supplemental Declaration regarding Final Accounting	\$ 14.36
TSLF CURRENT COSTS THROUGH 11/26/2024			\$ 14,419.90
UELG CURRENT COSTS THROUGH 11/26/2024			\$1.08
TSLF ESTIMATED FUTURE COSTS			\$ 121.36
TOTAL APPROX COSTS THROUGH FINAL ACCOUNTING			\$ 14,542.34

EXHIBIT 14



Reference No. 20240809-PJI-04

August 9, 2024

Breck Oyama
The Spivak Law Firm
1801 Century Park East, 25th Fl
Los Angeles CA 90067

RE: DAMAS/JUSTWINGIT

Dear Breck,

Thank you for this opportunity to provide a quote for your PAGA settlement. Using the parameters you described, Simpluris' total estimated cost is \$5,605. As a courtesy, we are offering a \$2,605 discount, for a discounted total of \$3,000.

Please let me know if you have questions. I look forward to this opportunity to work together.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Patrick J. Ivie".

PATRICK J. IVIE
Chief Revenue Officer

m: 310-995-6455
o: 714-975-5260
e: pivie@simpluris.com



3194-C Airport Loop Drive, Costa Mesa, CA 92626
www.simpluris.com | 1 (800) 779 - 2104



3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104
www.simpluris.com

Estimate Number:	20240809-PJI-04	Prepared By:	Patrick Ivie
Estimate Date:	8/9/2024	Telephone Number (mobile):	310.995.6455
Estimate Expiration Date:	11/7/2024	Email:	pivie@simpluris.com

Client Contact

Attorney: **Breck Oyama**
Firm: The Spivak Law Firm
Email: boyama@spivaklaw.com

Opposing Counsel Contact

Attorney:
Firm:
Email:

**Case Name: DAMAS/JUSTWINGIT
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:	364	Undeliverable Rate:	10%
Claims Rate:	n/a	Call Rate:	n/a
Opt-out Rate:	n/a	Average Call Length:	n/a
Language(s) for Communication	EN	Fund Distribution:	Simpluris
Reminder Mailing:	n/a	Number of Distributions:	1
Unclaimed Funds:	Escheat	State(s):	CA
Lengths of Administration:	6 Months	Tax Years:	1

Case Setup

- Data compilation: develop case-specific response tracking

Category	Unit Value	# of Units	Total
Project Manager - Case Setup	\$110.00	2	\$220.00
Database Manager - Initial Data Analysis	\$125.00	2	\$250.00
Total:			\$470.00

Award Disbursement

- Establish 26 CFR § 1.468B-1 compliant Qualified Settlement Fund ("QSF")
- Disburse Notice with award payments and tax document
- Unclaimed funds will go to the California State Controllers' Office Unclaimed Property Fund
- Conduct regular and annual IRS-mandated QSF reporting and reconciliation (one per calendar year)
- Complete all required filings with state and federal tax authorities

Category	Unit Value	# of Units	Total
Disbursement Data Preparation	\$125.00	2	\$250.00
Disbursement Manager - Data Validation	\$90.00	2	\$180.00
Setup Banking Account/QSF	\$675.00	1	\$675.00
QSF Monthly Maintenance	\$125.00	6	\$750.00
NCOA/CASS/LACS	\$0.14	364	\$50.96
Print & Mail Notice, Check and Tax Documents	\$1.00	364	\$364.00
Postage	\$0.72	364	\$262.08
Process Returned Checks	\$0.20	37	\$7.40
Skip Trace Search Undeliverable Checks	\$0.12	37	\$4.44
Remail Checks (Includes Postage)	\$2.00	37	\$74.00
Escheat Uncashed Funds	\$500.00	1	\$500.00
QSF Reporting and Final Declaration	\$500.00	1	\$500.00
Reissue Checks / Mailing	\$2.50	3	\$7.50
Reissue 1099s	\$2.50	2	\$5.00
Responding to IRS/State/Agency Inquiries	\$75.00	2	\$150.00
QSF Annual Tax Reporting and Reconciliation	\$850.00	1	\$850.00
Distribution Manager	\$90.00	2	\$180.00
Total:			\$4,810.38

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	2	\$90.00
Project Manager-Wrap-up Final Issues	\$110.00	1	\$110.00
Total:			\$325.00

Total Estimated Cost of Administration:	\$5,605
Less Client Courtesy Discount:	<u>-\$2,605</u>
Discounted Total:	<u><u>\$3,000</u></u>

Terms and Conditions

All administration services to be provided by Simpluris to Client, are provided subject to the following terms and conditions ("Agreement"):

1. Services: Simpluris agrees to provide Client those services set forth in the Proposal (the "Services") to which these terms and conditions are attached and which has been provided to Client. As compensation for such Services, Client agrees to pay the fees for Services outlined in the Proposal. Simpluris will often take direction from Client's representatives, employees, agents and or professionals (collectively, the "Client Parties") with respect to the Services. The parties agree that Simpluris may rely upon, and Client agrees to be bound by, any direction, advice or information provided by the Client Parties to the same extent as if provided by Client. Client agrees and understands that Simpluris shall not provide Client or any other party with any legal advice.

2. Fee Estimates Not Binding: Simpluris and Client acknowledge that it is difficult to determine all necessary work required for the Services or the total amount of fees that may be incurred in performing the Services. Client agrees that fees for Services described in the Proposal are estimated based on the requirements provided by Client. Actual fees charged by Simpluris may be greater or less than such estimate. Client specifically agrees that it will be responsible for the payment of all such fees. Simpluris will provide estimates and budgets, but they are not intended to be binding; are subject to unforeseen circumstances, and by their nature are inexact.

3. Billing and Payment: Simpluris will invoice Client on a regular basis unless a specific timeframe is otherwise set forth in the Proposal. Client shall pay all invoices within 30 days of receipt. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Services are not provided on a contingency basis and Client shall remain liable to Simpluris for all fees incurred by Simpluris in performing the Services, regardless of any circumstance that impacts the outcome of Client's matter, including but not limited to, court decisions, actions by the parties, or a failure to consummate a settlement.

4. Further Assurances: Client agrees that it will use its best efforts to include provisions reasonably acceptable to Simpluris in any relevant court order, settlement agreement or similar document that provide for the payment of Simpluris' fees and expenses hereunder. No agreement to which Simpluris is not a party shall reduce or limit the full and prompt payment of Simpluris' fees and expenses as set forth herein and in the Proposal.

5. Rights of Ownership: The parties understand that the software programs and other materials furnished Simpluris to Client and/or developed during the course of the performance of Services are the sole property of Simpluris. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. Client agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished to Client. Fees and expenses paid by Client do not vest in Client any rights in such property, it being understood that such property is only being made available for Client's use during and in connection with the Services provided by Simpluris.

6. Bank Accounts: Simpluris will establish a demand deposit checking account (i.e. non-interest bearing) for funds received related to a distribution, unless directed otherwise in writing by the parties or unless the settlement agreement stipulates otherwise. Simpluris may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and compensation for services Simpluris performs for financial institutions to be eligible for FDIC deposit insurance. The amounts held pursuant to these Terms and Conditions are at the sole risk of Client and, without limiting the generality of the foregoing, Simpluris shall have no responsibility or liability for any diminution of the fund that may result from any deposit made with a financial institution including any losses resulting from a default by such institution or other credit losses. It is acknowledged and agreed that Simpluris will have acted prudently in depositing the fund at such institution.

7. Retention of Documents & Data: Unless otherwise required in writing by the Client or court orders, all returned/undeliverable physical documents will be securely shredded after the data has been confirmed uploaded to our systems. Simpluris will retain bank and tax documents for such period of time as it determines is required to maintain compliance with various federal and state law requirements. Unless otherwise required in writing by the Client or court orders, Simpluris will adhere to the Company's data deletion policies and will destroy all remaining project-related information from our systems three (3) years after the conclusion of the project. Storage beyond three (3) years is available upon request and will be billed as incurred.

8. Limitation of Liability; Disclaimer of Warranties: Simpluris warrants that it will perform the Services diligently, with competence and reasonable care. In no event will Simpluris be liable to Client or any third party for any claims, losses, costs, penalties, fines, judgments, tax activities, lost profits or business opportunities, business interruptions or delay, special, exemplary, punitive, consequential, indirect or incidental damages relating to the performance of the Services, regardless of whether Client's claim is for breach of contract, tort (including negligence and strict liability) or otherwise, regardless of whether such damage was foreseeable and whether such party has been advised of the possibility of such damages. Simpluris' cumulative liability for damages to Client hereunder will be limited to the total fees charged or chargeable to Client for the particular portion of the Services affected by Simpluris' omission or error. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

9. Force Majeure: To the extent performance by Simpluris of any of its obligations hereunder is substantially prevented or delayed by reason of any act of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date

that Simpluris began performing Services, epidemic, pandemic, quarantine, civil commotion, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an export or import restriction, quota, or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation or because of any other matter beyond Simpluris' reasonable control, then Simpluris' performance shall be excused and this Agreement, at Simpluris' option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

10. Rights in Data: Client agrees that it will not obtain, nor does Simpluris convey, any rights of ownership in the programs, system data, or materials provided or used by Simpluris in the performance of the Services.

11. Electronic Communications: During the provision of the Services, the parties may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each party agrees to use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.

12. Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier to the address identified by each Party in the Proposal. Notice shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service. Notice should be addressed to an officer or principal of Client and Simpluris, as the case may be.

13. Waiver: Failure or delay on the part of a party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof or any of other subject, right, power or privilege.

14. Termination: Client may terminate the Services at any time upon 30 days prior written notice to Simpluris. Termination of Services shall in no event relieve Client of its obligation make any payments due and payable to Simpluris for Services rendered up to the effective date of Termination. Simpluris may terminate this Agreement (i) for any reason upon no less than 60 days prior written notice to the Client; or (ii) upon 15 calendar days' prior written notice if the Client is not current in payment of fees.

15. Jurisdiction: These Terms and Conditions will be governed by and construed in accordance with the laws of the state of California, without giving effect to any choice of law principles.

16. Survival: Any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 4 - Limitation of Liability; Disclaimer of Warranties, Section 6 – Rights in Data, and Section 12- Jurisdiction, 14 -Confidentiality, and Section 15 – Indemnification.

17. Confidentiality: Simpluris maintains reasonable and appropriate safeguards to protect the confidentiality and security of data provided by Client to Simpluris in connection with the Services. If, pursuant to a court order or other proceeding, a third-party requests that Simpluris to disclose any confidential data provided by or for Client, Simpluris will promptly notify the Client unless prohibited by applicable law. Client will then have the option to provide Simpluris with qualified legal representation at Client's expense to defend against such request. If, pursuant to a court order, Simpluris is required to disclose data, produce documents, or otherwise act in contravention of the obligation to maintain confidentiality set forth in these terms and conditions, Simpluris will not be liable for breach of said obligation.

18. Indemnification: Client will indemnify and hold Simpluris (and the officers, employees, affiliates and agents) harmless against any losses whatsoever incurred by Simpluris, arising out of any action by a third party, including governmental agencies, in connection with , or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by Simpluris in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by Simpluris pursuant to Client's instructions.

19. Severability: If any term or condition or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

20. Database Administration: Simpluris' database administration for Client assumes that Client will provide complete data that includes all information required to send notifications and calculate and mail settlement payments. Data must be provided in a complete, consistent, standardized electronic format. Simpluris' standardized format is Microsoft Excel, however, Simpluris may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by Simpluris on a time and materials basis according to Simpluris' Standard Rates.

21. Entire Agreement: These Terms and Conditions together with the Proposal constitutes the entire agreement between the parties with respect of the subject matter hereof and supersede all prior understandings, agreements, or representations by or among the parties, written or oral, to the extent they relate in any way to the subject matter hereof.

EXHIBIT 15

Case Name: DAMAS v. JUSTWINGIT

Thursday, August 8, 2024

Requesting Attorneys Name:	Breck Oyama
E-Mail:	boyama@spivaklaw.com
ILYM Contact:	Lisa Mullins
E-Mail:	Lisa@ilymgroup.com
Contact Number:	714.878.8836

Estimate For Administrative Solutions: PAGA

KEY ASSUMPTIONS	
Total Number of Aggreived Employees	364
Estimated Percentage of Remails	15%
Certified Spanish Translation	No
ILYM Group Static Website	No
NCOA	Yes
Case Duration (Years)	1

Summary Estimate: ILYM Group Fees & Expenses

Case Startup:	\$481.40
Distribution (Includes EIN, Bank Acct * /QSF Setup):	\$2,798.60
Case Conclusion:	\$470.00
Total ILYM Fees & Expenses:	\$3,750.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: DAMAS v. JUSTWINGIT

Thursday, August 8, 2024

Requesting Attorneys Name: Breck Oyama

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - <i>Import and Formatting of Data*</i>	Hourly	\$150.00	1	\$150.00
Project Manager (Case notification and maintenance)	Hourly	\$120.00	1	\$120.00
NCOA	Flat Rate	\$100.00	1	\$100.00
Toll-Free Call Center	Flat Rate	\$111.40	1	\$111.40
Subtotal				\$481.40

**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.*

DISTRIBUTION (Includes EIN, Bank Acct /QSF Setup)*				
Distribution Setup & Management	Hourly	\$150.00	1	\$150.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	1	\$125.00
Notice, Check, Stub & Release - (including 1099)	Per Check	\$1.50	364	\$546.00
USPS First Class 1oz Postage	Per Piece	\$0.60	364	\$218.40
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.00	55	\$109.20
Preparation of Taxes	Hourly	\$150.00	1	\$150.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00
Subtotal				\$2,798.60

**Additional Bank fees may apply*

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	1	\$100.00
Process Unclaimed Funds to the State	Flat Fee	\$250.00	1	\$250.00
Declaration	Hourly	\$120.00	1	\$120.00
Subtotal				\$470.00

Total ILYM Fees & Expenses: \$3,750.00

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT 16

CASE NAME: DAMAS v JUSTWINGIT

Requesting Managing Paralegal: Breck Oyama
Plaintiff or Defense: Plaintiff
Firm Name: The Spivak Law Firm
Telephone: (818) 582-3039
Email: boyama@spivaklaw.com

Date: August 8, 2024
Prepared By: Tim Phillips
 50 Corporate Park, Irvine CA92606
 Tim@CPTGroup.com
Direct Number: (818) 415-2703
Main Number: (800) 542-0900

PROJECT ASSUMPTIONS & ADMINISTRATIVE COSTS

Number of Aggrieved Employees: 364	Check Reminder Postcard: No
Language Translation Services: No	Unclaimed Funds: SCO
Settlement Website: No	Postage Total: \$283.99
Payment Option: Check	Grand Total: \$10,230.15
Undeliverable Check Rate: 6%	CPT'S DISCOUNTED FEE: \$7,000.00

The services and numbers reflected herein are estimates based on the information provided by counsel at the time of this Bid. If the actual services and numbers are different, our cost estimate will change accordingly. Client expressly acknowledges and agrees that estimated fees and costs may fluctuate and agrees to pay for any such increases to such estimates as if set forth herein.

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

CASE SETUP

After receiving the data, CPT will scrub all records to eliminate duplicates and anomalies; this process is designed to achieve a higher success percentage in delivering the distribution proceeds. Each aggrieved employee will receive a unique mailing ID that will be utilized for all administrative purposes. CPT will perform an address update via NCOA and, if necessary, conduct an additional skip trace in order to ensure that mail is delivered to the most current address possible.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Case Intake & Review	\$95.00	3	\$285.00
Project Manager: Format Documents	\$95.00	1	\$95.00
Programming: Data Base Setup	\$150.00	3	\$450.00
National Change of Address Search (NCOA)	\$135.00	1	\$135.00
XML Lex ID Skip Trace	\$0.85	36	\$30.60
Sub Total:			\$995.60

AGGRIEVED EMPLOYEE SUPPORT

CPT will establish a toll-free telephone number equipped with interactive voice response (IVR) capabilities and live customer support representatives. Live support will be available during regular business hours, Monday to Friday, 9:00 AM to 5:30 PM, Pacific Time (PT). The dedicated case phone number shall be operational for a maximum of 120 days following the disbursement.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Toll-Free Number Establish/Setup	\$150.00	2	\$300.00
Live Call Center Support Reps.	\$3.00	73	\$219.00
Sub Total:			\$519.00

SSN VERIFICATION

Authenticate Social Security Number for validity using IRS verification processes and/or IRS backup withholdings processes.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: SSN Selection	\$150.00	1	\$150.00
Department Manager: Analysis & Reporting	\$95.00	3	\$285.00
IRS SSN Verification	\$0.10	364	\$36.40
Sub Total:			\$471.40

DISTRIBUTION SERVICES

CPT will establish a 26 CFR § 1.468B-1 compliant Qualified Settlement Fund (QSF). Upon approval, CPT will perform the required payment calculations, and once approved by the parties, CPT will print a one-page notice and issue a (MICR) check to all eligible employees. CPT will also issue an IRS Form 1099 when applicable. CPT utilizes the bank's Payee Positive Pay to prevent check fraud and performs monthly account reconciliations for the QSF bank account. Undeliverable checks are skip-traced to obtain a current address and are remailed accordingly. Requests for check reissues will be processed throughout the check cashing period. CPT's administration of the QSF will continue for a maximum duration of one year following the initial distribution of funds.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: Calculation Totals	\$150.00	3	\$450.00
Project Supervisor: Review of Distribution	\$150.00	3	\$450.00
Project Manager: Correspondence w/Parties	\$95.00	2	\$190.00
Programming: Setup & Printing of Checks	\$150.00	3	\$450.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Print & Mail Notice, Checks & 1099	\$2.75	364	\$1,001.00
First-Class Postage (up to 1 oz.)*	\$0.69	364	\$251.16
Project Supervisor: Account Reconciliation	\$150.00	6	\$900.00
Update Undeliverable Checks Database	\$0.50	22	\$10.92
Clerical Staff	\$60.00	1	\$60.00
Skip Trace for Best Address	\$1.00	22	\$21.84
Remail Undeliverable Checks	\$3.00	20	\$60.00
First-Class Postage (up to 1 oz.)	\$0.69	20	\$13.80
Re-Issue Checks as Required	\$5.00	15	\$75.00
First-Class Postage (up to 1 oz.)	\$0.69	15	\$10.35
Sub Total:			\$4,394.07

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

TAXREPORTING & SETTLEMENT CONCLUSION

CPT prepares annual tax reporting on behalf of the QSF and Federal and State taxes in accordance with current state and federal regulations. All parties will be furnished with weekly and final reports. A declaration attesting to due process will be provided to all parties.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Supervisor: Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming: Weekly & Final Reports	\$150.00	2	\$300.00
Project Supervisor: Final Declaration	\$150.00	2	\$300.00
Project Manager: Account Files Sent to Atty	\$95.00	2	\$190.00
CA Tax Preparation*	\$600.00	1	\$600.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
Sub Total:			\$3,040.00

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

SCO ESCHEATMENT PROCESSING

Escheatment Processing to the State Controller Unclaimed Property Division / Uncashed Check Rate 21%			
ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
UP Enterprise Reporting Services	\$0.15	76	\$11.40
Project Manager: Reporting & Remittance	\$95.00	2	\$190.00
Project Supervisor: Review of Report	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.68	1	\$8.68
Add'l Account Recons	\$150.00	3	\$450.00
Sub Total:			\$810.08

Total Administration Costs: \$10,230.15

Courtesy Discount: -\$3,230.15

CPT'S DISCOUNTED FLAT FEE: \$7,000.00

TERMS AND CONDITIONS

These Terms and Conditions ("**Terms and Conditions**") are made a part of, and incorporated by reference into, any Bid presented by CPT Group, Inc. ("**CPT**") to Client. Each of Client and CPT is a "**Party**" to this Agreement, and collectively, the "**Parties**".

1. Definitions.

- a) "**Affiliate**" means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with another party.
- b) "**Agreement**" means these Terms and Conditions and the Bid.
- c) "**Applicable Laws**" means all applicable local, state and federal laws, ordinances, rules and regulations.
- d) "**Approved Bank**" means any financial institution that is insured by the Federal Deposit Insurance Corporation.
- e) "**Bid**" means a proposal, statement of work, order form, and/or schedule for Services (including any and all addendums, exhibits, or amendments thereto) provided by CPT to Client.
- f) "**Case**" means the case referred to in the attached Bid and/or the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the caption of the applicable Court Order.
- g) "**Class**" means Members and putative Members collectively.
- h) "**Client**" means the party or parties engaging CPT for Services as set forth in the Bid, namely Plaintiff Counsel and/or Defense Counsel.
- i) "**Confidential Information**" means any non-public information of CPT or Client disclosed by either Party to the other Party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other Party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing Party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
- j) "**Court Order**" means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more Parties To The Case to carry out a legal obligation pursuant to the Case.
- k) "**Defendant**" means the named Party and/or Parties in the Case against whom action is brought.
- l) "**Defense Counsel**" means the attorney(s) of record for the Defendant(s) in the Case.
- m) "**Intellectual Property Right**" means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
- n) "**Member**" means an individual who is eligible under the Case or Class to receive a communication about their pending legal rights under the matter and/or designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons or other parties in the representative action so designated or addressed therein.
- o) "**Member Content**" means all Member written document communications relating to the Case, including claim forms, opt-out forms, and/or objections, which may contain Member Data.
- p) "**Member Data**" means proprietary or personal data regarding Members under this Agreement.
- q) "**Parties To The Case**" shall mean collectively Defendant(s) and Plaintiff(s) as defined in the Settlement Agreement or Court Order.
- r) "**Plaintiff**" means the named party and/or parties in the Case who are bringing the action.
- s) "**Plaintiff Counsel**" means the attorney(s) of record for Plaintiff(s) in the Case, and/or upon certification by the Court the attorney(s) of record designated to represent the Class.
- t) "**Products**" means any and all CPT Services and work product resulting from Services.

- u) "**Qualified Settlement Fund**" or "**QSF**" means a bank account established pursuant to U.S. Department of Treasury Regulations §1468B-1.
- v) "**Service**" means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Members; (ii) setting up a QSF with an Approved Bank; (iii) management of disbursement of funds from the QSF to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
- w) "**Settlement Agreement**" means the contract between Parties To The Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Members.
- x) "**Settlement Amount**" means the total dollar amount agreed to between Parties To The Case to resolve the Case to mutual satisfaction.
- y) "**Software**" means any and all of CPT's software applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
- z) "**Transmission Methods**" means the secure authorized manner to send Member Data and/or Wire Information as specified on a schedule or exhibit hereto.
- aa) "**Term**" means the period commencing on the date set forth on the Bid and continuing until the date of final judgment (if a settlement) or upon completion of all Services as set forth in the Bid.
- bb) "**Wire Information**" means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.

2. Client Obligations. Client will ensure that it has obtained all necessary consents and approvals for CPT to access and use Member Data for the purposes permitted under this Agreement and shall only transmit Member Data and/or Wire Information to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Member Data provided under this Agreement. Client further warrants that any Member Data, Wire Information, or other content, data, materials or information it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect Member Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.

3. CPT Obligations. CPT will (i) maintain appropriate safeguards designed to protect Member Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Member Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Parties To The Case, Members, Plaintiff Counsel or Defense Counsel as applicable.

4. Security. Client and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any Member Data in its possession or control under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such Member Data; (c) protect against unauthorized access to or use of such Member Data that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such Member Data in connection with its disposal.

a) Incident Notification. In the event a Party discovers that Member Data relating to the Case is the subject of (i) any unauthorized acquisition, loss, access or use and/or (ii) an actual or suspected breach concerning such Party's systems (items (i) and/or (ii) a "**Security Incident**"), or a Party has a reasonable belief that a Security Incident has occurred or is at risk of occurring, such Party will promptly but no later than forty-eight (48) hours of its discovery of such circumstances, inform the other Parties in the event of such Security Incident, and shall utilize best efforts to assist the other Parties to mitigate the effects of such Security Incident.

b) b) Response Procedures. In the event of a Security Incident, the breached party shall (i) cooperate with any reasonable investigation concerning the Security Incident by the other Parties, regulators and/or law enforcement; and (ii) cooperate with the other Parties to comply with Applicable Laws concerning such Security Incident, including any notification to affected individuals. The Parties acknowledge that the breached party in any Security Incident shall be the Party responsible for

any and all remedies and costs under Applicable Laws concerning such Security Incident, unless such breach occurred due to another Party's actions hereunder, in which instance such party shall be comparatively responsible for all remedies and costs. In no event will any Party serve notice or otherwise publicize a Security Incident without the prior written consent of the other Parties. The Parties shall reasonably cooperate and coordinate with each other to respond to the Security Incident, including with regard to the content of notification to affected individuals.

6. **Qualified Settlement Fund Account.** When the Case has a Settlement Amount CPT shall be authorized to establish one or more QSF bank accounts at an Approved Bank if and as applicable to the Services as set forth in the Bid. The amounts held at the Approved Bank under this Agreement are at the sole risk of Defendant. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.

7. **Fees and Payment.** Pricing for Services is as stated on the Bid, and Client agrees to pay CPT in the amounts set forth on the Bid. Client will be invoiced per the schedule set forth in the Bid, and payment of fees will be due within 30 days after the date of the invoice, except where the Bid or terms of the Settlement Agreement or Court Order expressly prescribes other payment dates. All fees set forth in a Bid are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% per month (or the highest rate allowable by law, whichever is lower) on the outstanding balance from the date due until the date of actual payment, which such late charge(s) may be charged against the QSF account if incurred in connection with Services provided pursuant to administration of a settlement. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation. . In connection with CPT's administration of a QSF, unless otherwise stated in the Settlement Agreement or Court Order concerning disbursement of unclaimed funds in the QSF account, CPT reserves the right, after one (1) year of issuance of disbursements to Members, to classify any remaining balance in such QSF account as additional administrative fees payable to CPT until such time as the QSF account balance becomes zero (\$0.00), and thereafter close such account.

8. **Term and Termination.**

- a) **Term.** The Term is set forth in the Bid. The Agreement may be renewed by mutual written agreement of the parties.
- b) **Termination for Cause.** Either Party may immediately terminate this Agreement if the other Party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching Party's receipt of written notice describing the breach in reasonable detail.
- c) **Bankruptcy Events.** A Party may immediately terminate this Agreement if the other Party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
- d) **Effect of Termination.** Immediately following termination of this Agreement, upon written request, Member Data may be retrieved via the secure FTP site in the same format in which the Member Data was originally inputted into the Software, at no additional charge. Alternatively, Member Data can be returned in a mutually agreed format at a scope and price to be agreed upon. CPT will maintain a copy of Member Data and Member Content for no more than four (4) years following the date of the final check cashing deadline for Members under the Settlement Agreement, after which time any Member Data and Member Content not retrieved will be destroyed.
- e) **Final Payment.** If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination," Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.

9. **Confidentiality.** Each Party agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such Party's rights and responsibilities under this Agreement; and (iii)

to keep the Confidential Information confidential using the same degree of care such Party uses to protect its own confidential information; provided, however, that such Party shall use at least reasonable care. These obligations shall survive termination of this Agreement.

a) **Compelled Disclosure.** If receiving Party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such Party shall (i) promptly notify the other Party, (ii) reasonably cooperate with the other Party in such Party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each Party is advised by its counsel in writing is legally required to be disclosed.

b) **Remedies.** If either Party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other Party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.

10. **Intellectual Property.** CPT retains all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. CPT does not claim any ownership rights to Member Data.

11. **Indemnification.** Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, "**Covered CPT Parties**") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "**Damages**") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Member Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.

12. **Warranties.** Each Party represents and warrants to the other Party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such Party; (iii) the Agreement is a legally valid and binding obligation of such Party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE

13. **Liability.**

a) **Liability Cap.** EXCEPT FOR A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL FEES PAID OR PAYABLE BY CLIENT AND/OR THE PARTIES TO THE CASE TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.

b) **Exclusion of Consequential Damages.** NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14. **Communications.** CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and

certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.

15. Miscellaneous Provisions.

- a) Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.
- b) Force Majeure. Neither Party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such Party's reasonable control, provided that the delayed Party: (i) gives the other Party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
- c) Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
- d) Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the Parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
- e) Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by the Parties.
- f) Assignment. Neither Party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other Party's prior written consent; provided, however, either Party, without the consent of the other Party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such Party, where the responsibilities or obligations of the other Party are not increased by such assignment and the rights and remedies available to the other Party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
- g) No Third-Party Beneficiaries. The representations, warranties, and other terms contained herein are for the sole benefit of the Parties hereto and their respective successors and permitted assigns and shall not be construed as conferring any rights on any other persons.
- h) Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("**Statistical Data**") derived from the operation of the Software. and

nothing herein shall be construed as prohibiting CPT from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third-party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.

- i) Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such Applicable Laws, including the Export Administration Regulations maintained by the U.S. Department of Commerce and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j) Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k) Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other Party as set forth on the Bid or at such other address as may hereafter be furnished in writing by either Party hereto to the other Party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l) Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each Party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither Party may make any statement that would contradict anything in this section.
- m) Subcontractors. CPT may use subcontractors to perform Client-specific Services; provided however, that CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n) Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret, or construe its meaning, scope or intent.
- o) Waiver. No failure or delay on the part of either Party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power, or remedy.
- p) Acceptance. If, when requested in writing by Client, CPT then provides any Service to Client, whether or not such Services were specified in the original Bid, these Terms and Conditions shall apply to the provision of such Services and be deemed accepted and approved by Client concerning such Services.
- q) Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.