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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CRUZ

(UNLIMITED JURISDICTION)

IRMA TAPIA,

Plaintiff,

vs.

POSADA ASSOCIATES; LA POSADA;
KALCO PROPERTIES INC.; and DOES 1
to 25, inclusive,

Defendants.

Case No.: 23CV00355

**DECLARATION OF HAROUT
MESSRELIAN IN SUPPORT OF
PLAINTIFF'S MOTION FOR APPROVAL
OF PAGA SETTLEMENT**

Action filed: February 10, 2023

Hearing Date: July 22, 2024

Hearing Time: 8:30 a.m.

Hearing Dept: 5, Hon. Syda K. Cogliati

DECLARATION OF HAROUT MESSRELIAN IN SUPPORT OF
PLAINTIFF'S MOTION FOR APPROVAL OF PAGA SETTLEMENT

I, HAROUT MESSRELIAN, declare and state as follows:

1. I am an attorney duly licensed to practice before all the Courts of the State of California. I am the managing attorney of Messrelian Law Inc. and the attorney of record for Irma Tapia (individually, "Tapia" or "Plaintiff") in her lawsuit against Defendants Posada Associates, La Posada, and Kalco Properties, Inc. ("Defendants" or "POSADA").

2. I am experienced in handling employment law matters and specifically wage and hour representative and individual actions. My qualifications are as follows: I received my JD from Loyola Law School in 2010. I started my own law firm in 2011 – the Law Offices of Harout Messrelian. Since 2016, I have been the founder and principal attorney at Messrelian Law, Inc. Since 2011, I have filed and handled over 225 civil actions and/or claims involving representative actions under the Private Attorneys General Act ("PAGA") and/or wage and hour claims on behalf of my clients and have been appointed Class Counsel in three class action cases – *Zohrab Mekhitarian v. Triple Play Motors dba Bob Smith Toyota*, Los Angeles Superior Court Case No. 19STCV22411 (ADR Services, Inc., Case Number 20-2668-RWT), *Carina Camberos, on behalf of herself and others similarly situated, v. Great American Chicken Corp, Inc.*, Los Angeles Superior Court Case No. 21STCV32015, and *Robert Garcia, on behalf of himself and others similarly situated v. HD Supply Management Inc.*, San Bernardino Superior Court Case No. CIVSB2028067. I have a practice that encompasses cases in the Los Angeles Superior Courts, the Orange County Superior Courts, the Riverside County Superior Courts, the San Bernardino County Superior Courts, the Alameda County Superior Courts, Santa Clara County Superior Courts, San Mateo County Superior Courts, and the Monterey County Superior Courts.

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

4. A true and correct copy of the PAGA (Private Attorneys General Act, Labor Code § 2698 *et seq.*) Settlement Agreement (the "Settlement" or "Agreement") is attached hereto as **Exhibit 1**. A true and correct copy of the parties agreed upon notice to the below-defined

1 Aggrieved Employees (the “PAGA Notice”) is attached hereto as **Exhibit 2**.

2 ***Factual and Procedural Background***

3 5. Defendants operate a senior living/retirement community in Santa Cruz,
4 California. Plaintiff first started working for Defendants in or around November 2018 in the
5 housekeeping department. Plaintiff’s employment ended on or around December 27, 2022. At
6 all times during her employment with Defendants, Plaintiff was considered an hourly, non-
7 exempt employee.

8 6. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit
9 under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq.
10 (“PAGA”). On October 25, 2022 and February 10, 2023, Plaintiff, on behalf of herself and
11 Defendants’ other California non-exempt hourly employees (hereafter collectively the
12 “Aggrieved Employees”) gave written notice by electronic service to the California Labor and
13 Workforce Development Agency (“LWDA”) and via certified mail to Defendants of the specific
14 provisions of the California Labor Code alleged to have been violated, including the facts and
15 theories to support the alleged violations. A true and correct copy of Plaintiff’s letters to the
16 LWDA are attached hereto as **Exhibit 3**.

17 7. On February 10, 2023, Plaintiff filed a lawsuit in Santa Cruz County Superior
18 Court (the “Lawsuit”) against Defendants. A true and correct copy of the Lawsuit is attached
19 hereto as **Exhibit 4**. Plaintiff asserted the following causes of action against Defendants for: (1)
20 Failure to Compensate for All Hours Worked; (2) Failure to Pay Minimum Wages; (3) Failure
21 to Pay Overtime Wages; (4) Failure to Provide Accurate, Itemized Wage Statements; (5) Failure
22 to Pay Wages Owed Every Pay Period; (6) Failure to Pay Wages When Employment Ends; (7)
23 Failure to Give Rest Breaks; (8) Failure to Give Meal Periods and; (9) Failure to Reimburse
24 Business Expenses; (10) PAGA claims; (11) Sexual Harassment in Violation of the FEHA; (12)
25 Retaliation in Violation of the FEHA; (13) Failure to Prevent Harassment and Retaliation in
26 Violation of FEHA; (14) Retaliation in Violation of Labor Code Section 1102.5; (15) Negligent
27 Retention and Supervision; (16) Wrongful Discharge in Violation of Public Policy, and; (17)
28 Violation of California Business and Professions Code Section 17200.*Id.*

1 8. On April 17, 2023, Defendants filed their Answers to Plaintiff's Complaint. A
2 true and correct copy of Defendants La Posada and Posada Associates' Answer is attached
3 hereto as **Exhibit 5**. A true and correct copy of Defendant Kalco Property, Inc.'s Answer is
4 attached hereto as **Exhibit 6**.

5 9. The parties met and conferred and agreed that it may be in their mutual interests
6 to discuss Plaintiff's allegations informally, rather than through litigation, and scheduled private
7 mediation. On January 18, 2024, the parties attended a full day mediation session with Hon.
8 Wynne Carvill (Ret.). At the mediation, the parties agreed to settle Plaintiff's PAGA Claim for
9 violation of Labor Code § 2698, *et seq.* Before agreeing to the terms of the Settlement, the
10 Parties engaged in informal discovery regarding Defendants' policies, practices, operations,
11 time and payroll information and other topics. In advance of mediation, Defendants produced
12 Plaintiff's personnel file, including time and payroll data through data sampling. Moreover,
13 prior to the mediation, Defense counsel provided Plaintiff's counsel with information and
14 documents relating to other Aggrieved Employees, including time and payroll data. Through
15 extensive arm's length negotiations at the mediation and only after discovery and investigation
16 were performed, the parties agreed to settlement terms. Now that the parties have finalized the
17 PAGA Settlement, Plaintiff submits it to this Court for approval.

18 10. Defendants deny any liability or wrongdoing of any kind whatsoever associated
19 with the lawsuit. It is the desire of the parties to fully, finally, and forever compromise, and
20 discharge all claims known or unknown related to those alleged in Plaintiff's lawsuit.

21 11. Counsel for the Parties have further investigated the applicable law as applied to
22 the facts discovered regarding Plaintiff's claims, the defenses thereto, and the Labor Code
23 violations claimed by Plaintiff. I am experienced in prosecuting PAGA lawsuits. Counsel for the
24 Defendants are experienced in defending PAGA cases. Based on the parties' own independent
25 investigations and evaluations, the parties and their respective counsel are of the opinion that the
26 Settlement for the consideration and on the terms set forth in the Agreement are fair, reasonable
27 and adequate and are in the best interests of Plaintiff, the Aggrieved Employees, the State, and
28 Defendants in light of all known facts and circumstances and the risks inherent in litigation,

1 especially in this post pandemic era, where businesses are struggling to remain afloat, much less
2 prosper and make a large profit.

3 12. The Settlement of a PAGA claim requires court approval. Lab. Code §2699(l)(2).
4 The Court necessarily has broad discretion in making the decision to approve or reject a
5 settlement for civil penalties as the statutory scheme authorizes the Court to determine whether,
6 in certain circumstances, penalties should be assessed and, if so assessed, the appropriate amount
7 of penalties based on the facts and circumstances of the particular case. Although the PAGA
8 does not set forth the particular standards against which a PAGA settlement should be evaluated,
9 the LWDA has provided guidance for approval that mirrors the standards for evaluating class
10 action settlements.

11 13. PAGA imposes two requirements for the settlement of a PAGA claim. Both are
12 met here. First, any civil penalties recovered, whether by judgment or settlement, must be
13 distributed as follows: 75 percent to the LWDA, and the remaining 25 percent to the aggrieved
14 employees. *See Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742; Cal. Lab.
15 Code, § 2699(i). The parties' Settlement so provides (*See Exhibit 1*). Second, the LWDA must
16 be given notice of the settlement so that it may be heard before the Court decides whether to
17 grant approval. Cal. Lab. Code § 2699(l)(2). Here, notice is being given to the LWDA
18 concurrently with the filing of this motion. A true and correct copy of Plaintiff's submission with
19 the LWDA and a confirmation email is attached as **Exhibit 11**. As a result, Plaintiff has met all
20 procedural statutory requirements for settling a PAGA action.

21 14. The PAGA Settlement warrants a presumption of fairness for several reasons: (1)
22 The parties reached the Settlement through arm's-length bargaining with the aid of a respected
23 mediator; (2) The parties conducted sufficient investigation and discovery to allow Counsel and
24 the Court to act intelligently. Plaintiff requested and Defendants provided the number Aggrieved
25 Employees, the number of total pay periods during the PAGA Period, all policies in effect during
26 the PAGA Period, and a sampling of time records; and (3) Counsel for the Parties are experienced
27 with PAGA cases. Moreover, neither Plaintiff nor I have any conflicts of interest with the absent
28 Aggrieved Employees and there are no issues of ascertainability.

1 15. I considered various sources of information in the lead-up to the mediation of
2 January 18, 2024 that enabled Plaintiff to achieve the Settlement at issue. Among other things,
3 Plaintiff considered the following:

- 4 • Defendants produced and Plaintiff's counsel reviewed Plaintiff's personnel file.
- 5 • Plaintiff's counsel requested that Defendants provide any and all policies regarding
6 overtime and double-time wages, off the clock work, expense reimbursement, meal
7 periods, rest breaks, meal period waivers and agreements, compensation plans, and
8 complaints about working conditions in effect during the relevant time period beginning
9 in December of 2021. Defendants produced those policies as part of their employee
10 handbook.
- 11 • Plaintiff's counsel requested that Defendants provide the total number of employees,
12 paychecks, and the pay cycles during the relevant period. Defendants provided the
13 answers to each of these questions.
- 14 • Plaintiff's counsel requested a 20% sample of time and payroll records for the relevant
15 time period. Defendants provided a sampling of time and pay records for 10 of its
16 employees. This represents approximately 20% of the total employees (48) that
17 Defendants employed during the PAGA Period based on data available at the time.
- 18 • Plaintiff's counsel then retained a professional data analyst, James Toney, to examine
19 the records and determine the meal period violation rates, if there was any pay
20 discrepancy in timesheet hours versus paid hours, and if there was any rounding/time
21 shaving issues. Plaintiff is prepared to provide the Court with the data analysis for *in*
22 *camera* inspection upon its request.
- 23 • Plaintiff's counsel analyzed the state of caselaw on PAGA claims, meal and rest break
24 violations, claims for "off the clock" work and business expense reimbursement,
25 especially as it relates to "manageability" arguments brought up by the defense.

26 16. Defendants estimated for purposes of mediation that as of the date of mediation,
27 there were approximately 48 Aggrieved Employees and 2,141 pay periods for all Aggrieved
28 Employees during the PAGA Period. Based on this information, I prepared an estimate of the
maximum possible civil penalties under the PAGA. The maximum possible civil penalties under
the PAGA is the total number of pay periods with one or more violations multiplied by the
maximum possible civil penalty amount per pay period.

 17. Under the civil penalty formulas applicable under PAGA, Plaintiff estimated a

1 maximum exposure of approximately \$66,150 for civil penalties for Plaintiff's strongest disputed
2 claims of failure to provide meal and rest periods and \$214,100 for unreimbursed business
3 expenses. Plaintiff's analysis, which Defendants vehemently dispute, revealed a 23.8% violation
4 rate for either late, short, or interrupted meal periods for shifts over 5 hours. Since the total
5 number of pay periods in the PAGA period was 2,141 and since approximately 60% of the shifts
6 in the sample were over 5 hours, the total number of pay periods to consider for potential meal
7 break violations was 1285 (60% x 2,141 pay periods). As such, with the 23.8% violation rate,
8 the maximum exposure would be \$15,250.00, which is calculated as \$50 penalty multiplied by
9 305 pay periods (23.8% of the 1285 pay periods). As far as rest breaks, approximately 80.3% of
10 the shifts in the sample were over 3.5 hours, the total number of pay periods to consider for
11 potential rest break violations was 1719 (80.3% x 2,141 pay periods). Plaintiff extrapolated the
12 same 23.8% rate for rest break violations, which would equate to a maximum exposure of
13 \$50,900 (\$100 penalty per pay period multiplied by 509 pay periods, which is 23.8% x 2141 pay
14 periods). For unreimbursed expenses, Plaintiff estimated a maximum exposure of \$214,100,
15 calculated as \$100 penalty multiplied by 2,141 pay periods. As such, the aggregate maximum
16 exposure for meal break, rest break, and unreimbursed expenses claims would be \$280,250.
17 Assuming that Plaintiff's calculations and analysis are accurate, the maximum exposure
18 presumes that the Court will not reduce the penalty award as unjust, arbitrary, oppressive, or
19 confiscatory. For the rest period violations, it also presumes that the meal and rest period
20 violation rates were identical.

21 18. Plaintiff alleges that the strongest claims are that Plaintiff and other Aggrieved
22 Employees were not provided timely, uninterrupted meal and rest breaks. Defendants vehemently
23 deny that there were any meal and rest break violations especially in light of the fact that
24 Defendants presented evidence that they maintained Labor-Code-compliant meal and rest
25 policies and paid meal period premiums.

26 19. There are significant risks to Plaintiff's claim for unreimbursed expenses. Plaintiff
27 alleges that Defendants did not reimburse her or the other Aggrieved Employees for personal
28 mobile phone and uniform expenses. There is a risk that the Court may consider Plaintiff's claims

1 as to Defendants' alleged failure to indemnify for business expenses to be individual in nature.
2 As such, Plaintiff's counsel had to significantly discount the value of this claim during settlement
3 negotiations.

4 20. Moreover, I am unaware of any California State court decision awarding a
5 plaintiff and the other Aggrieved Employees she represents multiple civil penalties for the same
6 pay period under different Labor Code provisions. As such, one of the risks Plaintiff faces is that
7 the Court would refuse to "stack" civil penalties arising under the various Labor Code statutes.
8 Plaintiff's counsel had to substantially discount the value of these claims in the settlement
9 negotiations for this and a variety of other reasons. At best, Plaintiff could hope to recover one
10 penalty for each pay period (regardless of the different Labor Code violations that potentially
11 occurred for the same employee, during the same pay periods).

12 21. Additionally, PAGA states a court has discretion to award a lesser amount than
13 the maximum penalty. See Lab. Code § 2699(e)(2) ("...a court may award a lesser amount than
14 the maximum civil penalty amount specified by this part if, based on the facts and circumstances
15 of the particular case, to do otherwise would result in an award that is unjust, arbitrary and
16 oppressive, or confiscatory."); see also *Thurman v. Bayshore Transit Management, Inc.* (2012)
17 203 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that the Court
18 could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff's evidence
19 of willful and intentional conduct. *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504
20 ("*Carrington*") illustrates this. In that case, the Court of Appeal affirmed a trial court's heavily
21 discounted award of only \$5 per violation because it was within the Court's discretion to
22 significantly reduce PAGA penalties even when there is a finding that a violation of the
23 California Labor Code occurred. The plaintiff in *Carrington* had requested penalties in excess of
24 \$70 million and was successful in proving the PAGA claim during a bench trial. However, the
25 trial court reduced the total award after trial to only \$150,000 (30,000 violations x \$5) and stated
26 that this reduction was warranted because imposing the maximum penalty would be "unjust,
27 arbitrary, and oppressive", based on Starbucks's "good faith attempts" to comply with meal break
28 obligations and because the Court found the violations were minimal. Applying the same formula

1 here and assuming there was one violation during each pay period, the award of civil penalties
2 could not exceed \$10,705.00 in PAGA penalties (2,141 violations x \$5). As such, this Settlement
3 is a great result based solely on the risk the Court chooses to apply the *Carrington* formula.
4 Defendants have also posed formidable defenses to the Labor Code claims underlying Plaintiff's
5 allegations. Thus, the chance of Plaintiff recovering a higher amount than the Gross Settlement
6 Amount is uncertain.

7 22. The Parties further recognize that the issues presented in the representative PAGA
8 claim are likely only to be resolved with extensive and costly pretrial and trial proceedings, and
9 that further litigation will cause inconvenience, distraction, disruption, delay, and expense
10 disproportionate to the maximum potential benefits to the Aggrieved Employees and Plaintiff
11 from continued litigation, especially in the post pandemic era where further and extensive
12 litigation may cause businesses to shut down, resulting in no monetary compensation to Plaintiff,
13 Plaintiff's attorneys, other Aggrieved Employees, and the State of California.

14 23. The settlement of the representative PAGA claim involves monetary relief to all
15 Aggrieved Employees, Plaintiff, her attorneys, and the State of California. The Settlement is
16 reasonable given the uncertainties this lawsuit entails. It is also reasonable given the structure
17 and purpose of the PAGA, since the PAGA is not a restitution statute. Rather, it is essentially a
18 punishment statute. It provides for civil penalties only. Within the PAGA framework she is bound
19 by, Plaintiff, considering the evidence she faced, achieved a great result for the employees
20 concerned. Furthermore, any employees who are dissatisfied with the amount they received in
21 civil penalties can pursue any damages they believe they are owed by the Defendants. The
22 Settlement does not require them to opt out to do so.

23 24. Furthermore, Plaintiff recognizes that continued litigation presents significant
24 risks that support a significant downward departure from Plaintiff's estimated civil penalties
25 amount. In view of the risks, the Settlement represents a fair, adequate, and reasonable
26 compromise amount for these claims and is in the best interest of Plaintiff and Aggrieved
27 Employees and thus, warrants approval. *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479
28 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3. The PAGA settlement and its terms are fair, just,

1 reasonable, adequate, and equitable to Defendants, Plaintiff, and the State, especially in light of
2 the current economic climate, and are the product of good faith, and informed arms-length
3 negotiations between the Parties consistent with public policy and fully comply with applicable
4 provisions of law.

5 25. As such, the settlement of PAGA penalties in the gross sum of \$62,000, of which
6 75% of the net amount after attorney's fees, litigation costs, and settlement administration costs
7 (\$24,068.29) will be paid to the LWDA and 25% (\$8,022.76) will be distributed to the Aggrieved
8 Employees, is reasonable and appropriate under the circumstances.

9 ***Individual PAGA Payments***

10 26. Defendants represent that there are approximately 48 Aggrieved Employees
11 during the PAGA Period. After deducting the requested Court-approved PAGA Counsel's Fees
12 (\$20,666.66) and PAGA Counsel's Costs (\$5,381.47), and the Settlement Administration Costs
13 (\$3,860.82), the Net Settlement Amount will be approximately \$32,091.05. Seventy five percent
14 (75%) of the Net Settlement Amount will be paid to the Labor and Workforce Development
15 Agency ("LWDA") (\$24,068.29), and twenty five percent (25%) (\$8,022.76) of the Net
16 Settlement Amount will be paid to the Aggrieved Employees on a pro-rata basis based upon
17 their respective number of pay periods during the PAGA Period. Agreement, ¶ 3. With a total
18 of 48 Aggrieved Employees, the average estimated individual PAGA payment for each
19 Aggrieved Employee is approximately \$167.14 (25% of the estimated Net Settlement of
20 \$8,022.76) / 48 Aggrieved Employees). This is a great result given the uncertainties this lawsuit
21 entails.

22 ***Plaintiff's Individual Settlement***

23 27. Plaintiff negotiated an individual settlement agreement separate from the PAGA
24 Settlement. The parties agreed that the consideration Plaintiff received pursuant to the individual
25 settlement agreement was to settle her individual wage and hour, sexual harassment, retaliation,
26 and wrongful constructive discharge claims. Plaintiff's individual settlement agreement does
27 not provide for any additional attorney's fees or costs to my firm.

28 28. As part of this confidential agreement, Plaintiff also provided Defendants with a

1 general release of all claims, whether known or unknown, including unknown claims covered
2 by Civil Code Section 1542. Plaintiff has no conflict of interest with the absent Aggrieved
3 Employees and is adequate to represent the Aggrieved Employees. Plaintiff has maintained
4 contact with my office and helped me gather information and evidence to prove the alleged
5 claims and has agreed to remain involved as a PAGA representative even if the Court does not
6 approve the Settlement. While Plaintiff and I believe that Plaintiff's individual settlement has
7 no bearing on her adequacy as a PAGA Representative, she is willing to present that Settlement
8 to the Court *in camera* for review if the Court requests. It represents a fair resolution for
9 Plaintiff's individual wage and hour claims and claims for sexual harassment, retaliation, and
10 wrongful constructive discharge. *See generally* Declaration of Irma Tapia.

11 29. The PAGA statute does not forbid service awards. Courts frequently award them
12 in PAGA-only cases as well. *See Mancini v. W. & S. Life Ins. Co.* (S.D. Cal. Sept.18, 2018),
13 2018 WL 4489590, at *2 (approving an incentive award of \$5,000 to named plaintiff in a PAGA-
14 only settlement); *see also Kinney v. Harvest Al Mgmt. Sub LLC*, (E.D. Cal. Sept. 6, 2013) 2013
15 WL 12415482, at *2 (awarding an incentive award of \$3,000 to a named plaintiff in a PAGA-
16 only settlement). The work Plaintiff has done on this case includes hiring my firm, speaking
17 with our office on many occasions by phone, explaining what her employment at Posada was
18 like, explaining what her employment at Posada had in common with other employees who
19 worked for Posada, explaining her claims to me and my staff, and communicating with me and
20 my staff about the settlement agreement and related documents. Despite this, Plaintiff is **not**
21 asking for a service award for her involvement and the time she spent assisting my firm with the
22 PAGA action. *See generally* Declaration of Irma Tapia.

23 ***Attorneys' Fees and Costs***

24 30. I represent Plaintiff on a straight contingency basis. My firm's request for
25 \$20,666.66 in attorney fees and \$5,381.47 in litigation costs is fair and reasonable. To date, I have
26 investigated and prosecuted this matter for approximately 22.5 hours, including drafting the initial
27 PAGA notice as well as the complaint; reviewing formal discovery questions; reviewing
28 Defendants' informal document production, including wage and hour policies; sending and

1 receiving emails on the case with defense counsel, including substantive discussions and
2 settlement communications; sending the PAGA data to Plaintiff's expert for review/analysis and
3 reviewing the expert's findings/conclusions; attending mediation; and drafting this PAGA
4 approval motion. I also expect to perform additional work on this case if the Court grants final
5 approval of the Settlement, including supervision of the Settlement Administrator's disbursement
6 of the settlement funds to the Aggrieved Employees. "Empirical studies show that, regardless of
7 whether the percentage method or the lodestar method is used, fee awards in class actions average
8 around one-third of the recovery. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 47 fn. 11
9 (quoting *Shaw v. Toshiba America Information Systems, Inc.* (E.D. Tex. 2000) 91 F.Supp.2d 942,
10 972; *See also Lafitte v. Robert Half Int'l Inc.* (Cal. Aug. 11, 2016) 1 Cal.5th 480, 503, 376 P.3d
11 672, 686 (holding that courts can use the percentage method for the calculation of attorneys' fees).
12 This is also consistent with Plaintiff's Counsel's experience in cases involving PAGA claims.
13 This award is justified here because Plaintiff's counsel achieved a strong result for the PAGA
14 Members and the State while bearing the substantial burdens of contingency representation.

15 31. Should the Court elect to use Plaintiff's Counsel's lodestar as the method for
16 awarding fees, notwithstanding courts' clear preference for the percentage method, my request
17 for attorney's fees of \$20,666.66 (33% of the Gross Settlement Amount) is fair and reasonable
18 based on my firm's lodestar as cross-checked against the percentage of the recovery.

19 32. To date, the attorneys in my firm and I have investigated and prosecuted this
20 matter for over 37.5 hours. *See* Declaration of Maralle Messrelian ("MM"), ¶¶ 9-10. My average
21 hourly rate during this case was \$650.00/hour (12th, 13th, and 14th year attorney). My total
22 lodestar amount through June 27, 2024 is \$14,625.00. At 37.5 hours, my firm has a total lodestar
23 of approximately \$22,125.00, without the use of any multiplier, which results in a negative
24 multiplier of 0.934 when compared against the \$20,666.66 request for attorneys' fees.¹

25
26 ¹The multiplier of 0.934 is supported by California case law. Under California law, lodestar multipliers can range
27 from 2 to 4 or even higher. *See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 49; *Wershba v. Apple Computer,*
28 *Inc.*, 91 Cal.App.4th at p. 255; *Natural Gas Anti-Trust Cases I, II, III & IV* (Cal. Sup. Ct. 2006) 2006 WL 5377849,
*4 ("This Court and numerous cases have applied multipliers of between 4 and 12 to counsel's lodestar in awarding
fees."); *In re California Indirect Purchases* (Cal. Sup. Ct. 1998) 1998 WL 1031494, *10 (citing *Wilson v. Bank of*
America Nat'l Trust & Sav. Ass'n., (Cal Sup. Ct. 1982) No. 643872 (multiplier of 10 times the hourly rate awarded)
(cited in 3 Newberg & Conte, *Newberg on Class Actions*, section 1403, at 14-5 n. 21), and *Glendora Community*

1 Moreover, I will have waited for almost two years to be awarded attorneys' fees for work
2 performed since October of 2022, when Plaintiff first contacted my office, compared to
3 Defendants' counsel who have been paid as they performed work during this case.

4 33. In addition, my firm incurred substantial costs, \$5,381.47 to date, which consist
5 of mediator fees, data analysis fees, filing fees and attorney service fees. A true and correct
6 summary of my firm's costs and expenses incurred to date is attached as **Exhibit 7** to this
7 declaration. I will make detailed copies of such records available to the Court for *in camera*
8 inspection upon its request. As the evidence submitted herewith shows, all of these costs are
9 documented and reasonably incurred. Accordingly, they warrant the Court's approval.

10 34. My previous experience in litigating wage and hour actions also supports the
11 reasonableness of the fee request. Based on past experience with similar matter, I was able to
12 evaluate the strengths and weaknesses of this case and the reasonableness of the Settlement.
13 Because it is reasonable to compensate me commensurate with my skill, reputation, and
14 experience, attorney's fees of approximately one-third of the Gross Settlement Amount is
15 reasonable. Likewise, the caliber and experience of opposing counsel in labor and employment
16 litigation, Joseph Lordan, Vincent Fisher, and Trenten Bilodeaux of O'Hagan Meyer LLP (on
17 behalf of Posada) and Mike Laurenson and Hannah Diamond of Gordon Rees Scully
18 Mansukhani, LLP (on behalf of Kalco) also supports the fairness and reasonableness of the
19 requested fee award.

20 35. Plaintiff reiterates her request that the Court award her counsel one third of the
21 recovery as attorney fees. The award of attorney's fees sought is justified by the contingency
22 nature of the attorney-client relationship, my experience in litigating wage and hour cases, the
23 number of attorney and staff hours my firm has spent on this lawsuit, the high caliber of defense
24 counsel, the risks of non-payment and non-reimbursement, the delay in payment and cost
25 reimbursement, and the great results Plaintiff's Counsel has achieved for the Aggrieved
26 Employees.

27 _____
28 *Redevelopment Agency v. Demeter* (Cal. App. 2 Dist., 1984) 155 Cal. App. 3d 465, 479 (approving fee award 12
times estimated lodestar multiplier).

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A. ILYM Group, Inc.= \$4,550.00

B. Phoenix Class Action Administration Solutions = \$3,860.82; and

C. Simpluris, Inc.= \$ 4,000.00.

37. Furthermore, the Declaration of Michael Moore with attached exhibit, filed under separate cover, sets forth Phoenix's qualifications and costs to administer the settlement. *See generally* Declaration of Michael Moore. Thus, the settlement administration costs provision should be given approval.

38. Pursuant to Lab. Code § 2699(1)(2), Plaintiff submitted a copy of the Settlement with the LWDA at the same time the Settlement is being filed with the Court. True and correct copies of Plaintiff's submission with the LWDA and the confirmation email are collectively attached as **Exhibit 11** to this declaration.

Executed on June 27, 2024 at Glendale, California.

14

EXHIBIT 1

SETTLEMENT AGREEMENTⁱ

This Settlement Agreement (“Agreement”) is made by and between plaintiff Irma Tapia (“Plaintiff”), defendant Kalco Properties, Inc., (“Kalco”), and defendant Posada Associates/La Posada (“Posada,” with Kalco, “Defendants”). The Agreement refers to Plaintiff and Defendants collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s lawsuit captioned *Irma Tapia v. Posada Associates; La Posada; and Kalco Properties, Inc.; and Does 1 to 25*, Superior Court of the State of California (Santa Cruz County) Case No. 23CV00355.
- 1.2. “Administrator” means Phoenix Class Action Administration Solutions, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.
- 1.4. “Aggrieved Employee” means all current and former hourly, non-exempt employees who worked for Defendants in California during the PAGA Period.
- 1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendants’ possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.
- 1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.
- 1.7. “Court” means the Superior Court of California, County of Santa Cruz.
- 1.8. “Defense Counsel” means Joseph Lordan, Vincent Fisher, and Trenten Bilodeaux of O’Hagan Meyer LLP on behalf of Posada; Mike Laurenson and Hannah Diamond of Gordon Rees Scully Mansukhani, LLP on behalf of Kalco.
- 1.9. “Effective Date” means the later date by when both of the following have occurred: (a) service on Defendants of the Court Order and Judgment Approving the PAGA Settlement and (b) the Judgment is final, i.e., the day the Court enters Judgment.
- 1.10. “Gross Settlement Amount” means \$62,000.00 which is the total amount Defendants agrees to pay under the Settlement. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel

Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator's Expenses Payment.

- 1.11. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.
- 1.12. "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 1.13. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.14. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.15. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.
- 1.16. "PAGA" means the Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698, *et. seq.*
- 1.17. "PAGA Counsel" means Harout Messrelian and Maralle Messrelian, of Messrelian Law Inc., the attorneys representing the Plaintiff in the Action.
- 1.18. "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses Payment" mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.
- 1.19. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendants for at least one day during the PAGA Period.
- 1.20. "PAGA Period" means the period from December 7, 2021 to January 18, 2024.
- 1.21. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).
- 1.22. "PAGA Notice" means Plaintiff's October 25, 2022, letter to Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.23. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to LWDA in settlement of PAGA claims.

- 1.24. “Plaintiff” means Irma Tapia, the named plaintiff in the Action.
- 1.25. “Approval Order” means the proposed Court Order Granting Approval of PAGA Settlement.
- 1.26. “Released PAGA Claims” means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.
- 1.27. “Released Parties” means: Defendants, any potential “joint employer,” and any and all of either Defendants’ affiliated companies and its respective parent companies, subsidiaries, affiliates, shareholders, members, agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors, employees, or other person acting on either Defendants’ behalf) predecessors, successors, and assigns.
- 1.28. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

2. RECITALS.

- 2.1. On October 25, 2022, Plaintiff submitted notice to the LWDA in which she outlined her intent to pursue PAGA claims against Defendants. On February 2, 2023, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendants for; (1) Failure to Compensate for All Hours Worked; (2) Failure to Pay Minimum Wages; (3) Failure to Pay Overtime Wages; (4) Failure to Provide Accurate, Itemized Wage Statements; (5) Failure to Pay Wages Owed Every Pay Period; (6) Failure to Pay Wages When Employment Ends; (7) Failure to Give Rest Breaks; (8) Failure to Give Meal Periods and; (9) Failure to Reimburse Business Expenses; (10) PAGA claims; (11) Sexual Harassment in Violation of the FEHA; (12) Retaliation in Violation of the FEHA; (13) Failure to Prevent Harassment and Retaliation in Violation of FEHA; (14) Retaliation in Violation of Labor Code Section 1102.5; (15) Negligent Retention and Supervision; (16) Wrongful Discharge in Violation of Public Policy, and; (17) Violation of California Business and Professions Code Section 17200. The Complaint is the operative complaint in the Action (the “Operative Complaint.”) Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in in the Operative Complaint, deny any and all liability for the causes of action alleged, and deny that Plaintiff’s PAGA claims are manageable.
- 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendants and the LWDA by sending the PAGA Notice.
- 2.3. On January 18, 2024, the Parties participated in an all-day mediation presided over by the Hon. Wynne Carvill (Ret.) that led to this Agreement to settle the Action.
- 2.4. Prior to mediation, the Parties engaged in informal discovery. Defendants provided Plaintiff with documents reflecting the claims and defenses as well as a sample of timekeeping and

payroll data sufficient to inform mediation and the Parties' decision to settle the matter.

- 2.5. The Parties and Counsel are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Defendants promise to pay \$62,000.00 and no more as the Gross Settlement Amount. Defendants have no obligation to pay the Gross Settlement Amount prior to the deadline stated in Section 4 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.
- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
- 3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 33.33% which is currently estimated to be \$20,666.66 and a PAGA Counsel Litigation Expenses Payment not to exceed \$7,000.00. Defendants will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments.
- 3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed \$4,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$4,000.00, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.3. To the LWDA and Aggrieved Employees: The remainder shall be disbursed to the LWDA and to individual Aggrieved Employees according to the rules set forth in PAGA, including 75% of the remainder being paid to the LWDA and 25% of the remainder being paid to individual Aggrieved Employees.

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

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

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendants estimate there are 48 Aggrieved Employees who worked a total of 2,141 PAGA Pay Periods.

4.2. Aggrieved Employee Data. Within thirty (30) days of the order granting approval of this settlement, Defendants will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than thirty (30) days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within thirty (30) days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees Payment, and the PAGA Counsel Litigation Expenses Payment. Disbursement of the PAGA Counsel Fees and Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

4.4.1. The Administrator will issue checks for the Individual PAGA Payments and send

them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

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

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

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

5. RELEASES OF CLAIMS. Effective on the date when the Court enters Judgment, Plaintiff, the State of California, Aggrieved Employees, and PAGA Counsel will release claims against all Released Parties as follows:

5.1 Release by Plaintiff, Aggrieved Employees, and the State of California:

Plaintiff, Aggrieved Employees, and the State of California are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the pleadings, the PAGA Notice, or otherwise at issue in the case.

5.2 Release by PAGA Counsel:

PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the PAGA Period facts stated in the pleadings, the PAGA Notice, or otherwise at issue in the case.

6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.

Plaintiff shall prepare and file an application or motion for approval of this Settlement.

- 6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (iv) a redlined version of prior drafts of this Agreement; and (v) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
- 6.2 Responsibilities of PAGA Counsel. PAGA Counsel is responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than 60 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 delivering the Court's Preliminary Approval to the Administrator.
- 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

- 7.1 Selection of Administrator. The Parties have jointly selected Phoenix Class Action Administration Solutions to serve as the Administrator and verified that, as a condition of appointment, Phoenix Class Action Administration Solutions agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the

Administrator other than a professional relationship arising out of prior experiences administering settlements.

- 7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 7.4 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8. AGGRIEVED EMPLOYEE SIZE ESTIMATES

Based on its records, Defendants estimate that, as of the date of this Settlement Agreement, (1) there are 48 Aggrieved Employees who worked 2,141 Pay Periods during the PAGA Period. If the actual number of pay periods exceeds 15% (Fifteen Percent) of 2,141, Defendants, at their sole discretion, will either (1) pay the pro rata percentage increase in excess of 15% of the GFV to include the additional pay periods (e.g. a 16% increase in workweeks would result in a 1% increase in the GFV); or (2) reduce the PAGA Period to the date that 2,141 pay periods are met, but not exceeded.

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

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

10. ADDITIONAL PROVISIONS.

- 10.1 No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that

Defendants has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Defendants reserve all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendants' defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

- 10.2 Integrated Agreement. Upon execution by all Parties and Counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 10.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 10.4 Cooperation. The Parties and Counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 10.5 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 10.6 No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendants nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 10.7 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 10.8 Agreement Binding on Successors. This Agreement will be binding upon, and inure

to the benefit of, the successors of each of the Parties.

- 10.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 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.
- 10.11 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 10.12 Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from Defendants and shall confirm the same to Defense Counsel in writing unless, prior to the Administrator's payment of all Settlement Funds, Defendants make a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.
- 10.13 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 10.14 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 10.15 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Messrelian Law Inc.
Attn: Harout Messrelian
500 N. Central Ave., Suite 840
Glendale, CA 91203

To Posada:

O'Hagan Meyer, LLP
ATTN: Vincent R. Fisher, Trenten N. Bilodeaux
One Embarcadero Center, Suite 2100
San Francisco, California 94111

To Kalco:

Gordon Rees Scully Mansukhani LLP
ATTN: Michael A. Laurensen, Hannah F. Diamond
315 Pacific Avenue
San Francisco, California 94111

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.



Irma Tapia (Jun 4, 2024 16:36 PDT)

Irma Tapia, Plaintiff, on behalf of herself,
the State California, and all Aggrieved
Employees

Barry Levy
On behalf of and an authorized representative
of Kalco Properties, Inc., Defendant

William Alexander
On behalf of and an authorized
representative of Posada, Defendant

Vincent R. Fisher
Trenten N. Bilodeux
O'Hagan Meyer LLP
Attorneys for Posada and Posada
Associates, Defendants

To Posada:

O'Hagan Meyer, LLP
ATTN: Vincent R. Fisher, Trenten N. Bilodeaux
One Embarcadero Center, Suite 2100
San Francisco, California 94111

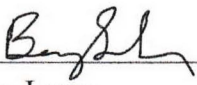
To Kalco:

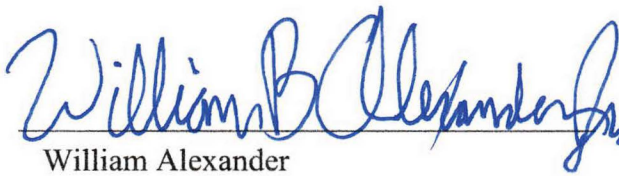
Gordon Rees Scully Mansukhani LLP
ATTN: Michael A. Laurenson, Hannah F. Diamond
315 Pacific Avenue
San Francisco, California 94111

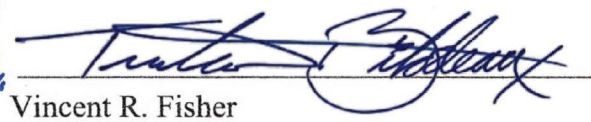
10.16 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument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

Irma Tapia, Plaintiff, on behalf of herself,
the State California, and all Aggrieved
Employees


Barry Levy
On behalf of and an authorized representative
of Kalco Properties, Inc., Defendant


William Alexander
On behalf of and an authorized
representative of Posada, Defendant


Vincent R. Fisher
Trenten N. Bilodeux
O'Hagan Meyer LLP
Attorneys for Posada and Posada
Associates, Defendants



Harout Messrelian
Maralle Messrelian
Messrelian Law, Inc.
PAGA Counsel

Mike Laurensen
Hannah Diamon
Gordon Rees Scully Mansukhani
Attorneys for Kalco Properties, Inc., Defendant

Harout

Harout Messrelian
Maralle Messrelian
Messrelian Law, Inc.
PAGA Counsel

Mike Laurensen
Hannah Diamond
Gordon Rees Scully Mansukhani
Attorneys for Kalco Properties, Inc., Defendant

EXHIBIT 2

NOTICE OF PAGA SETTLEMENT

Irma Tapia v. Posada Associates, et al.
Santa Cruz County Superior Court, Case No. 23CV00355

<<Phoenix Class Action Administration Solutions>>

[]

[]

Telephone: []

«Barcode» «BarcodeString»

SIMID «SIMID»

«FirstName»

«LastName»

«Address1» «Address2»

«City» «State» «Zip»

You are receiving this notice as a result of lawsuits brought on a representative basis under the Private Attorneys General Act, Labor Code § 2698 et seq. (“PAGA”) (“the Action”). The plaintiff in the Action is Irma Tapia (“Plaintiff”) and the Defendants are Posada Associates/La Posada and Kalco Properties, Inc. (“Defendants”). The Action seeks civil penalties for purported violations of the California Labor Code on behalf of all non-exempt California employees who worked for Defendants during the PAGA Period of December 7, 2021 to January 18, 2024 (the “Aggrieved Employees”). Defendants deny all claims and allegations in the Action, deny that they owe any penalties, and assert that they have fully complied with all applicable Labor Code provisions. Nevertheless, to avoid further costs and time in defending the Action, Defendants have settled the case and the Court has approved the settlement and release of claims. By settling the Action, Defendants are not admitting that they have done anything wrong as of and subject to the occurrence of the Effective Date of the Settlement. Upon the Effective Date of this Settlement, Plaintiff, the State of California (including, but not limited to, the LWDA), and the Aggrieved Employees will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released PAGA Claims with respect to Defendants and any potential “joint employer,” and any and all of either Defendants’ affiliated companies and its respective parent companies, subsidiaries, affiliates, shareholders, members, agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors, employees, or other person acting on either Defendants’ behalf) predecessors, successors, and assigns. The Released PAGA Claims shall include 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, including but not limited to: California Labor Code Sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, and 2802.

By Order dated <<court approval order date>>, the Superior Court of the State of California, Santa Cruz County approved the Settlement of the PAGA claims.

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

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

Do not call or write the Court or Office of the Clerk to ask questions about the settlement or to ask questions about the claims process. If you have any questions, you may call or write to Phoenix Class Action Administration Solutions (the Settlement Administrator) using the contact information at the top of this correspondence.

EXHIBIT 3



MESSRELIAN LAW
ATTORNEYS AT LAW

500 N. Central Avenue, Suite 840
Glendale, California 91203
Tel: (818) 484-6531
Fax: (818) 956-1983

VIA ELECTRONIC FILING

October 25, 2022

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

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

POSADA ASSOCIATES
609 FREDERICK ST.
SANTA CRUZ, CA 95062

IRMA TAPIA v. POSADA ASSOCIATES

RE: PRIVATE ATTORNEYS GENERAL ACT NOTICE

To Whom It May Concern:

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

Ms. Tapia currently works in the housekeeping department of POSADA. During her employment tenure, Ms. Tapia has been classified as an hourly, non-exempt employee and her latest rate of pay is \$18.25 per hour.

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



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

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

It is our position that POSADA has committed the following labor code violations against Ms. Tapia and other hourly, non-exempt employees who worked at any of POSADA’s locations in the state of California during the PAGA period:

POSADA did not provide Ms. Tapia and other similarly situated aggrieved employees with the minimum wages to which they were entitled for all work performed and did not compensate her and others for all hours worked pursuant to California Labor Code sections 1194, 1197 and 1197.1. To the extent that Ms. Tapia and others worked through their meal periods and while clocked out, the latter would also be a minimum wage violation since Ms. Tapia and others were not compensated for that time. Moreover, the company had a policy and practice of rounding down the number of hours worked, which led to time shaving and Ms. Tapia and others not being paid for all hours worked in violation of minimum wage laws.

Due to the above “off the clock” violations above, POSADA violated Labor Code §510 because it failed to pay our client and other similarly situated aggrieved employees overtime, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. Ms. Tapia’s and others’ actual work hours, which included the “off the clock” work as described above, entitled them to overtime, however, it was not company policy to keep accurate track of all hours worked and to pay employees the accurate amount overtime, especially since the “off the clock” work was not factored into the equation. Furthermore, any incentive payments and/or bonus payments, which were received by Ms. Tapia and others, were not factored into Ms. Tapia’s and other employees’ regular rate of pay for purposes of deciphering the correct overtime rate of pay. Additionally, the incentive and bonus payments were also not factored into Ms. Tapia’s regular rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews case.

POSADA violated Labor Code § 226.7 along with Industrial Welfare Commission Wage Order no. 4/5 because it failed to provide our client and other similarly situated aggrieved employees 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. POSADA did not completely relieve our client of all duty during said rest periods. POSADA did not pay to our client one additional hour of pay at our client’s regular rate of compensation for each workday that one or more statutory rest periods was not provided. In fact,



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it was not part of POSADA's culture for employees such as Ms. Tapia and others to take at least two 10-minute rest break every day wherein they are relieved of all work duties. The latter was due to understaffing of employees and employees such as Ms. Tapia being too busy to be able to take timely, uninterrupted rest breaks. In short, it was not part of the company policy or practice to abide by consistent, ten-minute rest periods every four hours worked wherein employees were relieved of all work duties.

POSADA also violated Labor Code §§ 512 and 226.7 along with Industrial Welfare Commission Wage Order No. 4/5 because it failed to provide our client and other similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment, and our client did not validly waive said meal periods. POSADA did not completely relieve our client of all duties during said meal periods. POSADA did not pay to our client one additional hour of pay at our client's regular rate of compensation for each workday that one or more statutory meal periods was not provided. If POSADA had Ms. Tapia sign a meal period waiver, it would not be valid and enforceable since Ms. Tapia and others generally worked more than a 6-hour shift. If POSADA had Ms. Tapia sign an on-duty meal period agreement wherein Ms. Tapia agreed to work through her meal period, it would also be invalid and unenforceable because the nature of Ms. Tapia's job does not prevent her from taking a meal period. As was the case with rest periods, timely, uninterrupted meal breaks were definitively not part of the POSADA's culture as Ms. Tapia and others would take their meal periods late and after the 5th hour worked or the meal periods would be interrupted by work obligations. The meal periods were not authorized and were not enforced. To the extent that POSADA argues that employees receive meal break premium pay for missed meal periods, that argument is inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations themselves, irrespective of whether an employee received the premium payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, "section 226.7 does not give employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour of pay." See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the violation; the employer has still committed a violation even if the remedy for the violation has been paid. See *Wert v. U.S. Bancorp.*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment and culture at POSADA was not conducive to receiving consistent, timely, statutory meal breaks under California law. Moreover, any meal or rest break premiums paid were not compensated at the weighted average regular rate, inclusive of bonuses and/or incentive payments.

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

POSADA did not provide our client and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

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

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

During the relevant time period, Ms. Tapia and other aggrieved employees incurred necessary, business-related expenses and costs that were not reimbursed by POSADA. These costs include, but are not limited to, uniforms, and use of personal cell phones for work. Accordingly, POSADA was in violation of California Labor Code sections 2800 and 2802.

Moreover, Ms. Tapia would have individual causes of action against POSADA for violations under the Fair Employment and Housing Act (FEHA) for sexual harassment, retaliation, and failure to prevent sexual harassment. The maintenance supervisor, "Victor", who is also the right-hand man of the owner of the company, has been consistently sexually harassing Ms. Tapia for the past year. Victor would consistently tell Ms. Tapia that he loves her, would make comments regarding her looks, and would always go into the rooms where Ms. Tapia was present and cleaning just to be near her and be in close proximity to her. Victor would make excuses for why he was alone in the same room as Ms. Tapia but based on his comments to Ms. Tapia, it was clear that Victor was trying to be close to Ms. Tapia. Ms. Tapia reported the sexual harassment to the main supervisor of the Housekeeping Department approximately 3 months ago, however, nothing was done by POSADA to investigate the claims and the hostile work environment. Instead, Ms. Tapia had a meeting with her supervisor and Victor wherein Victor claimed it was a "joke". Moreover, it seems that due to Ms. Tapia rejecting Victor's sexual advances, Victor and the main housekeeping supervisor set out to make Ms. Tapia's work environment difficult in an effort to get her fired or force her to quit. The hostile work environment and POSADA's lack of investigation and failure to prevent harassment caused Ms. Tapia a great deal of anxiety and stress and has made it difficult for Ms. Tapia to return back to work.

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

Please take notice that, based upon the above-mentioned violations, and in addition to the penalties provided by those specific sections themselves, our client also intends to seek penalties under the following Labor Code sections which themselves are inviolable but provide for



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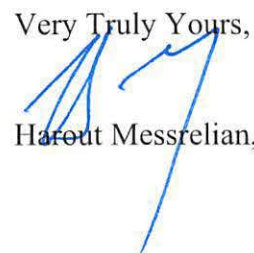
Fax: (818) 956-1983

recovery of penalties for violating one or more of the above-mentioned Labor Code sections:
Labor Code §§ 558, 226.3, 1197.1.

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

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

Very Truly Yours,



Harold Messrelian, Esq.



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VIA ELECTRONIC FILING

February 10, 2023

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

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

POSADA ASSOCIATES
609 FREDERICK ST.
SANTA CRUZ, CA 95062

LA POSADA
609 FREDERICK ST.
SANTA CRUZ, CA 95062

KALCO PROPERTIES INC.
c/o Wendy Levy, Agent for Service of Process
77 MARK DR., SUITE 20
SAN RAFAEL, CA 94903

IRMA TAPIA v. POSADA ASSOCIATES

RE: PRIVATE ATTORNEYS GENERAL ACT NOTICE
LWDA CASE NO.: LWDA-CM-915825-22

To Whom It May Concern:

This is a supplemental notice. The original notice dated October 25, 2022 is enclosed.

In the previous notice, we inadvertently omitted two employers, LA POSADA and KALCO PROPERTIES INC., from our definition of "POSADA." The claims stated in the previous notice against "POSADA" shall also apply with equal force and effect to LA POSADA and KALCO PROPERTIES, INC.

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

Very Truly Yours,

Harout Messrelian, Esq.



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VIA ELECTRONIC FILING

October 25, 2022

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

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

POSADA ASSOCIATES
609 FREDERICK ST.
SANTA CRUZ, CA 95062

IRMA TAPIA v. POSADA ASSOCIATES

RE: PRIVATE ATTORNEYS GENERAL ACT NOTICE

To Whom It May Concern:

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

Ms. Tapia currently works in the housekeeping department of POSADA. During her employment tenure, Ms. Tapia has been classified as an hourly, non-exempt employee and her latest rate of pay is \$18.25 per hour.

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



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

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

It is our position that POSADA has committed the following labor code violations against Ms. Tapia and other hourly, non-exempt employees who worked at any of POSADA’s locations in the state of California during the PAGA period:

POSADA did not provide Ms. Tapia and other similarly situated aggrieved employees with the minimum wages to which they were entitled for all work performed and did not compensate her and others for all hours worked pursuant to California Labor Code sections 1194, 1197 and 1197.1. To the extent that Ms. Tapia and others worked through their meal periods and while clocked out, the latter would also be a minimum wage violation since Ms. Tapia and others were not compensated for that time. Moreover, the company had a policy and practice of rounding down the number of hours worked, which led to time shaving and Ms. Tapia and others not being paid for all hours worked in violation of minimum wage laws.

Due to the above “off the clock” violations above, POSADA violated Labor Code §510 because it failed to pay our client and other similarly situated aggrieved employees overtime, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. Ms. Tapia’s and others’ actual work hours, which included the “off the clock” work as described above, entitled them to overtime, however, it was not company policy to keep accurate track of all hours worked and to pay employees the accurate amount overtime, especially since the “off the clock” work was not factored into the equation. Furthermore, any incentive payments and/or bonus payments, which were received by Ms. Tapia and others, were not factored into Ms. Tapia’s and other employees’ regular rate of pay for purposes of deciphering the correct overtime rate of pay. Additionally, the incentive and bonus payments were also not factored into Ms. Tapia’s regular rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews case.

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POSADA also violated Labor Code §§ 512 and 226.7 along with Industrial Welfare Commission Wage Order No. 4/5 because it failed to provide our client and other similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment, and our client did not validly waive said meal periods. POSADA did not completely relieve our client of all duties during said meal periods. POSADA did not pay to our client one additional hour of pay at our client's regular rate of compensation for each workday that one or more statutory meal periods was not provided. If POSADA had Ms. Tapia sign a meal period waiver, it would not be valid and enforceable since Ms. Tapia and others generally worked more than a 6-hour shift. If POSADA had Ms. Tapia sign an on-duty meal period agreement wherein Ms. Tapia agreed to work through her meal period, it would also be invalid and unenforceable because the nature of Ms. Tapia's job does not prevent her from taking a meal period. As was the case with rest periods, timely, uninterrupted meal breaks were definitively not part of the POSADA's culture as Ms. Tapia and others would take their meal periods late and after the 5th hour worked or the meal periods would be interrupted by work obligations. The meal periods were not authorized and were not enforced. To the extent that POSADA argues that employees receive meal break premium pay for missed meal periods, that argument is inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations themselves, irrespective of whether an employee received the premium payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, "section 226.7 does not give employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour of pay." See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the violation; the employer has still committed a violation even if the remedy for the violation has been paid. See *Wert v. U.S. Bancorp.*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment and culture at POSADA was not conducive to receiving consistent, timely, statutory meal breaks under California law. Moreover, any meal or rest break premiums paid were not compensated at the weighted average regular rate, inclusive of bonuses and/or incentive payments.

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

POSADA did not provide our client and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

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

During the relevant time period, Ms. Tapia and other aggrieved employees incurred necessary, business-related expenses and costs that were not reimbursed by POSADA. These costs include, but are not limited to, uniforms, and use of personal cell phones for work. Accordingly, POSADA was in violation of California Labor Code sections 2800 and 2802.

Moreover, Ms. Tapia would have individual causes of action against POSADA for violations under the Fair Employment and Housing Act (FEHA) for sexual harassment, retaliation, and failure to prevent sexual harassment. The maintenance supervisor, "Victor", who is also the right-hand man of the owner of the company, has been consistently sexually harassing Ms. Tapia for the past year. Victor would consistently tell Ms. Tapia that he loves her, would make comments regarding her looks, and would always go into the rooms where Ms. Tapia was present and cleaning just to be near her and be in close proximity to her. Victor would make excuses for why he was alone in the same room as Ms. Tapia but based on his comments to Ms. Tapia, it was clear that Victor was trying to be close to Ms. Tapia. Ms. Tapia reported the sexual harassment to the main supervisor of the Housekeeping Department approximately 3 months ago, however, nothing was done by POSADA to investigate the claims and the hostile work environment. Instead, Ms. Tapia had a meeting with her supervisor and Victor wherein Victor claimed it was a "joke". Moreover, it seems that due to Ms. Tapia rejecting Victor's sexual advances, Victor and the main housekeeping supervisor set out to make Ms. Tapia's work environment difficult in an effort to get her fired or force her to quit. The hostile work environment and POSADA's lack of investigation and failure to prevent harassment caused Ms. Tapia a great deal of anxiety and stress and has made it difficult for Ms. Tapia to return back to work.

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

Please take notice that, based upon the above-mentioned violations, and in addition to the penalties provided by those specific sections themselves, our client also intends to seek penalties under the following Labor Code sections which themselves are inviolable but provide for



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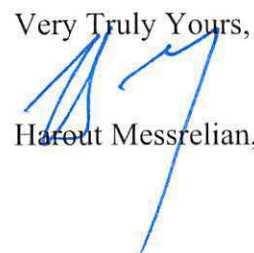
Fax: (818) 956-1983

recovery of penalties for violating one or more of the above-mentioned Labor Code sections:
Labor Code §§ 558, 226.3, 1197.1.

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

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

Very Truly Yours,



Harold Messrelian, Esq.

EXHIBIT 4

MESSRELIAN LAW INC.

Harout Messrelian, Esq. (SB# 272020)

hm@messrelianlaw.com

Maralle Messrelian, Esq. Of Counsel (SB#316974)

maralle@messrelianlaw.com

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Glendale, California 91203

Telephone: (818) 484-6531

Facsimile: (818) 956-1983

ELECTRONICALLY FILED
Superior Court of California
County of Santa Cruz
2/10/2023 7:12 PM
Clerk of the Court by Deputy,
Dajah de los Santos

Attorneys for Plaintiff IRMA TAPIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CRUZ

IRMA TAPIA,

Plaintiff,

vs.

POSADA ASSOCIATES; LA POSADA;
KALCO PROPERTIES INC.; and DOES 1
to 25, inclusive,

Defendants.

) CASE NO.: 23CV00355

) COMPLAINT FOR DAMAGES FOR:

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

) **LABOR CODE SECTION 1102.5;**
) **15) NEGLIGENT RETENTION AND**
) **SUPERVISION;**
) **16) WRONGFUL CONSTRUCTIVE**
) **DISCHARGE IN VIOLATION OF**
) **PUBLIC POLICY;**
) **17) VIOLATION OF CALIFORNIA**
) **BUSINESS AND PROFESSIONS**
) **CODE SECTION 17200.**

) **DEMAND FOR JURY TRIAL**
)
)
)
)

COMES NOW Plaintiff, IRMA TAPIA (hereinafter “Plaintiff”), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Santa Cruz in this judicial district because Defendants LA POSADA, POSADA ASSOCIATES, KALCO PROPERTIES INC., and DOES 1 to 25, inclusive, (collectively “Defendant(s)” or “POSADA”) do business in the County of Santa Cruz, and because Defendants’ obligations and liabilities arise therein. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

2. Plaintiff is a female resident of the County of Santa Cruz, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant LA POSADA was and is a business operating in the County of Santa Cruz, State of California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant POSADA ASSOCIATES was and is a business operating in the County of Santa Cruz, State of California, and which employed Plaintiff.

5. Plaintiff is informed and believes that at all times herein mentioned, Defendant KALCO PROPERTIES INC. was and is a California corporation operating in the County of Santa Cruz, State of California, and which employed Plaintiff.

6. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or

1 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
2 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
3 defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible
4 for the conduct alleged herein. Upon discovering the true names and capacities of these
5 fictitiously named defendants, Plaintiff will amend this complaint to show the true names and
6 capacities of these fictitiously named defendants. Unless otherwise alleged in this complaint,
7 Plaintiff is informed, and on the basis of that information and belief, alleges that at all times
8 herein mentioned, each of the remaining codefendants, in doing the things hereinafter alleged,
9 were acting within the course, scope, and under the authority of their agency, employment, or
10 representative capacity, with the consent of his/her codefendants.

11 **GENERAL ALLEGATIONS**

12 7. Plaintiff began working in the housekeeping department of POSADA in our around
13 November of 2018. Plaintiff's employment ended on or around December 27, 2022. During her
14 employment tenure, Plaintiff was classified as an hourly, non-exempt employee and her latest
15 rate of pay is \$18.50 per hour.

16 8. It is Plaintiff's position that POSADA has committed numerous labor code violations
17 against Plaintiff and other hourly, non-exempt employees who worked at any of POSADA's
18 locations in the state of California during the PAGA period.

19 9. POSADA did not provide Plaintiff and other similarly situated aggrieved employees with
20 the minimum wages to which they were entitled for all work performed and did not compensate
21 her and others for all hours worked pursuant to California Labor Code sections 1194, 1197 and
22 1197.1. To the extent that Plaintiff and others worked through their meal periods and while
23 clocked out, the latter would also be a minimum wage violation since Plaintiff and others were
24 not compensated for that time. Moreover, the company had a policy and practice of rounding
25 down the number of hours worked, which led to time shaving and Plaintiff and others not being
26 paid for all hours worked in violation of minimum wage laws.

27 10. Due to the above "off the clock" violations above, POSADA violated Labor Code §510
28 because it failed to pay Plaintiff and other similarly situated aggrieved employees overtime, even
though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week

1 throughout their employment. Plaintiff's and others' actual work hours, which included the "off
2 the clock" work as described above, entitled them to overtime, however, it was not company
3 policy to keep accurate track of all hours worked and to pay employees the accurate amount
4 overtime, especially since the "off the clock" work was not factored into the equation.
5 Furthermore, any incentive payments and/or bonus payments, which were received by Plaintiff
6 and others, were not factored into Plaintiff's and other employees' regular rate of pay for
7 purposes of deciphering the correct overtime rate of pay. Additionally, the incentive and bonus
8 payments were also not factored into Plaintiff's regular rate for purposes of receiving meal and
9 rest break premiums per the Ferra v. Loews case.

10 11. POSADA violated Labor Code § 226.7 along with Industrial Welfare Commission Wage
11 Order no. 4/5 because it failed to provide Plaintiff and other similarly situated aggrieved
12 employees 10-minute rest periods for every four hours of work, or majority portion thereof,
13 throughout their employment. POSADA did not completely relieve Plaintiff of all duty during
14 said rest periods. POSADA did not pay to Plaintiff one additional hour of pay at Plaintiff's
15 regular rate of compensation for each workday that one or more statutory rest periods was not
16 provided. In fact, it was not part of POSADA's culture for employees such as Plaintiff and others
17 to take at least two 10-minute rest break every day wherein they are relieved of all work duties.
18 The latter was due to understaffing of employees and employees such as Plaintiff being too busy
19 to be able to take timely, uninterrupted rest breaks. In short, it was not part of the company policy
20 or practice to abide by consistent, ten-minute rest periods every four hours worked wherein
21 employees were relieved of all work duties.

22 12. POSADA also violated Labor Code §§ 512 and 226.7 along with Industrial Welfare
23 Commission Wage Order No. 4/5 because it failed to provide Plaintiff and other similarly
24 situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five
25 (5) hours of work throughout their employment, and Plaintiff did not validly waive said meal
26 periods. POSADA did not completely relieve Plaintiff of all duties during said meal periods.
27 POSADA did not pay to Plaintiff one additional hour of pay at Plaintiff's regular rate of
28 compensation for each workday that one or more statutory meal periods was not provided. If
POSADA had Plaintiff sign a meal period waiver, it would not be valid and enforceable since

1 Plaintiff and others generally worked more than a 6-hour shift. If POSADA had Plaintiff sign an
2 on-duty meal period agreement wherein Plaintiff agreed to work through her meal period, it
3 would also be invalid and unenforceable because the nature of Plaintiff's job does not prevent
4 her from taking a meal period. As was the case with rest periods, timely, uninterrupted meal
5 breaks were definitively not part of the POSADA's culture as Plaintiff and others would take
6 their meal periods late and after the 5th hour worked or the meal periods would be interrupted
7 by work obligations. The meal periods were not authorized and were not enforced. To the extent
8 that POSADA argues that employees receive meal break premium pay for missed meal periods,
9 that argument is inconsequential for PAGA penalty purposes since the PAGA penalties are for
10 the violations themselves, irrespective of whether an employee received the premium payment
11 for a missed, short, or interrupted meal period. In Kirby v. Immoos Fire Protection, Inc., the
12 Court stated, "section 226.7 does not give employers a lawful choice between providing either
13 meal and rest breaks or an additional hour of pay." See Kirby v. Immoos Fire Protection, Inc.,
14 (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse
15 the violation; the employer has still committed a violation even if the remedy for the violation
16 has been paid. See Wert v. U.S. Bancorp. (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4).
17 As such, the work environment and culture at POSADA was not conducive to receiving
18 consistent, timely, statutory meal breaks under California law. Moreover, any meal or rest break
19 premiums paid were not compensated at the weighted average regular rate, inclusive of bonuses
20 and/or incentive payments.

21 13. Furthermore, during the relevant time period, and due to all of the above labor code
22 violations, POSADA failed to pay Plaintiff and other similarly situated aggrieved employees all
23 wages due to them within any time period specified by California Labor Code section 204,
24 including the minimum wages and overtime as described above as well as meal/rest break
25 premiums. POSADA was also in violation of California Labor Code section 226(a) by failing to
26 include pertinent information on the wage statements, including but not limited to, all hours
27 worked, gross wages earned, net wages earned, all deductions, premium payments for meal and
28 rest breaks, the correct legal name and address of the employing entity, the beginning and end
of the pay period, all applicable hourly rates, and all identifying employee information, among

1 other items. As such, POSADA did not provide Plaintiff and other similarly situated aggrieved
2 employees with complete, accurate itemized wage statements.

3 14. POSADA violated Labor Code § 203 because it willfully failed to pay other similarly
4 situated aggrieved employees earned and due wages upon separation of employment, either
5 immediately upon involuntary termination, or within 72 hours of resignation. These earned but
6 unpaid wages include compensation for all hours worked including minimum wages and
7 overtime compensation, tips, and premiums for the missed meal and rest breaks.

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

12 16. During the relevant time period, Plaintiff and other aggrieved employees incurred
13 necessary, business-related expenses and costs that were not reimbursed by POSADA. These
14 costs include, but are not limited to, uniforms, and use of personal cell phones for work.
15 Accordingly, POSADA was in violation of California Labor Code sections 2800 and 2802.

16 17. In addition, during Plaintiff's employment tenure, Plaintiff was subjected to sexual
17 harassment. POSADA's maintenance supervisor, "Victor", who is also the right-hand man of
18 Julie Rivera, POSADA's manager, Julie Rivera, was consistently sexually harassing Plaintiff
19 throughout the last year of her employment. Victor would consistently tell Plaintiff how pretty
20 she is, that she has beautiful eyes, that he is attracted to her, that he loves her, would make
21 comments regarding her hair, would consistently try to hug her, and would always go into the
22 rooms where Plaintiff was present and cleaning just to be near her and be in close proximity to
23 her. Victor would also wait for Plaintiff where they fixed the housekeeping carts and block her
24 entrance/exit and Plaintiff would have no choice but to go through/below his arm. Victor would
25 make excuses for why he was alone in the same room as Plaintiff but based on his behavior and
26 inappropriate comments to Plaintiff, it was clear that Victor was trying to be close to Plaintiff.
27 Plaintiff repeatedly told Victor to stop making such comments, to leave, and stop coming into
28 the rooms she was working in. Plaintiff informed her manager Paula Acevedo of the sexual
harassment she was experiencing.

1 18. In or around August 2022, Plaintiff reported the sexual harassment to the manager of
2 La Posada Retirement Community, Julie Rivera ("Rivera"). Plaintiff's housekeeping manager,
3 Paula Acevedo and coworker Monse accompanied Plaintiff when she went to speak with Rivera
4 and Monse helped translate for Plaintiff. After hearing Plaintiff's concerns, Rivera just said "its
5 ok!", told Plaintiff that she had known Victor for twenty years and that she trusted him and that
6 Victor only jokes like that. She then grabbed Plaintiff by the shoulder and led her out of the
7 office. Although Plaintiff had asked Rivera to keep this conversation confidential, Rivera
8 informed Victor about everything Plaintiff had said to her. Victor confronted Plaintiff and
9 proceeded to tell her "I told you Julie would not believe you." A few days later, Rivera arranged
10 for a meeting with Plaintiff, Paula, and Victor. Plaintiff expressed her concerns about not having
11 a translator present and that she felt uncomfortable with just Victor there, but Rivera told her
12 "don't worry Victor can translate." Not surprisingly, Victor denied everything, claimed it was
13 a "joke", and Rivera essentially brushed off Plaintiff's reports of the sexual harassment and
14 hostile work environment. As such, nothing was done by POSADA to investigate Plaintiff's
15 claims and the hostile work environment became even worse. Due to Plaintiff rejecting Victor's
16 sexual advances and also complaining about the sexual harassment, Victor, along with Sonia,
17 set out to make Plaintiff's work environment difficult in an effort to get her fired or force her to
18 quit. Victor and Sonia would consistently bully Plaintiff and insult her, calling her ugly, fat,
19 hypocritical, gossipy, etc. Sonia was very aggressive towards Plaintiff and would always yell,
20 belittle her, and mock her. Knowing Plaintiff was uncomfortable with Victor's advances, she
21 would ask Victor to go hug Plaintiff and would make comments like "Victor likes fat women"
22 referring to Victor's obsession with Plaintiff. When they were short staffed, Sonia would refuse
23 to help Plaintiff so that she suffers. Rivera supported Victor and Sonia and treated them better
24 and better as they continued to harass and hurt Plaintiff. When Plaintiff would place the
25 maintenance orders for the rooms, they would get "lost" and not carried out unless Sonia asked
26 for them. Also, residents' room arrangements could take months, unless Sonia requested it.
27 Furthermore, during the holidays, the elderly residents would make donations/gifts that were
28 then given to employees and Plaintiff's name was called as a recipient of one of these checks
from the residents. Rivera took Plaintiff's check since she was not at work to receive it and told

1 her coworkers that she would mail it to Plaintiff. To date, Plaintiff has not received this check.
2 The hostile work environment became unbearable for Plaintiff. POSADA's lack of
3 investigation and failure to prevent harassment caused Plaintiff a great deal of anxiety and stress
4 and made it difficult for Plaintiff to return back to work. Due to the hostile work environment
5 and retaliation she was experiencing, Plaintiff was forced to resign from her employment on or
6 around December 27, 2022.

7 19. Pursuant to California Government Code section 12960, Plaintiff has exhausted her
8 administrative remedies. Plaintiff filed a complaint with the Department of Fair Employment
9 and Housing ("DFEH"), alleging claims in this complaint. The DFEH immediately issued to
10 Plaintiff a right to sue letter.

11 **FIRST CAUSE OF ACTION**

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

13 **(California Industrial Welfare Commission Order 4/5-2001, California Code of
14 Regulations Title 8 Section 11040/11050, and California Labor Code Section 1198)**

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

16 20. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
17 1 through 19, inclusive, of this Complaint as though fully set forth herein.

18 21. At all times relevant herein, Defendants were required to compensate their employees for
19 all hours worked upon reporting for work at the appointed time stated by the employer pursuant
20 to Industrial Welfare Commission Order 4/5-2001, California Code of Regulations, Title 8,
21 Section 11040/11050.

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

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

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

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

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

8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO PAY MINIMUM WAGES**

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

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

12 27. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
13 1 through 26, inclusive, of this Complaint as though fully set forth herein.

14 28. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
15 to suffer or permit a California employee to work without paying wages at the minimum wage
16 rate for all hours worked as required by the applicable Industrial Welfare Commission
17 (hereinafter "IWC") Wage Order No. 4/5-2001, codified at California Code of Regulations, Title
18 8, Section 11040/11050, subdivision 4.

19 29. Pursuant to IWC Wage Order no. 4/5-2001, subdivision 2(K), at all relevant times,
20 "hours worked" included "the time during which an employee is subject to the control of an
21 employer, and includes all the time the employee is suffered or permitted to work, whether or
22 not required to do so..."

23 30. During her employment, Plaintiff was regularly required as a matter of uniform policy
24 and practice to work, and in fact worked, as an employee of Defendants and Plaintiff was paid
25 less than the minimum wage rate by Defendants for hours worked in violation of California
26 Labor Code Section 1197 and the applicable California IWC wage order(s).

27 31. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
28 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately
compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants to

1 believe that their acts or omissions were not contrary to California law.

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

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

10 **THIRD CAUSE OF ACTION**

11 **FAILURE TO PAY OVERTIME**

12 **(California Industrial Welfare Commission Order 4/5-2001, California Code of
13 Regulations Title 8 Section 11040/11050)**

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

15 34. Plaintiff re-alleges and incorporates by reference each and every allegation in
16 paragraphs 1 through 33, inclusive, of this Complaint as though fully set forth herein.

17 35. Pursuant to Industrial Welfare Commission Order No. 4/5-2001, California Code of
18 Regulations, Title 8, Section 11040/11050, for the period of Plaintiff's employment, Defendants
19 were required to compensate Plaintiff for all overtime, which is calculated at one and one-half
20 (1.5) times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40)
21 hours in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve
22 (12) hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day
23 in a week.

24 36. Plaintiff was a non-exempt employee entitled to the protections of the California
25 Industrial Welfare Commission Order No. 4/5-2001, California Code of Regulations, Title 8,
26 Section 11040/11050.

27 37. Plaintiff worked more than eight (8) hours in a single workday, more than twelve (12)
28 hours in a single day, or forty (40) hours in a single workweek on numerous occasions.

38. Plaintiff was entitled to the above overtime premiums.

1 39. Defendants did not pay Plaintiff premium wages of at least one and one-half times
2 Plaintiff's regular rate of pay for hours worked past eight (8) in a day or two times Plaintiff's
3 regular rate of pay for hours worked past twelve (12) in a day.

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

6 41. Plaintiff worked at least one pay period in which she was not properly paid overtime
7 within the three (3) years prior to the initiation of this lawsuit.

8 42. Defendants know or should know the actual dates of overtime worked, the amount of
9 overtime worked, and the amount of unpaid overtime due.

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

12 44. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
13 Regulations, Title 8, Sections 11040/11050, Plaintiff is entitled to recover damages for the
14 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
15 reasonable attorney's fees and costs of suit.

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

19 **FOURTH CAUSE OF ACTION**

20 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

21 **(California Labor Code Section 226)**

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

23 46. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
24 1 through 45, inclusive, of this Complaint as though fully set forth herein.

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

27 48. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that
28 accurately reflected all information required by Labor Code Section 226, including but not
limited to, gross wages earned, including overtime, net wages earned, total hours worked by the

1 employee, all deductions, and premium pay for missed meal breaks and rest breaks. Therefore,
2 Defendants failed to maintain and provide accurate itemized wage statements to Plaintiff in
3 accordance with California Labor Code Section 226(a).

4 49. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
5 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
6 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
7 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
8 reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to
9 the 1-year period immediately preceding the date this lawsuit was filed.

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

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

17 **FIFTH CAUSE OF ACTION**

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

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

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

21 52. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
22 1 through 51, inclusive, of this Complaint as though fully set forth herein.

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

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

27 55. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
28 informed, believes, and thereon alleges, that all times relevant during the liability period,
Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,

1 including overtime hours and the minimum wage along with premiums for missed meal breaks
2 and rest breaks.

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

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

9 **SIXTH CAUSE OF ACTION**

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

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

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

13 58. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
14 1 through 57, inclusive, of this Complaint as though fully set forth herein.

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

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

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

25 62. After Plaintiff's employment with Defendants ended, Defendants willfully refused and
26 continue to refuse to pay their unpaid wages as required by Labor Code Section 203.

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

1 the filing of this lawsuit.

2 64. Under this cause of action, Plaintiff also prays for attorney's fees and costs under
3 California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set
4 forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

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

7 **SEVENTH CAUSE OF ACTION**

8 **FAILURE TO GIVE REST BREAKS**

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

10 66. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
11 1 through 65, inclusive, of this Complaint as though fully set forth herein.

12 67. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 13 a. Title 8 of the California Code of Regulations Sections 11040/11050(12)(A), which
14 provides that every employer shall authorize and permit all employees to take rest
15 periods, which insofar as practicable shall be in the middle of each work period. The
16 authorized rest period time shall be based on the total hours worked daily at the rate
17 of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
- 18 b. Title 8 of the California Code of Regulations Sections 11040/11050(12)(B), which
19 provides that if an employer fails to provide an employee a rest period in accordance
20 with the applicable provisions of this order, the employer shall pay the employee one
21 (1) hour of pay at employee's regular rate of compensation for each workday that the
22 rest period is not provided;
- 23 c. Title 8 of the California Code of Regulations sections 11040/11050(20)(A), which
24 penalizes the employer \$50.00 for each initial violation, per employee, of any
25 provision of the Wage Order, and \$100.00 for each additional violation thereafter per
26 employee; and
- 27 d. California Labor Code section 226.7, which states that (a) no employer shall require
28 any employee to work during any rest period mandated by an applicable order of the
Industrial Welfare Commission, and (b) if an employer fails to provide an employee

1 a rest period in accordance with an applicable order of the Industrial Welfare
2 Commission, the employer shall pay the employee one (1) additional hour of pay at
3 employee's regular rate of compensation for each work day that the rest period is not
4 provided.

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

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

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

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

16 **EIGHTH CAUSE OF ACTION**

17 **FAILURE TO GIVE MEAL BREAKS**

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

19 72. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
20 1 through 71, inclusive, of this Complaint as though fully set forth herein.

21 73. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 22 a. California Labor Code section 512(a), which requires that employees be given a 30-
23 minute uninterrupted meal break after five (5) hours of work, and a second
24 uninterrupted meal break after ten (10) hours of work;
- 25 b. California Labor Code section 226.7, which states that (a) no employer shall require
26 any employee to work during any meal period mandated by an applicable order of
27 the Industrial Welfare Commission, and (b) if any employer fails to provide an
28 employee a meal period in accordance with an applicable order of the Industrial
Welfare Commission, the employer shall pay the employee one (1) additional hour

of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;

- c. California Industrial Welfare Commission Order Nos. 4/5 section 11(B), as codified under Title 8 of the California Code of Regulations Section 11040/11050, which states that if an employer fails to provide an employee a meal period in accordance with the applicable provisions of the Wage 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;
- d. California Industrial Welfare Commission Wage Order Nos. 4/5 Section 7(A)(3), as codified under Title 8 of the California Code of Regulations Section 11040/11050, which requires an employer to maintain records documenting its employees' meal periods;
- e. California Industrial Welfare Commission wage order Nos. 4/5 Section 20(A), as codified under California Code of Regulations Section 11040/11050, which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- f. California Labor Code section 1171 and 1173, which have given the California Labor Commission jurisdiction to enact Wage Orders (such as Wage Order nos. 4/5) as enforceable law.

74. Plaintiff alleges that she was not authorized and permitted to take relieved meal breaks after five (5) hours of work. Plaintiff further alleges that she was not authorized and permitted to take a second relieved meal break after ten (10) hours of work, as required by California law. California Labor Code section 512(a) and California Industrial Welfare Commission Order Nos. 4/5, as codified under California Code of Regulations Sections 11040/11050 et. seq. requires that employees receive uninterrupted meal periods every five (5) hours of consecutive work, and that the meal period be at least 30 minutes in length, wherein employee is relieved of all work duty. California Labor Code section 226.7 provides that employers may not require their employees to work through their meal periods. California Labor Code section 226.7 and California Code of Regulations section 11040/11050 requires that if the employer fails to provide

1 the employee with an uninterrupted meal period, the employer must pay the employee one (1)
2 hour of pay for each work day that the meal period is not given.

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

7 76. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
8 fees as well as interest under Labor Code section 218.6.

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

11 **NINTH CAUSE OF ACTION**

12 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

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

15 79. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her
16 employee for all necessary expenditures or losses incurred by the employee in direct
17 consequence of the discharge of his or her duties."

18 80. Beginning at least 3 years prior to the filing of this complaint, in order to discharge her
19 duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course of
20 completing her job duties, which were not reimbursed by Defendants. These costs include, but
21 are not limited to, uniforms, as well as personal cell phone for work purposes. Plaintiff is entitled
22 to reimbursement for these necessary expenditures, plus interest and attorney's fees and costs,
23 under Labor Code section 2802.

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1 under California Labor Code sections 2698 and 2699 because of Defendants' violations of
2 numerous provisions of the California Labor Code as alleged in this Complaint.

3 88. Plaintiff therefore has exhausted all administrative remedies required of her under
4 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
5 cause of action and pursue penalties in a representative action for Defendants' violations of the
6 Labor Code.

7 89. California Labor Code section 2699 et seq. imposes penalties upon culpable Defendants
8 for violating the Labor Code.

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

17 91. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
18 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
19 seeking individual/victim specific relief or underpaid wages for Plaintiff or other aggrieved
20 employees in this specific cause of action under the Private Attorneys General Act.

21 92. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
22 the following:

23 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
24 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802, via 2698 and 2699 and
25 any other Labor Codes and Industrial Welfare Commission Wage Order Provisions (nos.
26 4/5) violated based on the facts alleged in this Complaint.

27 93. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
28 costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved employees
as alleged herein in an amount to be shown according to proof at trial and within the jurisdictional

limits of this Court.

ELEVENTH CAUSE OF ACTION

SEXUAL HARASSMENT IN VIOLATION OF THE FEHA

(Plaintiff against Defendant POSADA and all DOE defendants)

94. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 93, inclusive, of this Complaint as though fully set forth herein.

95. At all times herein mentioned, FEHA, Government Code section 12900, et seq., was in full force and effect and was binding on Defendants. Specifically, Government Code section 12940(j) prohibits an employer from sexually harassing an employee on the basis of her sex.

96. POSADA's maintenance supervisor, Victor, was and is at all times relevant hereto an employee of POSADA and a "supervisor" as that term is fined in the Fair Employment and Housing Act (FEHA, Government Code section 12926(t). The actions of the maintenance supervisor, "Victor", towards Plaintiff, while in the course and scope of his employment with POSADA as described herein, created a hostile sexual environment which materially altered Plaintiff's working conditions and which constitutes sexual harassment in violation of California Government Code section 12940(j)(1).

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

98. As a proximate result of the conduct of the Defendants, Plaintiff has suffered and will continue to suffer damages in terms of lost wages, lost bonuses, lost benefits, and other pecuniary loss according to proof. Plaintiff has also suffered and will continue to suffer physical and emotional injuries, including nervousness, humiliation, depression, anguish, embarrassment, fright, shock, pain, discomfort, fatigue, and anxiety. The amount of Plaintiff's damages will be ascertained at trial.

99. In committing the foregoing acts, Defendants have been guilty of oppression, fraud, and/or malice under California Civil Code section 3294, thereby entitling Plaintiff to punitive damages in a sum appropriate to punish and make an example out of the foregoing

1 Defendants.

2 100. The acts of oppression, fraud, and/or malice, were engaged in by employees of
3 Defendants. Each of the foregoing Defendants had advance knowledge of the unfitness of each
4 employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the
5 wrongful conduct for which an award of punitive damages is sought, and/or was personally
6 guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard,
7 authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on part
8 of an officer, director, or managing agent of each of the Defendants, thereby entitling Plaintiff
9 to punitive and exemplary damages against each of the Defendants in accordance with California
10 Civil Code section 3294 in a sum appropriate to punish and make an example of each Defendant.

11 101. FEHA provides for an award of reasonable attorneys' fees and costs incurred by
12 a prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will
13 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
14 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
15 award of attorneys' fees and costs.

16 **TWELFTH CAUSE OF ACTION**

17 **RETALIATION IN VIOLATION OF THE FEHA**

18 **(Plaintiff against All Named Defendants and all DOE Defendants)**

19 102. Plaintiff re-alleges and incorporates by reference each and every allegation in
20 paragraphs 1 through 101, inclusive, of this Complaint as though fully set forth herein.

21 103. At all times herein mentioned, Government Code section 12940 et. seq. was in
22 full force and effect and was binding upon Defendants and each of them. Said statute imposes
23 certain duties upon Defendants concerning harassment and retaliation against persons, such as
24 Plaintiff, on the basis of sex/gender or due to complaints of sexual harassment. Said statutes were
25 intended to prevent the type of injury and damage set forth herein. Plaintiff was, at all times
26 herein mentioned, a member of the class of persons intended to be protected by said statutes. As
27 alleged above, Plaintiff was retaliated against and eventually resigned from her employment due
28 to the hostile working conditions POSADA subjected her to after reporting and complaining
about Victor's consistent sexually harassing behavior at the workplace.

1 104. As a direct and proximate result of Defendants' conduct, Plaintiff has been
2 harmed in that Plaintiff has suffered the loss of wages, salary, and benefits, among other things.
3 As a result, Plaintiff has suffered such damages in an amount according to proof.

4 105. As a further direct and proximate result of the conduct of Defendants, and each
5 of them, Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental anguish and
6 emotional distress, and has been harmed in mind and body. As a result, Plaintiff has suffered
7 such damages in an amount according to proof.

8 106. In committing the foregoing acts, Defendants have been guilty of oppression,
9 fraud, and/or malice under California Civil Code section 3294, thereby entitling Plaintiff to
10 punitive damages in a sum appropriate to punish and make an example out of the foregoing
11 Defendants.

12 107. The acts of oppression, fraud, and/or malice, were engaged in by employees of
13 Defendants. Each of the foregoing Defendants had advance knowledge of the unfitness of each
14 employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the
15 wrongful conduct for which an award of punitive damages is sought, and/or was personally
16 guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard,
17 authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on part
18 of an officer, director, or managing agent of each of the Defendants, thereby entitling Plaintiff
19 to punitive and exemplary damages against each of the Defendants in accordance with California
20 Civil Code section 3294 in a sum appropriate to punish and make an example of each Defendant

21 108. FEHA provides for an award of reasonable attorneys' fees and costs incurred by
22 a prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will
23 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
24 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
25 award of attorneys' fees and costs.

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1 **THIRTEENTH CAUSE OF ACTION**

2 **FAILURE TO PREVENT HARASSMENT AND RETALIATION IN VIOLATION OF**
3 **FEHA**

4 **(Plaintiff against All Names Defendants and all DOE defendants)**

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

7 110. At all times herein mentioned, FEHA, California Government Code section
8 12940(k), was in full force and effect and was binding on Defendants. This statute states that it
9 is an unlawful employment practice in California for an employer to “fail to take all reasonable
10 steps necessary to prevent discrimination and harassment from occurring.”

11 111. As alleged above, Plaintiff was subjected to sexual harassment and retaliation.

12 112. Defendants failed to take all reasonable steps necessary to prevent harassment
13 and retaliation. In addition, POSADA failed to remedy such harassment and retaliation.
14 POSADA further failed to train, supervise, and monitor its employees and agents.

15 113. The failure of Defendants to prevent harassment and retaliation created and
16 encouraged an environment where such harassment was condoned, encouraged, tolerated,
17 sanctioned, and/or ratified.

18 114. As a direct and proximate result of the aforementioned acts and omissions of
19 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
20 loss of income (past and future), loss of employment benefits (past and future), general and
21 compensatory damages (past and future), mental pain and anguish and emotional distress (past
22 and future), and will continue to suffer in the future, in an amount to be proved at trial.

23 115. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive,
24 and each of their directors, officers and/or managing agents, constitutes malice, fraud, and
25 oppression and was authorized, ratified, and carried on with a conscious and willful disregard of
26 their workers’ right to work in an environment free of harassment and retaliation, so as to justify
27 the imposition of punitive damages to punish and set an example of said Defendants.

28 116. As a proximate result of the foregoing conduct, which violated the provisions of
Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney’s

1 fees and costs in the prosecution of this claim, in an amount to be proven at trial.

2 **FOURTEENTH CAUSE OF ACTION**

3 **RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5**

4 **(Plaintiff against All Named Defendants and all DOE Defendants)**

5 117. Plaintiff re-alleges and incorporates by reference each and every allegation in
6 paragraphs 1 through 116, inclusive, of this Complaint as though fully set forth herein.

7 118. At all times material to this Complaint, California Labor Code § 1102.5 was in
8 effect and binding on Defendants. This section requires Defendants to refrain from retaliating
9 against an employee for refusing to participate in an activity that he/she reasonably believes
10 would result in a violation of state or federal statute, or a violation or noncompliance with a
11 state or federal rule or regulation. California Labor Code section 1102.5 also requires
12 Defendants to refrain from retaliating against an employee for disclosing information to a
13 person with authority over the employee if the employee has reasonable cause to believe that
14 the information discloses a violation of state or federal statute, or a violation of or
15 noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing
16 the information is part of the employee's job duties.

17 119. As discussed fully above, Plaintiff complained to Defendants about Victor's
18 sexually harassing behavior at the workplace.

19 120. Defendants retaliated against Plaintiff for her whistleblowing, as alleged above,
20 all in violation of Labor Code § 1102.5.

21 121. As a direct and proximate result of the aforementioned acts and omissions of
22 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
23 loss of income (past and future), loss of employment benefits (past and future), general and
24 compensatory damages (past and future), mental pain and anguish and emotional distress (past
25 and future), and will continue to suffer in the future, in an amount to be proved at trial.

26 122. Plaintiff requests all available relief under Labor Code § 1102.5 including
27 damages and the imposition of civil penalties of \$10,000 for each violation as well as attorney's
28 fees.

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1 **FIFTEENTH CAUSE OF ACTION**

2 **NEGLIGENT RETENTION AND SUPERVISION**

3 **(Plaintiff against All Named Defendants and all DOE Defendants)**

4 123. Plaintiff re-alleges and incorporates by reference each and every allegation in
5 paragraphs 1 through 122, inclusive, of this Complaint as though fully set forth herein.

6 124. Upon information and belief, POSADA, by and through its agents and
7 employees, knew or reasonably should have known through reasonable investigation, of
8 maintenance supervisor Victor's propensity for sexually harassing behavior.

9 125. Defendants had a duty not to hire or retain Victor, provide proper training to him
10 and provide reasonable supervision of him.

11 126. Defendants negligently hired, retained and/or failed to adequately train and
12 supervise Victor in his management position, wherein he was able to commit the wrongful acts
13 complained of herein against Plaintiff. Defendants failed to provide reasonable supervision of
14 Victor despite knowing of his propensities for sexually harassing behavior.

15 127. As a result of the above-described conduct, Plaintiff has suffered and continues
16 to suffer a great amount of stress, anxiety, humiliation, embarrassment, loss of sleep, loss of
17 confidence, loss of self-esteem, and general discomfort.

18 128. Defendants engaged in these acts alleged herein and/or condoned, permitted,
19 authorized, and/or ratified the conduct of their employees and agents and are vicariously liable
20 for the wrongful conduct of their employees and agents for this cause of action.

21 **SIXTEENTH CAUSE OF ACTION**

22 **WRONGFUL CONSTRUCTIVE DISCHARGE IN VIOLATION OF PUBLIC POLICY**

23 **(Plaintiff against All Named Defendants and all DOE Defendants)**

24 129. Plaintiff re-alleges and incorporates by reference each and every allegation in
25 paragraphs 1 through 128, inclusive, of this Complaint as though fully set forth herein.

26 130. At all times during her employment with Defendant POSADA, Plaintiff
27 performed her duties with the utmost diligence and competence.

28 131. Defendants intentionally created an illegal work environment and atmosphere
by harassing Plaintiff based on her sex/gender, not paying her overtime, and not paying her the

1 minimum wage, and violating numerous labor code sections as outlined in this Complaint,
2 thereby not giving Plaintiff an opportunity to work in an environment free of sexual harassment,
3 retaliation, and labor code violations. This situation became intolerable for Plaintiff and Plaintiff
4 had no alternative but to quit her job.

5 132. The employment of Plaintiff was constructively wrongfully terminated on or
6 around December 27, 2022 in violation of the fundamental public policy of the State of
7 California with respect to sexually harassing an employee on account of her sex, retaliating
8 against an employee for reporting sexual harassment at the workplace, and violating numerous
9 labor code sections, including not compensating Plaintiff for all hours worked, not compensating
10 Plaintiff the minimum wage, not compensating Plaintiff overtime wages, not reimbursing
11 Plaintiff for business expenses incurred in the course of performing her duties, not providing
12 Plaintiff accurate, itemized wage statements, and not paying Plaintiff wages owed every pay
13 period and upon the separation of employment, among others. Moreover, Plaintiff was forced to
14 hire an attorney to assist her to end these illegal activities. Said conduct violated statutory and
15 constitutional expressions of public policy including, FEHA, the California Labor Code and the
16 California Constitution, Article 1 section 8.

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

23 134. As a direct and proximate result of the aforementioned acts and omissions of
24 corporate Defendants, Plaintiff suffered general and compensatory damages, including but not
25 limited to, loss of income (past and future), loss of employment benefits (past and future), general
26 and compensatory damages (past and future), mental pain and anguish and emotional distress
27 (past and future), and will continue to suffer in the future, in an amount to be proved at trial.

28 135. The foregoing conduct engaged in by corporate Defendants and each of their
directors, officers and/or managing agents, constitutes malice, fraud, and oppression and was

1 authorized, ratified, and carried on with a conscious and willful disregard of their workers' right
2 to work in an environment free of retaliation due to whistleblowing, so as to justify the imposition
3 of punitive damages to punish and set an example of said Defendants.

4 **SEVENTEENTH CAUSE OF ACTION**

5 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

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

7 **(Plaintiff against All Named Defendants and all DOE Defendants)**

8 136. Plaintiff re-alleges and incorporates by reference each and every allegation in
9 paragraphs 1 through 135, inclusive, of this Complaint as though fully set forth herein.

10 137. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
11 constitutes unfair and unlawful business practices under California Business and Professions
12 Code Section 17200, et seq.

13 138. Defendant's violations of the FEHA, California labor laws, and the Labor Code
14 constitutes a business practice because it was done repeatedly over a significant period of time
15 in a systematic manner that was detrimental to Plaintiff and others.

16 139. For the four years preceding the filing of this action, Plaintiff has suffered
17 damages and request damages and/or restitution of all monies and profits to be disgorged from
18 corporate defendant POSADA in an amount according to proof at
19 time of trial, but in excess of the jurisdiction of this Court.

20 WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them, as
21 follows:

- 22 1. For compensatory damages including lost past and future wages, regular wages,
23 overtime, and all other sums of money, including employment benefits, together with
24 interest on said amounts, and any other economic injury to Plaintiff, according to proof;
- 25 2. For general damages according to proof;
- 26 3. For special and consequential damages to the extent allowed by law;
- 27 4. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
28 at trial;
5. For an award of punitive damages against Defendants according to proof;

6. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount subject to proof at trial;
7. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to proof at trial;
8. For restitution and disgorgement for all unfair business practices by Defendants against Plaintiff in an amount subject to proof at trial;
9. For an order enjoining Defendants from further unfair and unlawful business practices in violation of Business and Professions Code Sections 17200, et seq.;
10. For one hour of wages due to Plaintiff for each work period of more than five (5) hours when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
11. For one hour of wages due to Plaintiff for each work period of four (4) hours or major fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
12. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendants as described more particularly in the Complaint and representative PAGA claim;
13. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated damages, damages, penalties, and waiting time penalties according to proof to the extent permitted by law via PAGA;
14. For the imposition of civil penalties and/or statutory penalties;
15. For all interest as allowed by law;
16. For all costs and disbursements incurred in this suit;
17. Reasonable attorney's fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, Labor Code section 1102.5, the Labor Code, FEHA; and/or other applicable laws; and

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1 18. For such other and further relief as this Court may deem proper.

2 **DATED:** February 10, 2023

MESSRELIAN LAW INC.

3 By Maralle Messrelian
4 Harout Messrelian, Esq.
5 Maralle Messrelian, Esq., Of Counsel
6 Attorneys for Plaintiff Irma Tapia

7 **DEMAND FOR JURY TRIAL**

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

9 **DATED:** February 10, 2023

MESSRELIAN LAW INC.

10 By Maralle Messrelian
11 Harout Messrelian, Esq.
12 Maralle Messrelian, Esq., Of Counsel
13 Attorneys for Plaintiff Irma Tapia
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EXHIBIT 5

1 **LEWIS BRISBOIS BISGAARD & SMITH LLP**

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6 Facsimile: 415.434.0882

7 Attorneys for Defendants

POSADA ASSOCIATES and LA POSADA

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SANTA CRUZ

12 IRMA TAPIA,

13 Plaintiff,

14 vs.

15 POSADA ASSOCIATES; LA POSADA;
16 KALCO PROPERTIES INC.; and DOES 1 to
25, inclusive,

17 Defendants.

Case No. 23CV00355

**ANSWER TO PLAINTIFF'S
COMPLAINT**

Complaint Filed: February 10, 2023

Trial Date: None Set

19 Defendants POSADA ASSOCIATES and LA POSADA ("Defendants") INC.'S
20 ("Plaintiff") Complaint as follows:

21 **GENERAL DENIAL**

22 Pursuant to California Code of Civil Procedure section 431.30(d), Defendants generally
23 deny each and every allegation contained in Plaintiff's Complaint, and further deny that Plaintiff
24 sustained damages or is due civil penalties, or in any amount or at all, by reason of any act, breach
25 or omission on the part of Defendants, and further deny that Plaintiff is entitled to any relief
26 whatsoever from Defendants.

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1 **AFFIRMATIVE DEFENSES**

2 Defendants allege the following separate and affirmative defenses to each and every cause
3 of action alleged against them in the Complaint.

4 **FIRST AFFIRMATIVE DEFENSE**

5 (Failure to State a Cause of Action)

6 1. The Complaint, and each cause of action alleged therein, fails to set forth facts
7 sufficient to constitute causes of action.

8 **SECOND AFFIRMATIVE DEFENSE**

9 (Standing)

10 2. The Complaint, and each cause of action set forth therein, or some of them, is
11 barred because the named Plaintiff lacks standing, including as a putative representative of the
12 alleged aggrieved employees and she does not adequately represent the alleged aggrieved
13 employees.

14 **THIRD AFFIRMATIVE DEFENSE**

15 (Failure to Exhaust Administrative Remedies)

16 3. Defendants are informed and believe and thereon allege that Plaintiff's causes of
17 action are barred because Plaintiff has failed to satisfy the statutory prerequisites to sue and to
18 exhaust administrative remedies under the Labor Code Private Attorney General's Act of 2004
19 ("PAGA"), Cal. Lab. Code §§ 2698, *et. seq.*, and/or any other applicable statutory scheme.

20 **FOURTH AFFIRMATIVE DEFENSE**

21 (Not Employer or Joint Employer)

22 4. To the extent Plaintiff seeks relief against Posada Associates and/or La Posada in
23 her capacity as an employee of Kalco Properties, Inc., or against Posada Associates and/or La
24 Posada on behalf of alleged aggrieved employees of Kalco Properties, Inc., the Complaint, and
25 each and every cause of action therein, is barred, in whole or in part, because employees of Kalco
26 Properties, Inc., were not employed by Defendants and Defendants were not joint employers of
27 employees of Kalco Properties, Inc. The Complaint cannot be maintained jointly against Posada
28 Associates and/or La Posada, including on behalf of alleged aggrieved employees of Kalco

1 Properties, Inc., because each is a separate legal entity and maintained separate employees
2 pursuant to separate employment procedures based upon the facts and circumstances of their
3 individual operations.

4 **FIFTH AFFIRMATIVE DEFENSE**

5 (Statute of Limitations)

6 5. The Complaint is barred, in whole or in part, by the applicable statute(s) of
7 limitation, including without limitation, Cal. Code Civ. Proc. § 340(a), and so is time barred.

8 **SIXTH AFFIRMATIVE DEFENSE**

9 (Lack of Certainty)

10 6. Any recovery on Plaintiff's Complaint is barred, in whole or in part, because
11 Plaintiff's and/or the alleged aggrieved employees' Complaint is uncertain.

12 **SEVENTH AFFIRMATIVE DEFENSE**

13 (Failure to Take Meal and Rest Periods Provided)

14 7. Defendants allege that assuming *arguendo* that Plaintiff and the alleged aggrieved
15 employees did not take required meal periods and/or rest breaks, Plaintiff and/or the allegedly
16 aggrieved employees are not entitled to a premium payment under Cal. Lab. Code § 226.7 and the
17 applicable Wage Order of the Industrial Welfare Commission because they (1) voluntarily failed
18 to take meal periods and/or rest breaks that were provided or allowed in compliance with
19 California law, (2) voluntarily waived and/or relinquished their rights to meal periods and/or rest
20 breaks as provided or allowed under Cal. Lab. Code § 512(a) and/or the applicable Wage Order of
21 the Industrial Welfare Commission, and/or (3) Defendants did not engage in any act or omission
22 to prevent or prohibit Plaintiff and/or the allegedly aggrieved employees from taking meal periods
23 and rest breaks that were provided or allowed in accordance with applicable law and Defendants'
24 policies and/or practices.

25 **EIGHTH AFFIRMATIVE DEFENSE**

26 (Breach of Duties)

27 8. Plaintiff's Complaint and each cause of action therein is barred by Plaintiff's and/or
28 the alleged aggrieved employees' own breach of duties owed to Defendants because, *inter alia*,

1 based on information and belief, Plaintiff and/or the alleged aggrieved employees failed to report
2 claims upon which the Complaint is asserted pursuant to company policy.

3 **NINTH AFFIRMATIVE DEFENSE**

4 (No Knowledge or Permission of “Hours Worked”)

5 9. Defendants are informed and believe that a reasonable opportunity for investigation
6 and discovery will reveal, and on that basis allege, that the Complaint and each cause of action
7 therein, or some of them, are barred in whole or in part because if Plaintiff and/or the alleged
8 aggrieved employees “worked” hours for which compensation was not paid, Defendants had no
9 knowledge, or reason to know, of such “work,” which was also undertaken without the direction,
10 consent, control, or permission of Defendants.

11 **TENTH AFFIRMATIVE DEFENSE**

12 (*De Minimis* Doctrine)

13 10. Defendants are informed and believe and thereon allege that, to the extent Plaintiff
14 and/or the alleged aggrieved employees claim they are entitled to pay and/or civil penalties for
15 time they spent working or working overtime, such time was *de minimis* because it involved
16 employee activities that were so irregular or brief in duration that Defendants could not reasonably
17 have been required to compensate employees for the time spent on them.

18 **ELEVENTH AFFIRMATIVE DEFENSE**

19 (Voluntary Waiver)

20 11. Defendants are informed and believe and thereon allege that Plaintiff’s causes of
21 action for meal and rest period violations, including violations of the IWC Wage Orders, is barred
22 because Defendants provided meal and rest periods. Plaintiff and/or the alleged aggrieved
23 employees voluntarily waived their rights to take meal and rest periods or otherwise refused to
24 take meal and rest periods as provided by Defendants.

25 **TWELFTH AFFIRMATIVE DEFENSE**

26 (Consent)

27 12. Defendants allege that Plaintiff and/or the alleged aggrieved employees, at all
28 relevant times, gave their consent, express or implied, to the alleged acts, omissions, and conduct

1 of Defendants.

2 **THIRTEENTH AFFIRMATIVE DEFENSE**

3 (Failure to Mitigate)

4 13. Plaintiff and/or the alleged aggrieved employees have failed to exercise reasonable
5 care to mitigate their damages, if any, including, but not limited to, the extent that they worked
6 any unpaid time and failed to report such unpaid time to Defendants; to the extent that they failed
7 to take any rest or meal break that was provided by Defendants, and/or failed to report to
8 Defendants any inability to take a meal break, and/or reported having taken rest or meal breaks
9 when, in fact, the rest or meal breaks were not taken; and to the extent that they failed to follow
10 Defendants' policies. If it is determined that Plaintiff and/or alleged aggrieved employees have
11 the right to any recovery against Defendants, such recovery should be reduced and/or eliminated
12 by such failure to mitigate.

13 **FOURTEENTH AFFIRMATIVE DEFENSE**

14 (Avoidable Consequences)

15 14. Plaintiff is precluded from asserting her Complaint, and each purported cause of
16 action therein, because she failed to exercise reasonable care to avoid the injuries she purportedly
17 suffered in that, among other things, Plaintiff unreasonably failed to utilize Defendants' internal
18 complaint mechanisms.

19 **FIFTEENTH AFFIRMATIVE DEFENSE**

20 (Injury Arising From Acts or Omissions of Plaintiff and/or the Alleged Aggrieved Employees)

21 15. Each purported cause of action contained in the Complaint, or some of the causes
22 of action, are barred because the alleged losses or harms sustained by Plaintiff and/or the alleged
23 aggrieved employees, if any, resulted from the acts or omissions of Plaintiff and/or the alleged
24 aggrieved employees, and/or was proximately caused by the actions or inactions of Plaintiff
25 and/or the alleged aggrieved employees.

26 **SIXTEENTH AFFIRMATIVE DEFENSE**

27 (Estoppel/Unclean Hands)

28 16. Defendants are informed and believe that a reasonable opportunity for investigation

1 and discovery will reveal and, on that basis alleges, that Plaintiff's Complaint and each cause of
2 action alleged therein, or some of them, are barred, in whole or in part, by the doctrine of estoppel
3 and/or unclean hands. Plaintiff, by her actions and conducts, including her acquiescence, approval,
4 ratification, and participation in the acts complained of in the Complaint, and/or failure to follow
5 Defendants' policies, is estopped from suing on, or has waived the right to sue on, the acts
6 complained of in the Complaint.

7 **SEVENTEENTH AFFIRMATIVE DEFENSE**

8 (Release)

9 17. Plaintiff has released the claims she attempts to raise in her Complaint, and
10 therefore is barred from bringing this action.

11 **EIGHTEENTH AFFIRMATIVE DEFENSE**

12 (Offset)

13 18. To the extent Plaintiff and/or the alleged aggrieved employees are entitled to any
14 additional monetary relief, such additional monetary relief must be offset by the amount of any
15 compensation and/or other monies they received from Defendants in excess of the amount of
16 compensation to which they were legally entitled for work performed.

17 **NINETEENTH AFFIRMATIVE DEFENSE**

18 (Accord & Satisfaction)

19 19. The Complaint and each alleged cause of action are barred in whole or in part to the
20 extent Plaintiff has ever recovered any monies from Defendants, including, but not limited to, any
21 settlements with Defendants, emanating from a dispute over wages, benefits, or overtime
22 compensation, accordingly, said claims are barred by operation of law; alternatively, Plaintiff has
23 accepted compensation as partial settlement of those claims.

24 **TWENTIETH AFFIRMATIVE DEFENSE**

25 (Liquidated Damages)

26 20. Defendants are informed and believe and thereon allege that Plaintiff's claims,
27 including, but not limited to, her claims for liquidated damages under Cal. Lab. Code § 1194.2, is
28 barred, in whole or in part, because any acts or omissions at issue, if any, were based on an honest,

1 reasonable, and good faith belief in the facts as known and understood at the time. Said acts or
2 omissions at issue were in good faith based on reasonable grounds to believe that the acts or
3 omissions were not a violation of any provision of the Labor Code.

4 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

5 (Good-Faith Dispute)

6 21. Defendants are informed and believe that a reasonable opportunity for investigation
7 and discovery will reveal, and on that basis alleges, that the Complaint and each cause of action
8 therein, or some of them, are barred because (1) there are bona fide disputes as to whether
9 Defendants failed to timely pay all wages due (including disputes about whether any further
10 compensation is due, and if so, the amount of such further compensation), (2) there are bona fide
11 disputes as to whether Defendants failed to issue legally compliant wage statements, and (3)
12 Defendants has not willfully failed to pay such compensation, if any is owed.

13 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

14 (No Waiting Time Penalties; Not Willful or Intentional)

15 22. Defendants are informed and believe and thereon allege that Plaintiff's claim based
16 on alleged "waiting time penalties" under Cal. Lab. Code § 203 for untimely payment of wages
17 are barred because Defendants did not intentionally or willfully withhold payment of wages.

18 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

19 (No "Knowing and Intentional Failure")

20 23. Defendants are informed and believe and thereon allege that, even *assuming*
21 *arguendo*, that Plaintiff and/or the alleged aggrieved employees were not provided with proper
22 itemized statements of wages and deductions, which Defendants denies, Defendants' alleged
23 failure to comply with Cal. Lab. Code § 226 was not a "knowing and intentional failure" to
24 provide accurate wage statements, and any failure to provide such wage statements was
25 inadvertent or due to clerical error.

26 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

27 (No Injury or Standing for Wage Statement Claim)

28 24. Even if Defendants failed to provide Plaintiff with accurate itemized wage

1 statements, which Defendants denies, Plaintiff did not suffer injury as a result of such failure and
2 so lack standing to assert a claim under Cal. Lab. Code § 226.

3 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

4 (No Standing for Unfair Business Practices Claim)

5 25. Plaintiff lacks standing under California Bus. & Prof. Code § 17204, including, but
6 not limited because she is a former employee, and therefore the claim is barred.

7 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

8 (No PAGA “Aggrieved Employees”)

9 26. Defendants allege that Plaintiff and/or the employees whom she seeks to represent
10 are not “aggrieved employees” within the meaning set forth in and as required by PAGA.

11 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

12 (No PAGA Representative Action)

13 27. Defendants allege that the claims of Plaintiff and/or the allegedly aggrieved
14 employees Plaintiff purports to represent are such that they cannot be tried on a representative
15 basis because, *inter alia*, such a determination requires complex factual issues that are distinct
16 among the aggrieved employee population and trying such a representative action would be
17 unmanageable.

18 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

19 (Unmanageable PAGA Claims)

20 28. Plaintiff’s PAGA claims, and those of the representative members, are barred in
21 whole or in part, because, *inter alia*, Plaintiff cannot establish a manageable PAGA trial.
22 Manageability applies, *inter alia*, to the extent applying it constitutes a reasonable response to a
23 specific problem. At the least, any civil penalties should be minimal, if awarded all, because
24 Plaintiff cannot establish widespread Labor Code violations in an efficient manner.

25 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

26 (PAGA Unconstitutional)

27 29. Defendants allege that Plaintiff is not entitled to recover PAGA penalties because
28 the imposition of such damages violates the United States and California Constitutions, in that: (1)

1 such damages are so punitive in purpose and effect as to constitute excessive fines and unusual
2 punishment in violation of the Excessive Fines Clause (U.S. Const., amend. VIII); (2) the
3 imposition of such damages would violate Defendants' rights to due process and/or equal
4 protection under the law, under the United States and California Constitutions; (3) the PAGA
5 statute is unconstitutional in that it imposes an undue burden on interstate commerce; and/or (4)
6 PAGA violates the separation of powers doctrine by empowering private attorneys to prosecute
7 public claims, thereby impairing the judiciary's inherent power to regulate attorney conduct.

8 **THIRTIETH AFFIRMATIVE DEFENSE**

9 (PAGA Penalties)

10 30. Plaintiff's demand for penalties pursuant to PAGA is barred because such penalties
11 would violate Defendants' constitutional rights under the Due Process clauses under the United
12 States and California Constitutions and the imposition of such penalties would be unjust, arbitrary,
13 oppressive or confiscatory.

14 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

15 (No Restitution)

16 31. Plaintiff's claims seeking recovery in the form of restitution, disgorgement, or
17 injunctive relief under California Bus. & Prof. Code §§ 17200, *et seq.*, are barred with respect to
18 any alleged violations that have been discontinued, ceased, or are not likely to recur and/or the to
19 the extent the claims actually constitute claims for damages.

20 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

21 (No Knowledge of Alleged Harassing Conduct)

22 32. There can be no liability for the alleged conduct of Defendants and /or the alleged
23 harassers because Defendants had no prior actual or constructive knowledge of the alleged
24 harassing conduct, and therefore could not take prompt and appropriate action to address such
25 conduct.

26 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

27 (Legitimate Non-Discriminatory Business Justification)

28 33. Defendants' activities, undertaken with respect to Plaintiff, were justified as such

1 activities were proper, fair, and legitimate business activities and/or due to business-related
2 reasons that were neither retaliatory, discriminatory, arbitrary, capricious, nor unlawful; and
3 Defendants' conduct was a just and proper exercise of management's discretion and was regulated
4 by good faith at all relevant times.

5 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

6 (Workers' Compensation)

7 34. Defendants are informed and believe and thereon allege that Plaintiff is barred from
8 seeking any damages for purported physical, mental, or emotional injuries allegedly suffered as a
9 result of Plaintiff's employment in that the sole and exclusive remedy in this respect is and was
10 governed by the California Workers' Compensation Act, Cal . Lab. Code §§ 3200–4627.

11 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

12 (After-Acquired Evidence)

13 35. Defendants allege that upon likely evidentiary support after a reasonable
14 opportunity for further investigation or discovery, the FAC and each of its causes of action are
15 barred, either in whole or in part, by the doctrine of after-acquired evidence.

16 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

17 (Mixed-Motive)

18 36. At all times relevant to Plaintiff's claims, there existed lawful, legitimate reasons for
19 Defendants' actions and/or inactions toward Plaintiff, and those reasons, standing alone, would have
20 induced Defendants to make the same decision/s with respect to Plaintiff.

21 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

22 (Adequate Legal Remedy)

23 37. Plaintiff's claim for injunctive relief is barred because Plaintiff has an adequate and
24 complete remedy at law.

25 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

26 (Reservation of Rights)

27 38. Defendants have insufficient knowledge and information upon which to form a
28 belief as to whether it may have additional, yet unasserted, affirmative defenses. Defendants

1 therefore reserve the right to assert additional affirmative defenses in the event discovery indicates
2 it would be appropriate.

3 **PRAYER**

4 WHEREFORE, Defendants pray for judgment against Plaintiff as follows:

- 5 1. That Plaintiff takes nothing from Defendants by way of her Complaint herein;
6 2. That judgment is entered in favor of Defendants and against Plaintiff as to the
7 causes of actions directed against Defendants in Plaintiff's Complaint;
8 3. For Defendants fees and costs of suit herein incurred; and
9 4. For such other relief as the Court deems just and proper.

10
11 DATED: April 17, 2023

LEWIS BRISBOIS BISGAARD & SMITH LLP

12
13 By: 

14 _____
15 JOSEPH R. LORDAN
16 VINCENT R. FISHER
17 JADY Y. LEUNG
18 Attorneys for Defendants, POSADA
19 ASSOCIATES and LA POSADA
20
21
22
23
24
25
26
27
28

1 **CALIFORNIA STATE COURT PROOF OF SERVICE**

2 ***Irma Tapia v. Posada Associates***

3 Santa Cruz County Superior Court, Case No. 23CV00355

4 STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

5 At the time of service, I was over 18 years of age and not a party to this action. My
6 business address is 45 Fremont Street, Suite 3000, San Francisco, CA 94105.

7 On April 17, 2023, I served true copies of the following document(s): **ANSWER TO**
8 **PLAINTIFF'S COMPLAINT**

9 I served the documents on the following persons at the following addresses (including fax
10 numbers and e-mail addresses, if applicable):

11 Harout Messrelian
12 Maralle Messrelian
13 MESSRELIAN LAW INC.
14 500 N. Central Avenue, Suite 840
15 Glendale, CA 91203

Attorneys for Plaintiff
IRMA TAPIA

Telephone: (818) 484-6531
Facsimile: (818) 956-1983
E-mail:
hm@messrelianlaw.com
maralle@messrelianlaw.com

16 The documents were served by the following means:

17 ☒ (BY ELECTRONIC SERVICE VIA FIRST LEGAL) Based on a court order, I caused the
18 above-entitled document to be served through First Legal at <https://firstlegal.com>
19 addressed to all parties appearing on the electronic service list for the above-entitled case.
20 The service transmission was reported as complete and a copy of the First Legal Filing
21 Receipt Page/Confirmation will be filed, deposited, or maintained with the original
22 document in this office.

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

25 Executed on April 17, 2023, at San Francisco, California.

26 

27

Berenice Barragan

EXHIBIT 6

MICHAEL A. LAURENSEN (SBN: 190023)
mlaurenson@grsm.com
HANNAH F. DIAMOND (SBN: 339384)
hdiamond@grsm.com
GORDON REES SCULLY MANSUKHANI, LLP
1111 Broadway, Suite 1700
Oakland, CA 94607
Telephone: (415) 986-5900
Facsimile: (415) 986-8054

Attorneys for Defendant
KALCO PROPERTIES, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CRUZ

IRMA TAPIA, an individual,	)	CASE NO. 23CV00355
	)	
Plaintiff,	)	
	)	DEFENDANT KALCO
vs.	)	PROPERTIES, INC.'S ANSWER TO
	)	PLAINTIFF'S UNVERIFIED
POSADA ASSOCIATES; LA POSADA;	)	COMPLAINT
KALCO PROPERTIES, INC.: and DOES 1	)	
to 25, Inclusive,	)	
	)	
Defendants.	)	Complaint Filed: February 10, 2023

Defendant KALCO PROPERTIES, INC. ("Defendant") hereby answers the Complaint filed by Plaintiff IRMA TAPIA ("Plaintiff") as follows:

GENERAL DENIAL

Pursuant to California Code of Civil Procedure section 431.30(d), Defendant generally denies each and every allegation contained in Plaintiff's Complaint, and each and every alleged cause of action therein, and further denies that Plaintiff sustained damages in the amount alleged, or in any other amount or at all, by reason of any act, breach or omission on the part of Defendant, and further denies that Plaintiff is entitled to any relief whatsoever from Defendant.

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AFFIRMATIVE DEFENSES

Without admitting any of the allegations of the Complaint and without admitting or acknowledging that Defendant bear any burden of proof as to any affirmative defense, Defendant asserts the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

Plaintiff is not entitled to relief on any of her causes of action because the Complaint, and each purported cause of action therein, fails to state a cause of action for which relief can be granted against Defendant.

SECOND AFFIRMATIVE DEFENSE

(Statute of Limitations)

Plaintiff's Complaint, and each purported cause of action set forth therein, fails because they are barred by the applicable statute of limitations, including but not limited to California Government Code section 12960 and California Code of Civil Procedure sections 335-340.

THIRD AFFIRMATIVE DEFENSE

(After Acquired Evidence)

Plaintiff's Complaint, and each cause of action alleged therein, are barred by the after-acquired evidence doctrine.

FOURTH AFFIRMATIVE DEFENSE

(Legitimate Business Necessity)

Any recovery on Plaintiff's Complaint is barred in whole or in part on grounds that any actions taken by Defendant were reasonable in response to legitimate business necessities, and were taken for legitimate, non-retaliatory reasons.

FIFTH AFFIRMATIVE DEFENSE

(Exhaustion of Administrative Remedies)

Plaintiff is not entitled to relief on any of her causes of action to the extent Plaintiff failed to timely and successfully exhaust her administrative remedies for the conduct alleged in the Complaint.

SIXTH AFFIRMATIVE DEFENSE

(Mixed-Motive Defense)

Defendant had a legitimate reason for its employment decision that was the motivating factor in the decision. To the extent Plaintiff alleges that other factors motivated the decision, Defendant would have made the same employment decisions absent any alleged retaliatory motive.

SEVENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

Plaintiff is not entitled to relief because Plaintiff failed to mitigate and/or to attempt to mitigate her damages, if any, and therefore any recovery by Plaintiff must be reduced or barred.

EIGHTH AFFIRMATIVE DEFENSE

(Avoidable Consequences)

Plaintiff's Complaint, and each purported cause of action set forth therein, are barred by the doctrine of avoidable consequences.

NINTH AFFIRMATIVE DEFENSE

(Waiver/Estoppel/Unclean Hands)

Plaintiff's Complaint and each purported cause of action alleged therein are barred by virtue of Plaintiff's conduct under the doctrines of waiver, estoppel and unclean hands.

TENTH AFFIRMATIVE DEFENSE

(Same Decision)

Defendant alleges that it had an independent, legitimate reason for the employment decision and would have made the same decision absent any alleged retaliatory motive.

ELEVENTH AFFIRMATIVE DEFENSE

(Unreasonably Failed to Take Preventative Measures)

Plaintiff's purported causes of action and claims for damages are barred in whole or in part because Defendant exercised reasonable care to prevent and promptly correct any alleged discriminatory behavior (if any), and Plaintiff unreasonably failed to take advantage of

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1 preventative, remedial or corrective opportunities for reporting and resolving claims, or to
2 otherwise avoid harm.

3 **TWELFTH AFFIRMATIVE DEFENSE**

4 **(Worker's Compensation)**

5 Plaintiff's Complaint is barred in whole or in part by the Worker's Compensation Act,
6 which is the sole and exclusive remedy for some or all of Plaintiff's alleged injuries or damages.

7 **THIRTEENTH AFFIRMATIVE DEFENSE**

8 **(Consent)**

9 Plaintiff's Complaint, and each purported cause of action set forth therein, are barred
10 because Plaintiff at all times gave her consent, express or implied, to the acts, omissions,
11 representations, communications and course of conduct of Defendant as alleged in the
12 Complaint, and each purported cause of action set forth therein.

13 **RESERVATION OF RIGHTS**

14 Defendant hereby gives notice that it intends to rely upon any additional affirmative
15 defenses that become available or apparent during discovery and thus reserves the right to amend
16 its answer to assert such additional defenses as discovery proceeds.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Defendant prays for judgment as follows:

- 19 1. That this action be dismissed in its entirety, with prejudice;
20 2. That judgment be entered in favor of Defendant and against Plaintiff;
21 3. That Defendant be awarded its costs of suit and attorneys' fees incurred herein; and
22 4. For such and other further relief as this Court may deem just and proper.

23 Dated: April 17, 2023

GORDON REES SCULLY MANSUKHANI, LLP

24
25 By: 

26 Michael A. Laurensen
27 Hannah F. Diamond
28 Attorneys for Defendant
KALCO PROPERTIES, INC.

PROOF OF SERVICE

Irma Tapia v. Posada Associates, et al.
Santa Cruz Superior Court Case No. 23CV00355

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: Gordon Rees Scully Mansukhani, LLP 275 Battery Street, Suite 2000, San Francisco, CA 94111. On April 17, 2023, I served the within documents:

**DEFENDANT KALCO PROPERTIES, INC.'S ANSWER TO PLAINTIFF'S
UNVERIFIED COMPLAINT**

- ☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent by electronically mailing a true and correct copy through the Gordon Rees Scully Mansukhani, LLP electronic mail system from my email address: ccoopey@grsm.com to the email address(s) set forth herein per agreement and in accordance with CCP section 1010.6(a)(6); and CRC 2.251
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in United States mail in the State of California at San Francisco, addressed as set forth below.

Counsel for Plaintiff

Harout A. Messrelian
Maralle Messrelian
MESSRELIAN LAW INC.
500 N Central Avenue, Suite 840
Glendale, CA 91203-3574
T/: (818) 484-6531
F/: (818) 956-1983
E/: hm@messrelianlaw.com
maralle@messrelianlaw.com

Counsel for Defendants

Posada Associates and La Posada
Vincent Fisher
Joseph R. Lordan
Jady Leung
LEWIS BRISBOIS BISGAARD & SMITH, LLP
45 Fremont Street, Suite 3000
San Francisco, CA 94105
T/: (415) 362-2580
F/: (415) 434-0882
E/: vincent.fisher@lewisbrisbois.com
joseph.lordan@lewisbrisbois.com
jady.leung@lewisbrisbois.com

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

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

Executed on April 17, 2023 at San Francisco, California.


Christine Coopey

EXHIBIT 7

Irma Tapia v. Posada Associates

Superior Court of the State of California (Santa Cruz County) Case No. 23CV00355

Messrelian Law Inc. Costs and Expenses	Total
LWDA Notice Filing Fee	\$ 75.00
Complaint Filing	\$ 435.00
Court filing costs	\$ 31.82
Atty Service Fees	\$ 120.00
Mediator Fees	\$ 3,604.65
Data Analyst for Mediation	\$ 950.00
<i>PAGA Motion filling fee (estimated)</i>	\$ 75.00
<i>Decl re Compliance (post approval) atty service fees (estimated)</i>	\$ 45.00
<i>Request for dismissal atty service fees (estimated)</i>	\$ 45.00
Current and Estimated Costs through 06/26/2024	\$ 5,381.47

EXHIBIT 8

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Irma Tapia v. La Posada/Kalco

Tuesday, January 23, 2024

Requesting Attorneys Name:

E-Mail:

ILYM Contact:

E-Mail:

Contact Number:

Maralle Messrelian

maralle@messrelianlaw.com

Lisa Mullins

Lisa@ilymgroup.com

714.878.8836

Assumptions: PAGA Settlement

ASSUMPTIONS	
Total Number of Aggrieved Employees	48
NCOA	Yes
Certified Spanish Translation	Yes
Case Duration (Years)	1

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	2	\$300.00
Project Manager (Case notification and maintenance)	Hourly	\$120.00	3	\$360.00
Toll Free Telephone Support	Flat Rate	\$55.00	1	\$55.00
Certified Spanish Translation	Flat Fee	\$750.00	1	\$750.00
NCOA	Flat Rate	\$34.76	1	\$34.76

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

Subtotal \$1,499.76

DISTRIBUTION (Includes EIN, Bank Acct /QSF Setup)*				
Distribution Setup & Management	Hourly	\$150.00	2	\$300.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	2	\$250.00
Notice, Check, Stub & Release - (including 1099)	Per Check	\$2.00	48	\$96.00
USPS First Class Postage	Per Piece	\$0.63	48	\$30.24
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.50	10	\$24.00
Preparation of Taxes	Hourly	\$125.00	5	\$625.00
Annual Filing of Tax Return	Per Year	\$950.00	1	\$950.00

*Additional Bank fees may apply

Subtotal \$2,275.24

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	1	\$100.00
Process Unclaimed Funds to the State Controller	Flat Fee	\$550.00	1	\$550.00
Declaration	Hourly	\$125.00	1	\$125.00

Subtotal \$775.00

TOTAL CASE COSTS: \$4,550.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT 9



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

January 31, 2024

CASE ASSUMPTIONS

Class Members	48
Opt Out Rate	N/A
Opt Outs Received	
Total Class Claimants	48
Subtotal Admin Only	\$3,860.82

Flat Fee Total **\$3,860.82**

For 48 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Spanish Translation, Printing & Mailing Included

Case: Tapia v. La Posada/Kalco, PAGA Administration

Phoenix Contact: Michael E. Moore

Contact Number: 949.331.0131

Email: mike@phoenixclassaction.com

Requesting Attorney: Maralle Messrelian

Firm: Messrelian Law Inc.

Contact Number: 818.484.6531

Email: maralle@messrelianlaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly.

Estimate is based on **48** Class Members. Class data **Must** be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 day

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	1		\$100.00
Programming Database & Setup	\$100.00	1		\$100.00
Toll Free Setup*	\$100.00	1		\$100.00
Call Center & Long Distance	\$2.50	8		\$19.20
NCOA (USPS)	\$12.00	1		\$12.00
Total				\$331.20

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Check & Postage / Spanish Translation

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	1		\$100.00
Spanish Translation	\$150.00	1		\$150.00
Data Merge & Duplication Scrub	\$0.09	48		\$4.32
Notice and Check Packet	\$1.00	48		\$48.00
Estimated Postage (up to 1 oz.)*	\$0.64	48		\$30.72
Total				\$333.04

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



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	2		\$110.00
Skip Tracing Undeliverables	\$0.75	9		\$6.75
Remail Notice Packets	\$0.65	7		\$4.55
Estimated Postage	\$0.64	7		\$4.48
Programming Undeliverables	\$50.00	1		\$50.00
			Total	\$175.78

Database Programming

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Claims Database	\$150.00	1		\$150.00
Case Associate	\$55.00	2		\$110.00
Case Manager	\$85.00	2		\$170.00
			Total	\$430.00

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

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	1		\$135.00
Disbursement Review	\$135.00	1		\$135.00
Programming Manager	\$95.00	1		\$95.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	2		\$270.00
			Total	\$770.00

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



CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$115.00	1	\$115.00
Remail Undeliverable Checks (Postage Included)	\$1.50	7	\$10.80
Case Associate	\$55.00	2	\$110.00
Reconcile Uncashed Checks	\$85.00	3	\$255.00
Conclusion Reports	\$115.00	2	\$230.00
Case Manager Conclusion	\$85.00	2	\$170.00
Final Reporting & Declarations	\$115.00	2	\$230.00
QSF Annual Tax Reporting *	\$700.00	1	\$700.00
(State Tax Reporting & Escheating Uncashed Checks to the State of CA included)			
Check to Cy-Pres	\$150.00	1	Included
		Total	\$1,820.80

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$3,860.82



TERMS AND CONDITIONS

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

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

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

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

Tax Reporting Requirements

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

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

EXHIBIT 10



3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104
www.simpluris.com

Estimate Number:	20240125-PJI-02	Prepared By:	Patrick Ivie
Estimate Date:	1/25/2024	Telephone Number (mobile):	310.995.6455
Estimate Expiration Date:	4/24/2024	Email:	pivie@simpluris.com

	<u>Attorney Contact</u>		<u>Opposing Counsel Contact</u>
Attorney:	Maralle Messrelian, Esq.	Attorney:	
Firm:	MESSRELIAN LAW INC.	Firm:	
Email:	maralle@messrelianlaw.com	Email:	

Case Name: Irma Tapia v. La Posada/Kalco - 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:	48	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/SP	Fund Distribution:	Simpluris
Reminder Mailing:	n/a	Number of Distributions:	1
Unclaimed Funds:	Escheat	State(s):	CA
Lengths of Administration:	8 Months	Tax Years:	1

Case Setup

- Data compilation: develop case-specific response tracking

Category	Unit Value	# of Units	Total
Project Manager - Case Setup	\$125.00	1	\$125.00
Database Manager - Initial Data Analysis	\$140.00	1	\$140.00
Total:			\$265.00

Award Disbursement

- Establish 26 CFR § 1.468B-1 compliant Qualified Settlement Fund ("QSF")
- Disburse Notice with award payments and tax document
- All funds not claimed within 180 days of mailing of payment shall be sent to the Controller of the State of California
- 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	\$140.00	2	\$280.00
Disbursement Manager - Data Validation	\$90.00	2	\$180.00
Setup Banking Account/QSF	\$675.00	1	\$675.00
QSF Monthly Maintenance	\$100.00	8	\$800.00
NCOA/CASS/LACS	\$0.25	48	\$12.00
Spanish Translation (assuming 350 words)	\$0.25	350	\$87.50
Print & Mail Check and Tax Documents	\$1.25	48	\$60.00
Postage	\$0.62	48	\$29.76
Process Returned Checks	\$0.25	5	\$1.25
Skip Trace Search Undeliverable Checks	\$0.50	5	\$2.50
Remail Checks (Includes Postage)	\$2.00	5	\$10.00
Escheat Uncashed Checks	\$500.00	1	\$500.00
QSF Reporting and Final Declaration	\$500.00	1	\$500.00
Reissue Checks / Mailing	\$5.00	1	\$5.00
Reissue 1099s	\$5.00	1	\$5.00
Responding to IRS/State/Agency Inquiries	\$75.00	1	\$75.00
QSF Annual Tax Reporting and Reconciliation	\$1,350.00	1	\$1,350.00
Distribution Manager	\$90.00	2	\$180.00
Total:			\$4,753.01

Case Completion

- Final audit and review
- Send final declaration and reporting to counsel

Category	Unit Value	# of Units	Total
Data Manager-Final Reporting	\$140.00	1	\$140.00
Clerical-Clean Up Any Misc.	\$50.00	1	\$50.00
Project Manager-Wrap-up Final Issues	\$125.00	1	\$125.00
Total:			\$315.00

Total Estimated Cost of Administration:	\$5,333
Less Client Courtesy Discount:	-\$1,333
Discounted Total:	<u>\$4,000</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 11