

1 DAVID GLENN SPIVAK (SBN 179684)

david@spivaklaw.com

2 LAUREN R. DAVIS (SBN 294115)

lauren@spivaklaw.com

3 THE SPIVAK LAW FIRM

4 8605 Santa Monica Bl

PMB 42554

5 West Hollywood, CA 90069

Telephone: (213) 725-9094

6 Facsimile: (213) 634-2485

7
8 Attorneys for Plaintiff(s),

9 JUSTIN LOPEZ, and all others similarly situated

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

11 **FOR THE COUNTY OF LOS ANGELES**

12 **(UNLIMITED JURISDICTION)**

13 JUSTIN LOPEZ, on behalf of himself, all others
14 similarly situated, the general public, and as an
15 “aggrieved employee” on behalf of other
16 “aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 EDWARD WALTER SUNSERI, a natural
20 person doing business as Sunseri’s Bar and
21 Beverage Catering; MICHAEL SERENO, a
22 natural person; and DOES 1–50, inclusive,

23 *Defendant(s).*

Case No. 22STCV37939

**DECLARATION OF DAVID SPIVAK
IN SUPPORT OF PLAINTIFF JUSTIN
LOPEZ’S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Hearing Date: October 17, 2024

Hearing Time: 2:00 p.m.

Hearing Dept.: Dept. 14, The Honorable
Kenneth R. Freeman

Action filed: December 05, 2022

Trial Date: Not Set



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Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

WALTER L. HAINES (SBN 71075)
walter@uelglaw.com
UNITED EMPLOYEES LAW GROUP
8605 Santa Monica Bl.
PMB 63354
West Hollywood, CA 90069
Telephone: (562) 256-1047
Facsimile: (562) 256-1006

Attorneys for Plaintiff(s),
JUSTIN LOPEZ, and all others similarly situated



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Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

DECLARATION OF DAVID SPIVAK IN SUPPORT OF PLAINTIFF JUSTIN LOPEZ'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I, DAVID SPIVAK, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California and am an attorney of record for Plaintiff Justin Lopez ("Plaintiff") in his lawsuit against Defendants Edward Walter Sunseri and Michael Sereno (collectively "Defendants"). Plaintiff and Defendants are collectively referred to as the "Parties."

2. 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.

3. The Class Action and PAGA Settlement Agreement and Class Notice and Addendum to the Class Action and PAGA Settlement Agreement and Class Notice (the "Settlement") is attached hereto as **Exhibit 1**. The Settlement Class consists of all employees of Defendants in California and classified as an hourly, non-exempt employee who worked for Defendants during the Class Period. Settlement, ¶1.5. The "Class Period" means the period from December 06, 2018 through December 31, 2023. Settlement, ¶1.12. The "Aggrieved Employee or PAGA members" are all persons employed by Defendants in California and classified as hourly, nonexempt who worked for Defendants during the PAGA Period. Settlement, ¶1.4. The "PAGA Period" begins November 23, 2021 and ends December 31, 2023. Settlement, ¶1.32. The Settlement is written, signed by all necessary Parties, and attached to this declaration as stated above.

The Release Provisions

4. **Released Persons.** Under the Settlement, the release to be given by the Settlement Class Members (other than the Class representative) is limited to Defendants named in the Operative Complaint, together with their officers, directors, employees, and agents. The released persons consist of: Defendants, and their current and former officers, directors, employees, and agents, and the successors and assigns, of all such entities and individuals. Settlement, ¶ 1.42.

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

6. **Release Period.** Under the Settlement, the release to be given by the Settlement Class Members (other than the Class representative) is limited to liability that arose during the Class



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PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
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25th Fl
Los Angeles, CA 90067

Period. See above.

7. **PAGA Release.** Under the Settlement, Plaintiff releases all claims for civil penalties that could have been sought by the Labor Commissioner for the violations identified in Plaintiff's pre-filing letter to the LWDA; Plaintiff does not release the claim for wages or damages of any Aggrieved Employee or PAGA member unless such Aggrieved Employee or PAGA member is a Settlement Class Member. The PAGA Release states as follows: Release by Participating Class Members Who Are Not Aggrieved Employees: All Participating Class Members, on behalf of himself and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims stated in the Operative Complaint and those based solely upon the facts alleged in the Operative Complaint. Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period. Settlement, ¶ 6.2.

8. Release of PAGA Claim. Plaintiff releases all claims for civil penalties that could have been sought by the Labor Commissioner for the violations identified in Plaintiff's pre-filing letter to the LWDA; Plaintiff does not release the claim for wages or damages of any Aggrieved Employee unless such Aggrieved Employee is a Participating Class Member. Settlement, ¶ 6.3.

No Reversion

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

Taxes

10. The Settlement provides that Defendants will separately pay the employer's share of any applicable payroll taxes. Tax Allocation of Individual Class Payments. 33.33% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 66.67% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any



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PMB 42554
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1 employee taxes owed on their Individual Class Payment. Settlement, ¶ 3.2.4.1.

2 11. The Settlement provides as follows with regard to the tax treatment of
3 settlement shares: Tax Allocation of Individual Class Payments. 33.33% of each Participating
4 Class Member's Individual Class Payment will be allocated to settlement of wage claims (the
5 "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an
6 IRS W-2 Form. The 66.67% of each Participating Class Member's Individual Class Payment will
7 be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The
8 Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms.
9 Participating Class Members assume full responsibility and liability for any employee taxes owed
on their Individual Class Payment. Settlement, ¶ 3.2.4.1.

10 ***Factual and Procedural Background***

11 12. **Plaintiff's Employment with Defendants.** Defendants are event caterers.
12 Defendants employed Plaintiff as a bartender in California from about December 31, 2009, until
13 June 2, 2022.

14 13. **LWDA Notice.** On November 23, 2022, Plaintiff notified Defendants and the
15 California Labor and Workforce Development Agency ("LWDA"), pursuant to the California
16 Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* ("PAGA"),
17 of alleged Labor Code violations committed by Defendants. A true and correct copy of the letter
to the LWDA dated November 23, 2022 is attached hereto as **Exhibit 2**.

18 14. **Lawsuit.** On December 05, 2022, Plaintiff filed a Class Action Complaint in the
19 Los Angeles County Superior Court, Case No. 22STCV37939, against Defendants on behalf of
20 himself and others similarly situated, alleging causes of action on a class-wide basis for: (1)
21 Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and
22 1198); (2) Failure to Provide Rest Breaks (Lab. Code §§226.7 and 1198); (3) Failure to Provide
23 Meal Periods (Lab. Code §§226.7, 512 and 1198); (4) Wage Statement Penalties (Lab. Code §
24 226); (5) Waiting Time Penalties (Lab. Code §§ 201-203); and (6) Unfair Competition (Bus. &
25 Prof. Code §§ 17200, *et seq.*). A true and correct copy of Plaintiff's Complaint is attached hereto
26 as **Exhibit 3**. On February 10, 2023, Plaintiff filed his First Amended Complaint adding a claim
27 under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*
28 ("PAGA"). On April 10, 2023, Defendants filed an answer to Plaintiff's First Amended
Complaint. Defendants deny all of Plaintiff's allegations and strongly contend that their wage and



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PMB 42554
West Hollywood, CA 90069
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Office:
1801 Century Park East
25th Fl
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hour policies, practices and procedures are fully compliant with all applicable laws. A true and correct copy of Plaintiff's First Amended Complaint is attached hereto as **Exhibit 4**. A true and correct copy of Defendants' Answer is attached hereto as **Exhibit 5**.

15. **Investigation.** On April 12, 2023, Plaintiff requested that Defendants informally disclose documents and data to enable Plaintiff to prepare for settlement discussions, including the number of putative class members and aggrieved employees, the number of paychecks and workweeks for the various limitation periods applicable to Plaintiff's claims. DS, ¶ 15. Plaintiff also requested a reasonable, randomly selected sample of Defendants' time, payroll, and related personnel records. *Id.* Finally, Plaintiff requested Defendants' policies applicable to the claims at hand and asked Defendants identify any and all comparable claims against them.

16. The Parties thereafter engaged in an informal, voluntary exchange of information in the context of privileged settlement discussions to facilitate an early mediation. Defendants produced Plaintiff's entire personnel file.

17. **Sampling.** Defendants contend that they employed 203 putative class members during the period of January 12, 2018, to December 30, 2022. Defendants produced the records of 15.27% of the putative class members for the period of January 12, 2018, to December 30, 2022. There were records for 31 employees in the sample. Plaintiff chose the sample. The sample was randomly selected. The sample consisted of payroll sheets, event sheets, time sheets, scheduling text messages, financial records, and related records.

18. **Plaintiff's Data Analyst.** Plaintiff retained Sridhar Srinivasan, a data analyst, to analyze the sample. Plaintiff also employed the Raosoft¹ Sample Size calculator (<http://www.raosoft.com/samplesize.html>) to determine if the sample size selected is statistically reliable. *Bell v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715 and *Duran v. U.S. Bank* (2014) 59 Cal.4th 1. The *Bell* court found a relative margin of error of 32.4 percent was unacceptable whereas the *Duran* court found a relative margin of error of 43.3 percent was unacceptable. Using

¹ Raosoft advertises, "Raosoft, Inc. produces EZSurvey for the Internet, InterForm, SurveyWin, EZReport and Rapid Report innovative survey software programs for information gathering and analysis. The family of survey software supports data collection and reporting for any form-based data. Support is for web-surveys and forms, email distribution, diskette, PDA, laptop or pen-based: all types of distribution." The Raosoft webpage advertises that is it "database web survey software for gathering information." <http://www.raosoft.com/>. It also advertises, "The parameters of the sample size calculation are something that you choose." <http://www.raosoft.com/suggestreading.html>.



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1 a margin of error of 32%, a confidence level of 95%, and a population size of 203, the Raosoft
2 Sample Size Calculator recommended a sample of 10. A true and correct copy of the results from
3 the Raosoft Sample Size Calculator are attached as **Exhibit 6** (Raosoft Sample Size Calculator
4 results print-out). Thus, the sample population that Plaintiff's data analyst evaluated is statistically
5 reliable. *Id.*

6 19. **Mediation.** On July 28, 2023, following much of the foregoing informal discovery
7 and exchange of information, the Parties participated in a mediation session presided over by
8 Mediator Monique Ngo-Bonnici, an experienced class action mediator. During the mediation, the
9 Parties had a full day of productive negotiations and reached agreement on a class-wide settlement
10 after the mediation session. During the mediation sessions, each side, represented by his
11 respective counsel, recognized the risk of an adverse result in the Action. Though the Action did
12 not settle at the mediation session, ultimately, the Parties agreed to settle the Action and all other
13 matters covered by this Agreement pursuant to the terms and conditions of this Agreement.

14 20. **Defendants' Financial Condition.** At the mediation, it became clear that
15 Defendants had insufficient resources to cover the full extent of liability. As part of the settlement
16 negotiations, Defendants disclosed their tax returns, bank statements, profit and loss statements,
17 balance sheets, and related information for recent years. The information provided was sufficient
18 to demonstrate the financial condition of the Defendants and that there will be unlikely to be able
19 to afford payment of a larger amount than the Settlement amount. Based on such records, Plaintiff,
20 on his own behalf and on behalf of the Class Members, has agreed to settle the lawsuit on the
21 terms set forth in the Settlement.

22 *Similar Actions*

23 21. **Relevant Litigation and Claims.** I am not aware of any class, representative,
24 or other collective action in any other court, in this, or any other jurisdiction, that asserts
25 claims similar to those asserted in this action, on behalf of the class or group of individuals,
26 some or all of whom would also be members of the class to find in this action. I have made
27 a reasonable inquiry of the other members of my law firm and my counsel to determine
28 whether they are aware of any such similar actions. Based on these inquiries, I am aware of
no such similar actions. The Defendants disclosed that there have not been any comparable
claims against them.

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Uncashed Checks

22. **Unclaimed Property Fund.** The Settlement provides for the disposition of uncashed checks as follows: The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Notice Packet was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Notice Packet was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator must update the recipients' mailing addresses using the National Change of Address Database. Settlement, ¶4.4.1. In my view, sending funds represented by uncashed checks to the Unclaimed Property Fund instead of a *cy pres* recipient is the best way to ensure that the Class Members and Aggrieved Employee or PAGA members actually receive their portions of the Settlement.

Ascertainable and Numerous Class

23. **Ascertainability.** A class is ascertainable when it may be readily identified without unreasonable expense or time by reference to official records. Here, Plaintiff maintains that the above-defined Class is ascertainable because its members may be identified by reference to Defendants' records and Defendants have agreed to share the relevant information from their records to facilitate the settlement process. Therefore, the Settlement Class is ascertainable.

24. **Numerosity.** The Settlement Class has sufficiently numerous members to render joinder impractical. No set number is required as a matter of law to maintain a class action. The California Supreme Court has upheld a class of as few as 10 individuals. Defendants estimate that there are approximately 209 Class Members for the Class Period of December 06, 2018, to December 30, 2022. Plaintiff maintains that it would be impractical and economically inefficient to require each Settlement Class Member to separately maintain an individual action or be joined as a named plaintiff in this action. In light of these considerations, the Settlement Class' membership is sufficiently numerous. Additionally, there are 150 Aggrieved Employee or PAGA



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members for the PAGA Period of November 23, 2021 to December 30, 2022.

Predominant Common Questions

25. A question of law or fact is common to the members of a class if it may be resolved through common proof. In this case, there are many predominant common questions. Plaintiff asserts all class members were subject to the same or similar operations and employment policies, practices, and procedures. The claims arise from Defendants' alleged policy-driven failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and related labor law violations, all of which Plaintiff claims constitute unfair business practices and give rise to PAGA penalties. Plaintiff asserts that common questions include, but are not limited to: (1) Whether Defendants failed to pay all wages earned to class members for all hours worked at the correct rates of pay; (2) Whether Defendants failed to provide the class with all meal and rest periods in compliance with California law; (3) Whether Defendants failed to pay the class one additional hour of pay on workdays they failed to provide the class with one or more meal or rest periods in compliance with California law; (4) Whether Defendants knowingly and intentionally failed to provide the class with accurate wage statements; (5) Whether Defendants willfully failed to provide the class with timely final wages; and (6) Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code section 17200, *et seq.*, with respect to the class.

Typicality

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

Adequacy

27. The adequacy requirement is met where the plaintiff is represented by counsel qualified to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to



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

4 28. To the best of my knowledge, neither Plaintiff nor I have any conflicts of interest
5 with the absent Settlement Class Members. Plaintiff contends that he is an adequate class
6 representative. Plaintiff and the Class Members have strong and co-extensive interests in this
7 litigation because they all worked for Defendants during the relevant time period, allegedly
8 suffered the same alleged injuries from the same alleged course of conduct, and there is no
9 evidence of any conflict of interest between Plaintiff and the Class Members. Moreover, Plaintiff
10 has demonstrated his commitment to the Settlement Class by, among other things, retaining
11 experienced counsel, providing counsel with documents and extensively speaking with them to
12 assist in identifying the claims asserted in this case, assisting them in identifying witnesses, as
13 well as exposing himself to the risk of attorneys' fees and costs awards against him if this lawsuit
14 had been unsuccessful. Thus, Plaintiff is adequate to serve as settlement class representative. The
15 declaration of Plaintiff Justin Lopez on this subject will be filed concurrently with this declaration.

16 ***Background of Class Counsel***

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

20 30. In December of 1995, the Supreme Court for the State of California admitted me
21 as an Attorney and Counselor at Law and licensed me to practice law in all the Courts of this
22 State. On May 11, 2012, I also became admitted to the District of Columbia Bar. In February
23 2013, I became admitted to the New York State Bar.

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

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

33. Since I started practicing law, I have tried many cases before courts, arbitrators



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1 and government agencies. Some of my cases are:

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

10 b. *Jorge Guzman v. Department of Justice*, United States District Court,
11 Central District of California (the Honorable Lourdes Baird presiding), 1999. Plaintiffs Special
12 Agent for the Immigration and Naturalization Service alleged racial discrimination, retaliation
13 and police brutality by agents of the Office of the Inspector General. Jury found the Defendants
14 liable. Case settled shortly before the damages phase. See "U.S. to Pay \$400,000 to INS Agent in
15 Bias Suit; Courts: Complaint says he suffered 10 years of harassment on the job because he is
16 Latino, including falsified charges" by Patrick J. McDonnell, Los Angeles Times, January 21,
17 1999.

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

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



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1 e. *Rick Pierce v. Department of Treasury*, Merit Systems Protection Board
2 (1999). Administrative Judge awarded compensatory damages to wrongfully terminated Customs
3 Agent, followed by an award of Attorneys' fees and costs.

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

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

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

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

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

a. *Alafa v. Custom Built Personal Training, Inc.*, Tulare County Superior
Court, Case No. VCU-245496 (appointed Class Counsel and granted final approval class action



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1 settlement on behalf of assistant fitness manager employees).

2 b. *Cuellar v. Lovin Oven*, Orange County Superior Court, Case No. 30-2010-
3 000382146 (appointed Class Counsel and granted final approval of class action settlement by the
4 court on behalf of nonexempt employees).

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

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

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

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

18 g. *Huynh v. Carefusion Resources, LLC, et al.*, San Diego Sup.Ct., Case No.
19 37-2009-00103277-CU-OE-CTL (appointed Class Counsel and granted final approval of class
20 action settlement on behalf of medical devices employees).

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

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

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

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



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1 settlement on behalf of security guard employees).

2 l. *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-
3 1500-CV-282679 (appointed Class Counsel and granted final approval of class action settlement
4 on behalf of dairy and agricultural laborers).

5 m. *Montes v. Branam Enterprises, Inc.*, Los Angeles Sup.Ct. Case No.
6 BC442608 (appointed Class Counsel and granted final approval by this Court of class action
7 settlement on behalf of call concert rigging employees). *Nardone v. Sequoia Beverage Company,*
8 *LP*, Tulare County Superior Court, Case No. VCU-248370 (appointed Class Counsel and granted
9 final approval of class action settlement by the court on behalf of hourly employees).

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

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

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

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

24 r. *Stucker v. L'Oreal*, Los Angeles Sup.Ct. Case No. BC456080 (appointed
25 Class Counsel and granted final approval by this Court of class action settlement involving alleged
26 misclassification of sales employees and unpaid vacation pay).

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

t. *Valencia v. SCIS Air Security Corp.*, Los Angeles Superior Court, Case
No. BC421485 (granted class certification through contested motion and appointed Class Counsel



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1 in case on behalf of former security workers based on late final wage payments in violation of
2 Labor Code §§ 201–203).

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

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

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

13 ***Class Action Treatment Is Superior***

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

23 ***The Settlement is Presumptively Fair***

24 38. The class settlement here satisfies all of the *Kullar* factors. The Settlement resulted
25 from thorough, arms’ length, negotiations between experienced counsel with the assistance of a
26 respected mediator after sufficient discovery was exchanged to assess the relative strengths and
27 weaknesses of their respective cases and Defendants’ estimated exposure. Both defense counsel
28 and I are particularly experienced in employment law and wage and hour class actions. We are
experienced and qualified to evaluate the class claims, the viability of the defenses, and the risks
and benefits of settlement versus trial on a fully informed basis. I have negotiated many wage and
hour class settlements, including many involving the same issues presented here. Counsel on both



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sides share the view that the Settlement is a fair and reasonable settlement in light of the complexities of the case and uncertainties of class certification and litigation, and a fair result for the Class Members.

Exposure & Risk Analysis

39. On December 05, 2022, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendants for failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to issue proper wage statements, failure to timely pay wages, and related claims. On February 10, 2023, Plaintiff filed a First Amended Complaint alleging causes of action against Defendants for failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to issue proper wage statements, failure to timely pay wages, and for civil penalties under the California Private Attorneys' General Act ("PAGA"). The First Amended 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 the Operative Complaint and deny any and all liability for the causes of action alleged. Settlement, ¶ 2.1.

40. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendants and the LWDA by sending the PAGA Notice. Settlement, ¶2.2. Plaintiff prepared "damages" estimates in advance of the mediation. Plaintiff determined Defendants' maximum possible exposure for restitution and penalties to be approximately \$5,484,253.36 (consisting of \$64,269.23 in unpaid wages, \$163,497.48 in missed meal period premium wages, \$168,989.64 in missed rest break premium wages, \$211,894.21 for wage statement penalties, \$164,343.38 for waiting time penalties, and \$3,511,259.42 for civil penalties under PAGA). True and correct copies of the spreadsheets I prepared for mediation of this Action are collectively attached to this declaration as **Exhibit 7**.

41. The estimates are in essence "home run" projections that omit data points that will undoubtedly reduce the maximum possible damages award and do not factor in any of the risks involved in litigating this Action. Plaintiff calculated the damages based on the number of workweeks and pay periods provided by Defendants, Plaintiff's reports, and the sample data. *Id.* Plaintiff also considered the possibility that Defendants could launch a *Pick Up Stix* campaign and pursue individual release agreements from the Class Members. Plaintiff's Counsel applied discounts to the maximum possible exposure to account for all other risks discussed below. While



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1 it is difficult to assign anything but crudely-determined percentages of risk to any of the claims,
2 it is safe to say that the risk that a *Pick Up Stix* campaign would preclude recovery for such
3 employees is substantial and alone justifies a significant discount because Defendants would
4 likely by trial have gathered releases from the majority of the Class Members.

5 42. My initial estimates do not realistically account for the risks outlined below or the
6 risk that a class will not be certified. Therefore, I believe a class settlement for \$375,000.00 is fair
7 and reasonable.

8 43. **Risks Associated with Defendants' Financial Condition.** As stated above,
9 Defendants' financial condition was the key factor in reaching this Settlement. Due to
10 Defendants' financial condition, even if Plaintiff prevailed on all claims at trial, his may never
11 recover the damages due to the risk of insolvency. A very large class action judgment would
12 almost certainly put the company out of business and/or would interfere with the company's
13 ability to carry out its contractual obligations.

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

45. The difficulty inherent in proving that off-the-clock work occurred poses a
significant hurdle to Plaintiff. Plaintiff will rely on declarations and witness statements to prove
this claim. Generally, a court will not certify a class unless it can determine an appropriate



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1 classwide methodology. *See, e.g., Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014). Here,
2 Plaintiff may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially
3 given the lack of records indicating when such off-the-clock work may have taken place.
4 Individualized inquiries would need to be conducted person-by-person, day-by-day, to determine
5 if an individual in fact worked “minutes” off-the-clock on a “regular” basis. Accordingly, there
6 is a significant risk that the Court would consider this evidentiary showing insufficient as a
7 classwide methodology.

8 46. **Risks Associated with the Meal Period Claims.** There are risks to Plaintiff’s
9 meal period claim. Defendants contend that, to establish a violation for missed meal periods, a
10 plaintiff must do more than show that a meal break was not taken. *Brinker*, 53 Cal. 4th at 1004.
11 So long as an employer provides employees with a “reasonable opportunity” to take a duty-free
12 meal period, it has no further duty to “police meal breaks and ensure no work thereafter is
13 performed.” *Id.* at 1040-41. *Id.* Instead, a plaintiff must show the employer impeded, discouraged,
14 or prohibited the employee from taking a proper break, or otherwise failed to release the employee
15 of all control. *Id.* “Thus, the crucial issue with regard to the meal break claim is the reason that a
16 particular employee may have failed to take a meal break.” *Washington v. Joe’s Crab Shack* (N.D.
17 Cal. 2010) 271 F.R.D. 629, 641. *Id.*

18 47. Defendants contend they did not impede or discourage Plaintiff, or any other
19 employees, from taking their meal or rest periods. Defendants require that employees take at least
20 a 30-minute, uninterrupted meal period. Accordingly, there is a significant risk that the value of
21 Plaintiff’s meal period claim would be substantially reduced at trial.

22 48. **Risks Associated with the Rest Break Claims.** There are risks to Plaintiff’s rest
23 period claim. Employers are not required to record rest periods and such periods are paid.
24 Defendants contend they provided non-exempt employees the opportunity to take rest periods in
25 accordance with California law. Further, Defendants’ policies on meal and rest periods are
26 consistent with the Wage Order. Thus, unlike meal periods, where there are often records showing
27 whether an employee clocked out or not, there is no such evidence to prove a missed rest period
28 or that the employer refused to authorize and permit one. *Id.* Managing such claims at trial has
become exceedingly difficult. Plaintiff will depend on sample witness testimony and surveys to
prove the claims. While a victory with such evidence is certainly possible, relevant caselaw makes
such claims risky from a trial management and due process perspective. *See Duran v. U.S. Bank*



1 *National Assn.* (2014) 59 Cal. 4th 1, 31 (explaining “[I]f sufficient common questions exist to
2 support class certification, it may be possible to manage individual issues through the use of
3 surveys and statistical sampling.”); *Tyson Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382;
4 *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426.

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

12 50. **Risks Associated with the Waiting Time Penalties Claims.** Without proof
13 willful behavior, Plaintiff will be unable to recover these penalties.

14 51. **Risks Associated With the PAGA Claim.**

15 52. As the Operative Complaint makes clear, Plaintiff predicates his PAGA claim
16 on the same Labor Code violations as his other claims. Plaintiff’s “damages” spreadsheet,
17 **Exhibit 7**, states the length of the relevant time period for the PAGA claim and the number of
18 employees allegedly employed during that time period. Plaintiff’s “damages” spreadsheet,
19 **Exhibit 7**, also states the total amount of civil penalties for which the Defendants is potentially
20 liable if all allegations are proven. As I state above in connection with Plaintiff’s claims for
21 statutory penalties with regard to proof Defendants’ intent, knowledge and willfulness, there are
22 serious risks to proving Defendants acted intentionally, knowingly, and willfully in violating the
23 rights of Class Members under the Labor Code. Plaintiff calculated the agreed-upon amount of
24 civil penalties by considering the risks outlined above and that the Settlement already provides
25 substantial payments for the Labor Code violations that the civil penalties claim is predicated on.

26 53. Regarding PAGA, a court has discretion to award a lesser amount than the
27 maximum penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.*
28 (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendants
have posed valid defenses to the Labor Code claims underlying Plaintiff’s PAGA allegations.
Thus, the PAGA claims likewise face significant uncertainty. There is a risk that the Court would
consider the maximum civil penalty available to be confiscatory.



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1 54. This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and
2 required a significant discount for settlement purposes. For mediation purposes, Plaintiff's
3 counsel estimated a maximum possible exposure of approximately \$3,511,259.42 in civil
4 penalties. This estimate did not take into account any of the risks discussed above and assumed a
5 violation for every single pay period. *Id.* Plaintiff's counsel also assessed multiple penalties for
6 the same pay period for the same alleged violations of different Labor Code provisions and
7 derivative violations. Although two federal district court decisions held that "stacking" PAGA
8 penalties in this fashion may be appropriate to determine the amount in controversy for purposes
9 of removal jurisdiction, Plaintiff's counsel is not aware of any California state courts awarding
10 plaintiffs multiple PAGA penalties for the same violation for the same pay period under different
11 Labor Code provisions. This may be because the PAGA does not provide for what many
12 employers characterize as claim splitting and not merely stacking.

13 55. I am aware of only two significant awards under the PAGA in a contested
14 proceeding, both issued by federal district courts.² PAGA penalty awards are often small even for
15

16 ² In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil
17 penalties under the PAGA of \$12,277,500.00 where total adjusted damages were
18 \$18,695,692.58. In this regard, the district court stated,

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

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

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



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egregious, intentional violations of the Labor Code.³

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

57. **Risks Associated With A Pick-Up Stix Campaign.** An employer enjoys the right to settle a putative class member's disputed wage claims individually, without the consent or involvement of class counsel. (See *Chindarah v. Pick Up Stix, Inc.* 171 Cal. App. 4th 796 (2009). As discussed above, Defendants may launch a "pick off" settlement campaign to pursue individual release agreements from the Class Members, thereby potentially narrowing the size of the Settlement Class – 209 members - until it is no longer numerous enough for class certification. *Id.* Plaintiff, then, may not have sufficient number of employees to represent. This led to a significant reduction of claim value in settlement negotiations.

58. While the evidence gathered through Plaintiff's discovery supports the merits of the claims asserted in this lawsuit, Plaintiff and his counsel recognize that continued litigation presents significant risks that support a downward departure from Defendants' estimated liability exposure. In view of the risks, the Settlement reflects my estimate of the total amount of damages, monetary penalties or other relief that the Class could reasonably expect to be awarded at trial, taking into account the likelihood of prevailing and other attendant risks. It also represents a fair, adequate, and reasonable compromise amount for these claims and warrants preliminary approval. *Id.*, *Torrison v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1376 (the financial

³ In 2012, I tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. A true and correct copy of the first amended complaint in *Ghrdilyan* is attached as **Exhibit 8**. The plaintiff sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M. Sohigian awarded approximately \$325,000 in civil penalties under the PAGA. A true and correct copy of the judgment transcript in *Ghrdilyan* is attached as **Exhibit 9**, 19:8-20:19. Also, on October 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff civil, represented by very experienced counsel, penalties totaling only \$50.00. *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828. A similar result could occur here.



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1 condition of defendant predominated in assessing the reasonableness of settlement); *Spann v. J.C.*
2 *Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty concerning defendant's
3 financial stability "strongly supports the reasonableness of the settlement"); *See Laguna v.*
4 *Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3.

5 ***Allocation of the PAGA Payment***

6 59. The settlement of PAGA penalties in the sum of \$4,000.00, of which 75%
7 (\$3,000.00) will be paid to the LWDA and 25% (\$1,000.00) will be distributed to the Aggrieved
8 Employee or PAGA members, is reasonable and appropriate under the circumstances. The Parties
9 negotiated a good faith amount for PAGA Penalties to be paid to the LWDA and to the Aggrieved
10 Employee or PAGA members. The portion to be paid to the LWDA was not the result of self-
11 interest at the expense of other Aggrieved Employee or PAGA members.

12 ***Attorneys' Fees and Costs***

13 60. I intend to request Class Counsel Attorneys' Fees of up to one-third of the GSA
14 (which is currently estimated to be \$125,000.00) and Class Counsel's litigation costs incurred in
15 prosecuting this Action, which I currently estimate to be approximately \$13,045.83 and will be
16 no more than \$16,000.00 at the conclusion of matters related to the Settlement. In view of my
17 efforts and risks in pursuing this case these amounts are well within the range of reasonableness
18 and thus warrant this Court's preliminary approval. In addition, based on my experience in
19 wage and hour class action matters, fee awards of approximately one-third of the settlement
20 fund are routinely approved as reasonable. I have been awarded attorneys' fees equaling
21 approximately one-third of the fund in several recent wage and hour class actions, including:
22 *Alvarez v. Gary Grace Enterprises, LP*, Marin County Superior Court, Case No. CIV1002553
23 (one-third of fund); *Calderon v. Greatcall, Inc.*, San Diego Superior Court, Case No. 37-2010-
24 00093743-CU-OE-CTL (one-third of fund); *Butler v. Lexxiom, Inc.*, San Bernardino County
25 Superior Court, Case No. CIVRS1001579 (one-third of fund); *Perez v. Southwest Dealer*
26 *Services, Inc.*, Los Angeles County Superior Court, Case No. BC439253 (one-third of fund);
27 *O'Brien v. Optima Network Services, Inc.*, San Bernardino County Superior Court, Case No.
28 CIVRS1107056 (one-third of fund); *Noyd v. The Cristcat Group, et al.*, Los Angeles County
Superior Court, Case No. BC439558 (one-third of fund); *Huynh v. Carefusion Resources, LLC,*
et al, San Diego Sup.Ct., Case No. 37-2009-00103277-CU-OE-CTL (one-third of fund);
Cunningham v. DPI Specialty Foods West, Inc., Los Angeles Sup.Ct., Case No. BC465017



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

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



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1 numerous occasions, reviewed and analyzed hundreds of pages of data and documents provided
2 by Defendants and obtained through other sources, researched applicable law, and estimates of
3 “damages” for purposes of settlement discussions, among other tasks.

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

9 ***Class Representative Service Payment***

10 63. The Settlement provides that Plaintiff may seek a Class Representative Service
11 Payment of \$15,000.00. This amount is entirely reasonable given Plaintiff’s efforts in this Action
12 and the risks he undertook on behalf of Class Members. Here, Plaintiff has devoted many hours
13 advancing the interests of the Settlement Class. Plaintiff has done this by, among other things,
14 retaining experienced counsel, providing them with information about his work history with
15 Defendants and Defendants’ policies and practices with respect to the wage and hour claims at
16 issue, assisting counsel in identifying witnesses, traveling to and participating in mediation, and
17 being actively involved in the settlement process to ensure a fair result for the Settlement Class
18 as a whole. In doing this, Plaintiff has been exposed to significant risks, including the risk of an
19 order to pay Defendants’ attorneys’ fees and costs if this action had been unsuccessful (*See Labor*
20 *Code* §§ 218.5-218.6). The efforts and risks that Plaintiff undertook on behalf of the Settlement
21 Class shows that the proposed Class Representative Service Payment is fair, adequate, and
22 reasonable, and thus warrant preliminary approval. Plaintiff Justin Lopez’s declaration, filed
23 concurrently with mine, provides further information supporting his request for the Class
24 Representative Service Payment.

25 64. Plaintiff began his investigation and retention of attorneys to pursue the claims at
26 issue on approximately July 26, 2022. Awarding Plaintiff 4.00% of the GSA is entirely reasonable
27 given Plaintiff’s efforts in this case undertaken on behalf of absent Class Members. In this case,
28 Plaintiff has devoted several hours of his time advancing the interests of the Class Members and
also expects to devote additional hours of his time with Class Counsel overseeing the
administration of the Settlement if the Court grants final approval of the Settlement. *See generally*
Declaration of Justin Lopez. Plaintiff has done this by, among other things, retaining experienced



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counsel, providing them with extensive information about his work history with Defendants and Defendants' policies and practices with respect to the wage and hour claims at issue, assisting them in contacting absent Class Members to gather information, participating in a full day of mediation, foregoing pursuit of his individual claims in favor of a fair class-wide resolution, and being actively involved in the settlement process to ensure a fair result for the Class Members as a whole.

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

66. In taking the actions outlined above, Plaintiff has exposed himself to significant risks, including the risk that he could have been ordered to pay Defendants' attorneys' fees and costs if this Action had been unsuccessful (*see* Lab. Code §§ 218.5-218.6), as well as the risk that he could, in the future, face a potentially hostile work environment and worsened career prospects for suing a prior employer for wage and hour violations and serving as the Plaintiff in a class action lawsuit. Additionally, Plaintiff has exposed himself to the risk that he could end up receiving less than Defendants would have paid him at the beginning of the Action via a C.C.P. § 998 offer or other individual settlement offer to drop his class allegations. On many occasions, California courts have ordered wage and hour plaintiffs and would be class representatives to pay outrageous fee and/or cost awards for unsuccessful claims. A few examples are:



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1 a. *Zalewa v. Tempo Research Corp.*, No. B238142, 2013 WL 766535 (CA 2nd Dist.
2 March 1, 2013) (court awarded the employer \$2,210,360 in attorney’s fees to be paid by employee
3 for employee’s unsuccessful suit for unpaid bonuses). A true and correct copy of the court’s order
4 is attached to this declaration as **Exhibit 10**.

5 b. *Cun v. Café Tiramisu LLC*, No. A131241, 2011 WL 5979937 (CA 1st Dist. Nov.
6 30, 2011) (court ordered the employee to pay \$36,612.50 in attorney’s fees and costs to employer
7 for unsuccessful suit for unpaid wages). A true and correct copy of the court’s order is attached
8 to this declaration as **Exhibit 11**.

9 c. *Csaszi v. Sharp Healthcare*, No. D038558, 2003 WL 352422 (CA 4th Dist. Feb.
10 18, 2003) (court ordered the employee to pay \$20,269 in attorney’s fees and costs to the employer
11 for unsuccessful suit for unpaid wages and overtime). A true and correct copy of the court’s order
12 is attached to this declaration as **Exhibit 12**.

13 d. *Villalobos v. Guertin*, No. CIV. S–07–2778 LKK/GGH, 2009 WL 4718721
14 (U.S.D.C. Eastern Dist. Dec. 3, 2009) (court ordered Plaintiff’s counsel to pay \$21,180 in
15 attorney’s fees and \$1,525.80 in costs to defense counsel for unpaid wages). A true and correct
16 copy of the court’s order is attached to this declaration as **Exhibit 13**.

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

23 67. As I explain further below, Plaintiff’s individual share of the Net Settlement
24 Amount will be less than that of some absent Settlement Class Members. Under the Settlement,
25 Settlement Class Members will receive a *pro rata* distribution of the Settlement proceeds
26 proportionate to the period of time he or she worked for Defendants during the Class Period,
27 compared to the total of the total period of time worked by all Settlement Class Members during
28 the Class Period, as reflected by Defendants’ records. Because Plaintiff may have been employed
for a shorter period during the Class Period, some Class Members will have worked more Pay
Periods than Plaintiff and, as a result, receive larger shares in the recovery – *even though they did*
not actively participate in the lawsuit. While this is a risk that Plaintiff assumed when he brought



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Los Angeles, CA 90067

1 his lawsuit, it is unfair to limit Plaintiff's Class Representative Service Payment to an amount not
2 much greater than an absent Class Members' share of the recovery. To encourage employees like
3 Plaintiff to don the helm of class champions (and thereby advance the important public policies
4 behind class actions), the Court should award something substantial to Plaintiff for his readiness
5 to receive less than absent Class Members while assuming all the risk and delay of payment.

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

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

21 70. Plaintiff faced the risk that he could face worsened career prospects for suing a
22 former employer for wage and hour violations and serving as the Plaintiff in a class action lawsuit.
23 *See generally* Declaration of Justin Lopez. Because he filed a lawsuit in the California Superior
24 Court, a public record now exists that Plaintiff sued his employer for Labor Code violations – a
25 fact that won't be lost on prospective employers considering him for a job. Common sense dictates
26 that an employer will think twice about hiring someone who sued his last employer. Legal experts
27 have recognized this fact. Attached to this declaration as **Exhibit 14** is a true and correct copy of
28 the article "Employees: Better Think Twice Before Suing Your Employer (Four Reasons Why)." Attached to this declaration as **Exhibit 15** is a true and correct copy of the article "What To Expect If You Sue Your Employer." California even has laws to address this risk: Labor Code § 1102.5 prohibits retaliation against employees who speak up about Labor Code violations and Labor



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Code § 98.6 prohibits discrimination against employees who bring Labor Code violations to the attention of the Labor Commissioner. Thus, the risk to Plaintiff's future employment shows that the Class Representative Service Payment sought is fair, adequate, and reasonable, and warrants final approval of the Court.

71. Class Counsel depended on Plaintiff's input to prosecute this lawsuit. Plaintiff made this case possible for a number of reasons. First, Plaintiff challenged his employers on an unlawful practice that led to Defendants paying a large percentage of the unpaid wages in question plus interest to the remainder of their employees – in spite of Defendants' financial limitations. Plaintiff provided Class Counsel with detailed descriptions of how Defendants' business operates, the hours and scheduling of employees, and the nature of the work Class Members performed. *See generally* Declaration of Justin Lopez.

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

73. In view of the risks, Plaintiff achieved a result the Class can be proud of. There were significant risks (outlined in the preliminary approval motion) to any award on behalf of the Class Members and still Plaintiff achieved a settlement of \$375,000.00. This outstanding result calls for significant awards to Plaintiff for making the result possible. If the Court is disinclined to award Plaintiff all or part of the Class Representative Service Payment requested, Class Counsel request that the Court allocate the difference to Plaintiff from Class Counsel's requested attorney fee award.

Class Member and Aggrieved Employee Settlement Share Estimates

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

75. **Individual Class Payments.** At \$15.27 per hour (the average Class Member's hourly wage), the average estimated Individual Class Payment to Settlement Class Members is the equivalent of over 64 hours of unpaid wages (the primary remedies sought) (\$983.25 /\$15.27 =64.39 hours). Thus, this is a result the Class can be proud of in view of the significant risks.

76. Plaintiff estimates that there are 6,290 Pay Periods for the Class Period. So, each Pay Period has a value of approximately \$32.11 (\$202,000.00 Net Settlement Amount / 6,290



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1 Pay Periods = \$32.11). Plaintiff had 182 Pay Periods during the Class Period. Based on this, it is
2 anticipated that Plaintiff Justin Lopez will receive an Individual Class Payment of approximately
3 \$5,844.02 as a Settlement Class Member (182 Pay Periods x \$32.11 = \$5,844.02) while the
4 average estimated Individual Class Payment to Settlement Class Members will be approximately
5 \$966.51. Some Class Members – those who worked more Pay Periods during the Class Period -
6 will receive more, and some less. The highest possible Individual Class Payment to a Settlement
7 Class Member (i.e., to those who qualify for all Pay Periods in the Class Period) will be
8 approximately \$8,468.72. The lowest possible Individual Class Payment to a Settlement Class
9 Member (i.e., to those who qualify for only one Pay Period in the Class Period) will be
10 approximately \$32.11. Some Class Members – those who worked more Pay Periods during the
11 Class Period - will receive more, and some less.

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

17 78. **Individual PAGA Payments.** I estimate that the average Aggrieved
18 Employee or PAGA member Individual PAGA Payment will be \$6.67. *Id.* Plaintiff's
19 Individual PAGA Payment, his individual share of 25% of the PAGA Penalties, will be less than
20 that of some absent Aggrieved Employee or PAGA members. Under the Settlement, each
21 Aggrieved Employee or PAGA member will receive a *pro rata* distribution of 25% of the
22 PAGA Penalties proportionate to the number of paychecks he or she had with Defendants during
23 the PAGA Period, compared to the total of all paychecks of all Aggrieved Employee or PAGA
24 members during the PAGA Period, as reflected by Defendants' records. Plaintiff estimates that
25 there are 2,900 Aggrieved Employee or PAGA member paychecks for the PAGA Period. So,
26 each Aggrieved Employee or PAGA member paycheck from the PAGA Period has a value of
27 approximately \$0.34 (25% of \$4,000.00 in PAGA Penalties / 2,900 Aggrieved Employee or
28 PAGA member paychecks = \$0.34). It is anticipated that Plaintiff Justin Lopez will receive an
Individual PAGA Payment of approximately \$9.18 as an Aggrieved Employee or PAGA member
(27 paychecks during the PAGA Period x \$0.34 paycheck value = \$9.18) while the average
estimated Individual PAGA Payment to an Aggrieved Employee or PAGA member will be



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1 approximately \$6.67 (\$1,000.00, 25% of PAGA Penalties / Aggrieved Employee or PAGA
2 member paychecks during the PAGA Period = \$6.67 Individual PAGA Payment). Some
3 Aggrieved Employee or PAGA members – those who had more paychecks during the PAGA
4 Period - will receive more, and some less. The highest possible Individual PAGA Payment to an
5 Aggrieved Employee or PAGA member (i.e., to those who qualify for all paychecks in the PAGA
6 Period) will be approximately \$109.41. The lowest possible Individual PAGA Payment to an
7 Aggrieved Employee or PAGA member (i.e., to those who qualify for only one paycheck in the
8 PAGA Period) will be approximately \$0.34.

8 ***Proposed Preliminary Approval Order***

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

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

24 81. **Exclusion Form.** The proposed Preliminary Approval Order provides that the
25 Class Notice shall be accompanied by the Election Not to Participate in Settlement form
26 (Exhibit B to the Preliminary Approval Order), the Pay Period Dispute form (Exhibit C to the
27 Preliminary Approval Order), and the Objection form (Exhibit D to the Preliminary Approval
28 Order) in English with Spanish translations. Based on my investigation, the Class Members all
understand English, Spanish or both. The proposed Preliminary Approval Order provides that
any exclusion form shall be submitted to the Administrator rather than filed with the Court.



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1 The proposed Preliminary Approval Order does not require the Class Member to send copies
2 of the exclusion form to counsel, but requires the Administrator to do so. The proposed
3 Preliminary Approval Order provides that the Administrator shall file a declaration
4 concurrently with the filing of Plaintiff's motion for final approval with a copy of every
5 exclusion form received by the Administrator.

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

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

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

24 85. **No Injunction against Filing Claims.** Neither the proposed Preliminary
25 Approval Order nor the Class Notice purports to enjoin the Class Members from filing any
26 actions or administrative claims or proceedings pending the final hearing on the settlement,
27 or for any other period.

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

The Notice Packet

87. The Settlement requires distribution of the Notice by First Class U.S. mail only.
Settlement, ¶ 8.4. Although there are current employee Class Members, it is uncertain whether



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

17 88. The Settlement does not require Class Members to submit claims to
18 participate.

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

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

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

28 92. The Class Notice advises the Class Members of where they can find the
Settlement Agreement, by describing the full title and filing date either of the settlement
agreement and this declaration to which the Settlement Agreement is attached. The Class
Notice also states the address of the courthouse to which the case is assigned, and the address



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of the court's website at which the case file can be viewed on-line.

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

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

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

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

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

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

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

Administrator Duties

100. The duties of the Settlement Administrator are spelled out in the Settlement and in the bid provided by Phoenix Class Action Settlement Solutions, Inc. a true and correct copy of which is attached hereto as **Exhibit 16**.



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Administration Costs

101. With regard to the settlement administration costs provision (Settlement § 3.2.3), it is reasonable. Before agreeing to Phoenix Class Action Settlement Solutions, Inc. the Parties sought and reviewed bids from other reputable third-party administrators: (A) CPT Group, Inc. = \$10,000.00; (B) Phoenix Class Action Settlement Solutions, Inc. = \$13,000.00; and C) ILYM Group, Inc. = \$7,500.00. A true and correct copy of the bid from ILYM Group, Inc. is attached hereto as **Exhibit 17**. A true and correct copy of the bid from CPT Group, Inc. is attached hereto as **Exhibit 18**. The bid provided by Phoenix Class Action Settlement Solutions, Inc. is competitive. Thus, the settlement administration costs provision should be given preliminary approval.

102. [OMITED].

PAGA Provisions of the Settlement

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

104. The Settlement provides that 25% of the PAGA Penalties shall be distributed among all Aggrieved Employee or PAGA members, even those who opt out of the Class Settlement. See Settlement, ¶ 3.2.5.

105. The Settlement states as follows with regard to the release of the PAGA claim: Release by Participating Class Members Who Are Not Aggrieved Employees: All Participating Class Members, on behalf of himself and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims stated in the Operative Complaint and those based solely upon the facts alleged in the Operative Complaint. Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period. Settlement 6.2.

Release of PAGA Claim. Plaintiff releases all claims for civil penalties that could have been sought by the Labor Commissioner for the violations identified in Plaintiff's pre-filing letter to the LWDA; Plaintiff does not release the claim for wages or damages of any Aggrieved Employee unless such Aggrieved Employee is a Participating Class Member. Settlement 6.3.



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Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

EXHIBIT 1

1 DAVID GLENN SPIVAK (SBN 179684)

david@spivaklaw.com

2 LAUREN R. DAVIS (SBN 245366)

lauren@spivaklaw.com

3 THE SPIVAK LAW FIRM

4 8605 Santa Monica Bl

PMB 42554

5 West Hollywood, CA 90069

Telephone: (213) 725-9094

6 Facsimile: (213) 634-2485

7 Attorneys for Plaintiff(s),

8 JUSTIN ERIC LOPEZ, and all others similarly situated

9 (Additional attorneys for parties on following page)

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

11 **FOR THE COUNTY OF LOS ANGELES**

12 **(UNLIMITED JURISDICTION)**

13 JUSTIN ERIC LOPEZ, on behalf of himself and
14 all others similarly situated, and as “aggrieved
15 employees” on behalf of other “aggrieved
16 employees” under the Labor Code Private
Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 EDWARD WALTER SUNSERI, a natural
20 person doing business as Sunseri’s Bar and
21 Beverage Catering; MICHAEL SERENO, a
22 natural person; and DOES 1–50, inclusive,

23 *Defendant(s).*

Case No. 22STCV37939

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

Action filed: December 05, 2022

Dept: Dept. 14, The Honorable
Kenneth R. Freeman

ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

WALTER L. HAINES (SBN 71075)
walter@uelglaw.com
UNITED EMPLOYEES LAW GROUP
8605 Santa Monica Bl.
PMB 63354
West Hollywood, CA 90069
Telephone: (562) 256-1047
Facsimile: (562) 256-1006

Attorneys for Plaintiff(s),
JUSTIN ERIC LOPEZ, and all others similarly situated

ATTORNEYS FOR DEFENDANT(S)

RONALD W. NOVOTNY (SBN 100041)
rnovotny@aalrr.com
JOSHUA N. LANGE (SBN 269016)
Joshua.Lange@aalrr.com

ATKINSON, ANDELSON, LOYA, RUDD & ROMO
12800 Center Court Drive South
Suite 300
Cerritos CA 90703-9364
Telephone: (562) 653-3200
Facsimile: (562) 653-3655

Attorneys for Defendant(s),
EDWARD WALTER SUNSERI and MICHAEL SERENO

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between
2 plaintiff Justin Eric Lopez (“Plaintiff”) and defendants Edward Walter Sunseri and Michael
3 Sereno (collectively “Defendants”). The Agreement refers to Plaintiff and Defendants
4 collectively as “Parties,” or individually as “Party.”

5 **1. DEFINITIONS.**

6 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against
7 Edward Walter Sunseri and Michael Sereno captioned “Justin Eric Lopez on behalf of himself,
8 and all others similarly situated, and as ‘aggrieved employees’ on behalf of other ‘aggrieved
9 employees’ under the Labor Code Private Attorneys General Act of 2004, *Plaintiff(s)*, vs. Edward
10 Walter Sunseri, Michael Sereno; AND DOES 1 through 50, inclusive, *Defendant(s)*,” Case No.
11 22STCV37939 initiated on December 05, 2022 and pending in Superior Court of the State of
12 California, County of Los Angeles.

13 1.2. “Administrator” means Phoenix Class Action Administration Solutions, Inc., the
14 neutral entity the Parties have agreed to appoint to administer the Settlement.

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

19 1.4. “Aggrieved Employee” means a person employed by Defendants in California and
20 classified as an hourly, non-exempt who worked for Defendants during the PAGA Period.

21 1.5. “Class” means all persons employed by Defendants in California and classified as
22 an hourly, non-exempt who worked for Defendants during the Class Period.

23 1.6. “Class Counsel” means David Glenn Spivak of The Spivak Law Firm and Walter
24 L. Haines of United Employees Law Group.

25 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment”
26 mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and
27 expenses, respectively, incurred to prosecute the Action.

28 1.8. “Class Data” means Class Member identifying information in Defendants’

1 possession including the Class Member's name, last-known mailing address, Social Security
2 number, and number of Class Period Pay Periods and PAGA Pay Periods.

3 1.9. "Class Member" or "Settlement Class Member" means a member of the Class, as
4 either a Participating Class Member or Non-Participating Class Member (including a Non-
5 Participating Class Member who qualifies as an Aggrieved Employee).

6 1.10. "Class Member Address Search" means the Administrator's investigation and
7 search for current Class Member mailing addresses using all reasonably available sources,
8 methods and means including, but not limited to, the National Change of Address database, skip
9 traces, and direct contact by the Administrator with Class Members.

10 1.11. "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION
11 SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to
12 Class Members in English with a Spanish translation in the form, without material variation,
13 attached as Exhibit A and incorporated by reference into this Agreement.

14 1.12. "Class Period" means the period from December 06, 2018 to December 31, 2023.

15 1.13. "Class representative" means the named Plaintiff in the operative complaint in the
16 Action seeking Court approval to serve as Class Representative.

17 1.14. "Class Representative Service Payment" means the payment to the Class
18 Representative for initiating the Action and providing services in support of the Action.

19 1.15. "Court" means the Superior Court of California, County of Los Angeles.

20 1.16. "Defendants" means named Defendants Edward Walter Sunseri and Michael
21 Sereno.

22 1.17. "Defense Counsel" means Ronald W. Novotny and Joshua N. Lange of Atkinson,
23 Andelson, Loya, Rudd & Romo.

24 1.18. "Effective Date" means: the later of: (a) if any timely objections are filed and not
25 subsequently withdrawn, the 60th day after the Court enters an order granting final approval of
26 the Joint Stipulation of Class Action and PAGA Settlement; (b) if any timely appeals are filed,
27 the date of the resolution (or withdrawal) of any such appeal in a way that does not alter the terms
28 of the Settlement; or (c) if no timely objections are filed, or if all objections are withdrawn, the

1 date upon which the Court enters an order granting final approval of the Joint Stipulation of Class
2 Action and PAGA Settlement.

3 1.19. “Final Approval” means the Court’s order granting final approval of the
4 Settlement.

5 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final
6 Approval of the Settlement.

7 1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final
8 Approval of the Settlement. A proposed Final Judgment form is attached as Exhibit F.

9 1.22. “Gross Settlement Amount” means \$375,000.00 which is the total amount
10 Defendants agree to pay under the Settlement except as provided in Paragraph 9 below. The Gross
11 Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments,
12 the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative
13 Service Payment and the Administrator’s Expenses.

14 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata
15 share of the Net Settlement Amount calculated according to the number of Pay Periods worked
16 during the Class Period.

17 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of
18 25% of the PAGA Penalties calculated according to the number of Pay Periods worked during the
19 PAGA Period.

20 1.25. “Judgment” means the judgment entered by the Court based upon the Final
21 Approval.

22 1.26. “LWDA” means the California Labor and Workforce Development Agency, the
23 agency entitled, under Labor Code section 2699, subd. (i), to the payment specified in section
24 1.27.

25 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the
26 LWDA under Labor Code section 2699, subd. (i).

27 1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following
28 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA

1 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
2 Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be
3 paid to Participating Class Members as Individual Class Payments.

4 1.29. “Non-Participating Class Member” means any Class Member who opts out of the
5 Settlement by sending the Administrator a valid and timely Request for Exclusion.

6 1.30. “Notice Packet” means the Class Notice (Exhibit A), the Election Not to
7 Participate in Settlement form (Exhibit B), the Work Week Dispute form (Exhibit C), and the
8 Objection form (Exhibit D) in English with Spanish translations.

9 1.31. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee
10 worked for Defendants for at least one day during the PAGA Period.

11 1.32. “PAGA Period” means the period from November 23, 2021 to December 31, 2023.

12 1.33. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

13 1.34. “PAGA Notice” means Plaintiff’s November 23, 2022 letter to Defendants and
14 the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

15 1.35. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from
16 the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$1,000.00) and the
17 75% to LWDA (\$3,000.00) in settlement of PAGA claims.

18 1.36. “Participating Class Member” means a Class Member who does not submit a valid
19 and timely Request for Exclusion from the Settlement.

20 1.37. “Plaintiff” means Justin Eric Lopez, the named Plaintiff in the Action.

21 1.38. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval
22 of the Settlement.

23 1.39. “Preliminary Approval Order” means the proposed Order Granting Preliminary
24 Approval and Approval of PAGA Settlement. A proposed Preliminary Approval Order form is
25 attached as Exhibit E.

26 1.40. “Released Class Claims” means the claims being released as described in
27 Paragraph 6.2 below.

28 1.41. “Released PAGA Claims” means the claims being released as described in

Paragraph 6.2 below.

1.42. “Released Parties” means: Defendants, and their current and former officers, directors, employees, and agents, and the successors and assigns, of all such entities and individuals.

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

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

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

1.46. “Pay Period” means any week during which a Class Member worked for Defendants for at least one day, during the Class Period.

1.47. A Pay Period Dispute form is attached as Exhibit C.

2. RECITALS.

2.1. On December 05, 2022, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendants for failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to issue proper wage statements, failure to timely pay wages, and related claims. On February 10, 2023, Plaintiff filed a First Amended Complaint alleging causes of action against Defendants for failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to issue proper wage statements, failure to timely pay wages, and for civil penalties under the California Private Attorneys’ General Act (“PAGA”). The First Amended Complaint is the operative complaint in the Action (the “Operative Complaint.”) Defendants deny the allegations in the Operative

1 Complaint, deny any failure to comply with the laws identified in in the Operative Complaint and
2 deny any and all liability for the causes of action alleged.

3 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written
4 notice to Defendants and the LWDA by sending the PAGA Notice.

5 2.3. On July 28, 2023, the Parties participated in an all-day mediation presided over
6 by Ms. Monique Ngo-Bonnici Esq. Continuing negotiations between the Parties after mediation
7 led to this Agreement to settle the Action including the production of detailed financial
8 information from the Defendants.

9 2.4. Prior to negotiating the Settlement, Plaintiff obtained, through formal and
10 informal discovery, the number of comparable employees, the number of pay periods, average
11 rates of pay, sample time records, sample payroll records, sample schedules, written policies,
12 financial records, and related information. Plaintiff's investigation was sufficient to satisfy the
13 criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794,
14 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130
15 ("*Dunk/Kullar*").

16 2.5. The Court has not granted class certification.

17 2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware
18 of any other pending matter or action asserting claims that will be extinguished or affected by the
19 Settlement.

20 **3. MONETARY TERMS.**

21 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below,
22 Defendants promise to pay \$375,000.00 and no more as the Gross Settlement Amount and to
23 separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual
24 Class Payments. Defendants have no obligation to pay the Gross Settlement Amount (or any
25 payroll taxes) prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator
26 will disburse the entire Gross Settlement Amount without asking or requiring Participating Class
27 Members or Aggrieved Employees to submit any claim as a condition of payment. None of the
28 Gross Settlement Amount will revert to Defendants.

1 3.2. Payments from the Gross Settlement Amount. The Administrator will make and
2 deduct the following payments from the Gross Settlement Amount, in the amounts specified by
3 the Court in the Final Approval:

4 3.2.1. To Plaintiff: Class Representative Service Payment to the Class
5 Representative of not more than \$15,000.00 each (in addition to any Individual Class Payments
6 and any Individual PAGA Payments the Class Representative is entitled to receive as a
7 Participating Class Member and Aggrieved Employee). Defendants will not oppose Plaintiff's
8 request for a Class Representative Service Payment that does not exceed this amount. As part of
9 the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will
10 seek Court approval for any Class Representative Service Payment no later than 16 court days
11 prior to the Final Approval Hearing. If the Court approves a Class Representative Service
12 Payment less than the amount requested, the Administrator will retain the remainder in the Net
13 Settlement Amount. The Administrator will pay the Class Representative Service Payment using
14 IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the
15 Class Representative Service Payment.

16 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than
17 33.33%, which is currently estimated to be \$125,000.00 and a Class Counsel Litigation Expenses
18 Payment of not more than \$12,500.00. Defendants will not oppose requests for these payments
19 provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for
20 Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days
21 prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or
22 a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator
23 will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability
24 to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class
25 Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator
26 will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more
27 IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the
28 Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds

1 Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any
2 division or sharing of any of these Payments.

3 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
4 \$13,000.00 except for a showing of good cause and as approved by the Court. To the extent the
5 Administration Expenses are less, or the Court approves payment less than \$13,000.00, the
6 Administrator will retain the remainder in the Net Settlement Amount.

7 3.2.4. To Each Participating Class Member: An Individual Class Payment
8 calculated by (a) dividing the Net Settlement Amount by the total number of Pay Periods worked
9 by all Participating Class Members and Aggrieved Employees during the Class Period and (b)
10 multiplying the result by each Participating Class Member's Pay Periods.

11 3.2.4.1. Tax Allocation of Individual Class Payments. 33.33% of
12 each Participating Class Member's Individual Class Payment will be allocated to settlement of
13 wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be
14 reported on an IRS W-2 Form. The 66.67% of each Participating Class Member's Individual
15 Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage
16 Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on
17 IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any
18 employee taxes owed on their Individual Class Payment.

19 3.2.4.2. Effect of Non-Participating Class Members on Calculation
20 of Individual Class Payments. Non-Participating Class Members will not receive any Individual
21 Class Payments. The Administrator will retain amounts equal to their Individual Class Payments
22 in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

23 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the
24 amount of \$4,000.00 to be paid from the Gross Settlement Amount, with 75% (\$3,000.00)
25 allocated to the LWDA PAGA Payment and 25% (\$1,000.00) allocated to the Individual PAGA
26 Payments.

27 3.2.5.1. The Administrator will calculate each Individual PAGA Payment
28 by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$1,000.00

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

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

8 **4. SETTLEMENT FUNDING AND PAYMENTS.**

9 4.1. Class Pay Periods and Aggrieved Employee Pay Periods. Based on a review of
10 their records to date, Defendants estimate there are 209 Class Members who collectively worked
11 a total of 6,290 Pay Periods, and 150 Aggrieved Employees who worked a total of 2,900 PAGA
12 Pay Periods.

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

25 4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross
26 Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll
27 taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date.

28 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendants

1 fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class
2 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
3 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
4 Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees
5 Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service
6 Payment shall not precede disbursement of Individual Class Payments and Individual PAGA
7 Payments.

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

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

28 4.4.3. For any Class Member whose Individual Class Payment check or

1 Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator
2 shall transmit the funds represented by such checks to the California Controller's Unclaimed
3 Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to
4 the requirements of California Code of Civil Procedure Section 384, subd. (b).

5 4.4.4. The payment of Individual Class Payments and Individual PAGA
6 Payments shall not obligate Defendants to confer any additional benefits or make any additional
7 payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in
8 this Agreement.

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

13 1. Plaintiff's Release. Plaintiff and his respective former and present
14 spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns
15 generally, release and discharge Released Parties from all claims, transactions, or occurrences
16 that occurred during the Class Period, including, but not limited to: (a) all claims that were, or
17 reasonably could have been, alleged, based on the facts contained, in the Operative Complaint
18 and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts
19 contained in the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the
20 Action and released under 6.2, below. "Released Class Claims" specifically means any and all
21 claims, causes of action, damages, wages, benefits, expenses, penalties, debts, liabilities,
22 demands, obligations, attorneys' fees, costs, and any other form of relief or remedy in law,
23 equity, or whatever kind of nature, arising from the claims pled in the Action and any claims
24 based on facts alleged in the operative complaint, including, all claims for unpaid overtime, meal
25 period violations, rest break violations, unpaid minimum wage, failure to pay all wages during
26 and at termination of employment, failure to provide accurate wage statements, failure to
27 maintain accurate records, failure to reimburse necessary business expenses, and unlawful
28 business practices under the California Labor Code and/or the California Business and

1 Professions Code, including all claims for restitution or equitable relief, liquidated damages,
2 penalties of any nature whatsoever, attorneys' fees and costs, asserted or that might have been
3 asserted by any Class Member against the Released Parties based on the facts or claims alleged
4 in the Action during the Class Period. "Released Class Claims" also includes claims meeting
5 the above definition(s) under any and all applicable statutes, including without limitation
6 California Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226.3, 226.7, 510, 512, 558, 1174,
7 1174.5, 1194, 1194.2, 1197, 1197.1, and 1198; the California Unfair Competition Act, and in
8 particular, California Business and Professions Code §§ 17200 *et seq.* ("Release.") Plaintiff's
9 Release does not extend to any claims or actions to enforce this Agreement, or to any claims for
10 vested benefits, unemployment benefits, disability benefits, social security benefits, workers'
11 compensation benefits that arose at any time, or based on occurrences outside the Class Period.
12 Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to,
13 the facts or law that Plaintiff now know or believe to be true but agrees, nonetheless, that
14 Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different
15 or additional facts or Plaintiff's discovery of them.

16 6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
17 purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights,
18 and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

24
25 6.2 Release by Participating Class Members Who Are Not Aggrieved Employees:
26 All Participating Class Members, on behalf of himself and their respective former and present
27 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released
28 Parties from all claims stated in the Operative Complaint and those based solely upon the facts

1 alleged in the Operative Complaint. Except as set forth in Section 6.3 of this Agreement,
2 Participating Class Members do not release any other claims, including claims for vested benefits,
3 wrongful termination, violation of the Fair Employment and Housing Act, unemployment
4 insurance, disability, social security, workers' compensation, or claims based on facts occurring
5 outside the Class Period.

6 6.3 Release of PAGA Claim. Plaintiff releases all claims for civil penalties that
7 could have been sought by the Labor Commissioner for the violations identified in Plaintiff's
8 pre-filing letter to the LWDA; Plaintiff does not release the claim for wages or damages of any
9 Aggrieved Employee unless such Aggrieved Employee is a Participating Class Member.

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

14 7.1 Defendants' Declaration in Support of Preliminary Approval. Within ten (10)
15 days of the full execution of this Agreement, Defendants will prepare and deliver to Class Counsel
16 a signed Declaration from Defendants and Defense Counsel disclosing all facts relevant to any
17 actual or potential conflicts of interest with the Administrator. In their Declarations, Defense
18 Counsel and Defendants shall aver that they are not aware of any other pending matter or action
19 asserting claims that will be extinguished or adversely affected by the Settlement.

20 7.2 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel
21 all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice,
22 and memorandum in support, of the Motion for Preliminary Approval that includes an analysis
23 of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under
24 Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval
25 and Approval of PAGA Settlement; (iii) a draft proposed Notice Packet; (iv) a signed declaration
26 from the Administrator attaching its "not to exceed" bid for administering the Settlement and
27 attesting to its willingness to serve; competency; operative procedures for protecting the security
28 of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other

misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; 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. (1)(1)), this Agreement (Labor Code section 2699, subd. (1)(2)); (vi) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, or the Administrator. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

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

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

///

1 **8. SETTLEMENT ADMINISTRATION.**

2 8.1 Selection of Administrator. The Parties have jointly selected Phoenix Class
3 Action Settlement Solutions, Inc. to serve as the Administrator and verified that, as a condition of
4 appointment, Phoenix Class Action Settlement Solutions, Inc. agrees to be bound by this
5 Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for
6 payment of Administration Expenses. The Parties and their Counsel represent that they have no
7 interest or relationship, financial or otherwise, with the Administrator other than a professional
8 relationship arising out of prior experiences administering settlements.

9 8.2 Employer Identification Number. The Administrator shall have and use its own
10 Employer Identification Number for purposes of calculating payroll tax withholdings and
11 providing reports state and federal tax authorities.

12 8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund
13 that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury
14 Regulation section 468B-1.

15 8.4 Notice to Class Members.

16 8.4.1 No later than three (3) business days after receipt of the Class Data, the
17 Administrator shall notify Class Counsel that the list has been received and state the number of
18 Class Members, PAGA Members, Pay Periods in the Class Data.

19 8.4.2 Using best efforts to perform as soon as possible, and in no event later than
20 14 days after receiving the Class Data, the Administrator will send to all Class Members identified
21 in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Notice Packet
22 with Spanish translation, if applicable substantially in the forms attached to this Agreement as
23 **Exhibits A, B, C, and D.** The first page of the Class Notice shall prominently estimate the dollar
24 amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class
25 Member, and the number of Class Pay Periods and PAGA Pay Periods (if applicable) used to calculate
26 these amounts. Before mailing Notice Packets, the Administrator shall update Class Member
27 addresses using the National Change of Address database.

28 8.4.3 Not later than 3 business days after the Administrator’s receipt of any

1 Notice Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice
2 Packet using any forwarding address provided by the USPS. If the USPS does not provide a
3 forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail
4 the Notice Packet to the most current address obtained. The Administrator has no obligation to
5 make further attempts to locate or send Notice Packet to Class Members whose Notice Packet is
6 returned by the USPS a second time.

7 8.4.4 The deadlines for Class Members' written objections, Challenges to Pay
8 Periods (disputes), and Requests for Exclusion will be extended an additional 14 days beyond the
9 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed.
10 The Administrator will inform the Class Member of the extended deadline with the re-mailed
11 Notice Packet.

12 8.4.5 If the Administrator, Defendants or Class Counsel is contacted by or
13 otherwise discovers any persons who believe they should have been included in the Class Data
14 and should have received Notice Packet, the Parties will expeditiously meet and confer in person
15 or by telephone, and in good faith, in an effort to agree on whether to include them as Class
16 Members. If the Parties agree, such persons will be Class Members entitled to the same rights as
17 other Class Members, and the Administrator will send, via email or overnight delivery, a Class
18 Notice requiring them to exercise options under this Agreement not later than 14 days after receipt
19 of Class Notice, or the deadline dates in the Class Notice, which ever are later.

20 8.5 Requests for Exclusion (Opt-Outs).

21 8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class
22 Settlement must send the Administrator, by fax, email, or mail, a signed written Request for
23 Exclusion not later than 60 days after the Administrator mails the Notice Packet (plus an
24 additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for
25 Exclusion is a letter from a Class Member or his/her representative that reasonably communicates
26 the Class Member's election to be excluded from the Settlement and includes the Class Member's
27 name, address and email address or telephone number. To be valid, a Request for Exclusion must
28 be timely faxed, emailed, or postmarked by the Response Deadline. An Election Not to Participate

1 in Settlement form, attached as Exhibit B, may be used for this purpose but is not required.

2 8.5.2 The Administrator may not reject a Request for Exclusion as invalid
3 because it fails to contain all the information specified in the Class Notice. The Administrator
4 shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the
5 identity of the person as a Class Member and the Class Member's desire to be excluded. The
6 Administrator's determination shall be final and not appealable or otherwise susceptible to
7 challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion,
8 the Administrator may demand additional proof of the Class Member's identity. The
9 Administrator's determination of authenticity shall be final and not appealable or otherwise
10 susceptible to challenge.

11 8.5.3 Every Class Member who does not submit a timely and valid Request for
12 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all
13 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
14 Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the
15 Participating Class Member actually receives the Class Notice or objects to the Settlement.

16 8.5.4 Every Class Member who submits a valid and timely Request for
17 Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment
18 or have the right to object to the class action components of the Settlement. Aggrieved Employees
19 are eligible for an Individual PAGA Payment.

20 8.6 Challenges to Calculation of Pay Periods. Each Class Member shall have 60 days
21 after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members
22 whose Notice Packet is re-mailed) to challenge the number of Class Pay Periods and PAGA Pay
23 Periods (if any) allocated to the Class Member in the Class Notice. This is also known as a dispute.
24 Pay Period Dispute form, attached as Exhibit C, may be used for this purpose but is not required.
25 The Class Member may challenge the allocation by communicating with the Administrator via
26 fax, email or mail. The Administrator must encourage the challenging Class Member to submit
27 supporting documentation. In the absence of any contrary documentation, the Administrator is
28 entitled to presume that the Pay Periods contained in the Class Notice are correct so long as they

1 are consistent with the Class Data. The Administrator's determination of each Class Member's
2 allocation of Pay Periods shall be final and not appealable or otherwise susceptible to challenge.
3 The Administrator shall promptly provide copies of all challenges to calculation of Pay Periods
4 and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination
5 the challenges.

6 8.7 Objections to Settlement.

7 8.7.1 Only Participating Class Members may object to the class action
8 components of the Settlement and/or this Agreement, including contesting the fairness of the
9 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel
10 Litigation Expenses Payment and/or Class Representative Service Payment.

11 8.7.2 Participating Class Members may send written objections to the
12 Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear
13 in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval
14 Hearing. A Participating Class Member who elects to send a written objection to the
15 Administrator must do so not later than 60 days after the Administrator's mailing of the Notice
16 Packet (plus an additional 14 days for Class Members whose Notice Packet was re-mailed). The
17 Objection form attached as Exhibit D may be used for this purpose but is not required.

18 8.7.3 Non-Participating Class Members have no right to object to any of the class
19 action components of the Settlement.

20 8.8 Administrator Duties. The Administrator has a duty to perform or observe all
21 tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

22 8.8.1 Website, Email Address and Toll-Free Number. The Administrator will
23 establish and maintain and use an internet website to post information of interest to Class
24 Members including the date, time and location for the Final Approval Hearing and copies of the
25 Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Notice
26 Packet, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class
27 Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final
28 Approval and the Judgment. The Administrator will also maintain and monitor an email address

1 and a toll-free telephone number to receive Class Member calls, faxes and emails.

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

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

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

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

1 number of written objections and attach the Exclusion List. The Administrator will supplement
2 its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible
3 for filing the Administrator's declaration(s) in Court.

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

11 **9. DEFENDANTS' RIGHT TO WITHDRAW.** If the number of valid Requests for
12 Exclusion identified in the Exclusion List exceeds 10.00% of the total of all Class Members,
13 Defendants may, but are not obligated, elect to withdraw from the Settlement. The Parties agree
14 that, if Defendants withdraw, the Settlement shall be void ab initio, have no force or effect
15 whatsoever, and that neither Party will have any further obligation to perform under this
16 Agreement; provided, however, Defendants will remain responsible for paying all Settlement
17 Administration Expenses incurred to that point. Defendants must notify Class Counsel and the
18 Court of their election to withdraw not later than 7 days after the Administrator sends the final
19 Exclusion List to Defense Counsel; late elections will have no effect.

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

28 10.1 Response to Objections. Each Party retains the right to respond to any objection

1 raised by a Participating Class Member, including the right to file responsive documents in Court
2 no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted
3 by the Court.

4 10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
5 Approval on any material change to the Settlement (including, but not limited to, the scope of
6 release to be granted by Class Members), the Parties will expeditiously work together in good
7 faith to address the Court's concerns by revising the Agreement as necessary to obtain Final
8 Approval. The Court's decision to award less than the amounts requested for the Class
9 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation
10 Expenses Payment and/or Administrator Expenses Payment shall not constitute a material
11 modification to the Agreement within the meaning of this paragraph.

12 10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of
13 Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for
14 purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
15 administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

16 10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms
17 and conditions of this Agreement, specifically including the Class Counsel Fees Payment and
18 Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their
19 respective counsel, and all Participating Class Members who did not object to the Settlement as
20 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to
21 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions
22 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver
23 of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the
24 Parties' obligations to perform under this Agreement will be suspended until such time as the
25 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect
26 the amount of the Net Settlement Amount.

27 10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If
28 the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a

1 material modification of this Agreement (including, but not limited to, the scope of release to be
2 granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless
3 expeditiously work together in good faith to address the appellate court's concerns and to obtain
4 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration
5 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify
6 the Court's award of the Class Representative Service Payments or any payments to Class
7 Counsel shall not constitute a material modification of the Judgment within the meaning of this
8 paragraph, as long as the Gross Settlement Amount remains unchanged.

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

12 **12. ADDITIONAL PROVISIONS.**

13 12.1 No Admission of Liability, Class Certification or Representative Manageability
14 for Other Purposes. This Agreement represents a compromise and settlement of highly disputed
15 claims. Nothing in this Agreement is intended or should be construed as an admission by
16 Defendants that any of the allegations in the Operative Complaint have merit or that Defendants
17 have any liability for any claims asserted; nor should it be intended or construed as an admission
18 by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that class
19 certification and representative treatment is for purposes of this Settlement only. If, for any reason
20 the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendants
21 reserve the right to contest certification of any class for any reasons, and Defendants reserve all
22 available defenses to the claims in the Action, and Plaintiff reserves the right to move for class
23 certification on any grounds available and to contest Defendants' defenses. The Settlement, this
24 Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be
25 admissible in connection with, any litigation (except for proceedings to enforce or effectuate the
26 Settlement and this Agreement).

27 12.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel,
28 Defendants and Defense Counsel separately agree that, until the Motion for Preliminary Approval

1 of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or
2 cause or permit another person to disclose, disseminate or publicize, any of the terms of the
3 Agreement directly or indirectly, specifically or generally, to any person, corporation, association,
4 government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses,
5 all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter;
6 (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a
7 court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal
8 government agency.

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

17 12.3 No Solicitation. The Parties separately agree that they and their respective
18 counsel and employees will not solicit any Class Member to opt out of or object to the Settlement,
19 or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class
20 Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical
21 obligations owed to Class Members.

22 12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this
23 Agreement together with its attached exhibits shall constitute the entire agreement between the
24 Parties relating to the Settlement, superseding any and all oral representations, warranties,
25 covenants, or inducements made to or by any Party.

26 12.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant
27 and represent that they are authorized by Plaintiff and Defendants, respectively, to take all
28 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement

1 to effectuate its terms, and to execute any other documents reasonably required to effectuate the
2 terms of this Agreement including any amendments to this Agreement.

3 12.6 Cooperation. The Parties and their counsel will cooperate with each other and
4 use their best efforts, in good faith, to implement the Settlement by, among other things,
5 modifying the Settlement Agreement, submitting supplemental evidence and supplementing
6 points and authorities as requested by the Court. In the event the Parties are unable to agree upon
7 the form or content of any document necessary to implement the Settlement, or on any
8 modification of the Agreement that may become necessary to implement the Settlement, the
9 Parties will seek the assistance of a mediator and/or the Court for resolution.

10 12.7 No Prior Assignments. The Parties separately represent and warrant that they
11 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
12 or encumber to any person or entity and portion of any liability, claim, demand, action, cause of
13 action, or right released and discharged by the Party in this Settlement.

14 12.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendants nor Defense
15 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
16 Settlement be relied upon as such within the meaning of United States Treasury Department
17 Circular 230 (31 CFR Part 10, as amended) or otherwise.

18 12.9 Modification of Agreement. This Agreement, and all parts of it, may be
19 amended, modified, changed, or waived only by an express written instrument signed by all
20 Parties or their representatives, and approved by the Court.

21 12.10 Agreement Binding on Successors. This Agreement will be binding upon, and
22 inure to the benefit of, the successors of each of the Parties.

23 12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will
24 be governed by and interpreted according to the internal laws of the state of California, without
25 regard to conflict of law principles.

26 12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and
27 preparation of this Agreement. This Agreement will not be construed against any Party on the
28 basis that the Party was the drafter or participated in the drafting.

1 12.13 Confidentiality. To the extent permitted by law, all agreements made, and orders
2 entered during Action and in this Agreement relating to the confidentiality of information shall
3 survive the execution of this Agreement.

4 12.14 Use and Return of Class Data. Information provided to Class Counsel pursuant
5 to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class
6 Counsel by Defendants in connection with the mediation, other settlement negotiations, or in
7 connection with the Settlement, may be used only with respect to this Settlement, and no other
8 purpose, and may not be used in any way that violates any existing contractual agreement, statute,
9 or rule of court. Not later than 90 days after the date when the Court discharges the
10 Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement
11 funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from
12 Defendants unless, prior to the Court's discharge of the Administrator's obligation, Defendants
13 make a written request to Class Counsel for the return, rather than the destructions, of Class Data.

14 12.15 Headings. The descriptive heading of any section or paragraph of this Agreement
15 is inserted for convenience of reference only and does not constitute a part of this Agreement.

16 12.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement
17 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
18 weekend or federal legal holiday, such date or deadline shall be on the first business day
19 thereafter.

20 12.17 Notice. All notices, demands or other communications between the Parties in
21 connection with this Agreement will be in writing and deemed to have been duly given as of the
22 third business day after mailing by United States mail, or the day sent by email or messenger,
23 addressed as follows:

24 To Plaintiff:

25 David Glenn Spivak, Esq.

26 The Spivak Law Firm

27 8605 Santa Monica Bl

28 PMB 42554

West Hollywood, CA 90069
david@spivaklaw.com
To Defendant:
Ronald W. Novotny, Esq.
Atkinson, Andelson, Loya, Rudd & Romo
12800 Center Court Drive South
Suite 300
Cerritos, CA 90703-9364
rnovotny@aalrr.com

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

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

Dated: 04 / 02 / 2024

By:


JUSTIN ERIC LOPEZ

Dated:

By:

EDWARD WALTER SUNSERI

1 West Hollywood, CA 90069
2 david@spivaklaw.com
3 To Defendant:
4 Ronald W. Novotny, Esq.
5 Atkinson, Andelson, Loya, Rudd & Romo
6 12800 Center Court Drive South
7 Suite 300
8 Cerritos, CA 90703-9364
9 rnovotny@aalrr.com
10

11 12.18 Execution in Counterparts. This Agreement may be executed in one or more
12 counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this
13 Agreement shall be accepted as an original. All executed counterparts and each of them will be
14 deemed to be one and the same instrument if counsel for the Parties will exchange between
15 themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove
16 the existence and contents of this Agreement.

17 12.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement
18 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
19 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
20 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
21 process.
22

23 Dated:

By:

JUSTIN ERIC LOPEZ

26 Dated:

By:

Edward W. Sunseri Jr.
EDWARD WALTER SUNSERI

[Red signature] 01-6-21

1 Dated:

By:

MICHAEL SERENO

7 Dated: 04 / 02 / 2024

By:



DAVID GLENN SPIVAK, Attorneys
for Plaintiff(s), JUSTIN ERIC LOPEZ,
and all others similarly situated

13 Dated: April 1, 2024

By:



WALTER L. HAINES, Attorneys for
Plaintiff(s), JUSTIN ERIC LOPEZ, and
all others similarly situated

ATKINSON, ANDELSON, LOYA, RUDD &
ROMO

19 Dated:

By:

RONALD W. NOVOTNY, Attorneys
for Defendant(s), EDWARD WALTER
SUNSERI and MICHAEL SERENO

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Dated: 4-06-2024

By: 
MICHAEL SERENO

THE SPIVAK LAW FIRM

Dated:

By: 
DAVID GLENN SPIVAK, Attorneys
for Plaintiff(s), JUSTIN ERIC LOPEZ,
and all others similarly situated

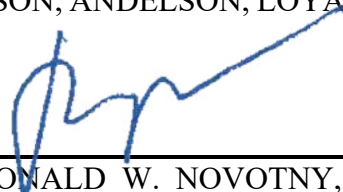
UNITED EMPLOYEES LAW GROUP

Dated:

By: 
WALTER L. HAINES, Attorneys for
Plaintiff(s), JUSTIN ERIC LOPEZ, and
all others similarly situated

ATKINSON, ANDELSON, LOYA, RUDD &
ROMO

Dated: April 8, 2024

By: 
RONALD W. NOVOTNY, Attorneys
for Defendant(s), EDWARD WALTER
SUNSERI and MICHAEL SERENO

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EXHIBIT A

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

(case name: Justin Eric Lopez v. Edward Walter Sunseri and number 22STCV37939)

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

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Edward Walter Sunseri and Michael Sereno (“Defendants” is used herein as a placeholder) for alleged violations of California’s labor laws. The Action was filed by Defendants’ employee, Justin Eric Lopez (“Plaintiff”), and seeks payment of (1) wages and other relief for a class of hourly, non-exempt employees (“Class Members”) who worked for Defendants during the Class Period (December 06, 2018 to December 31, 2023); and (2) penalties under the California Private Attorney General Act (“PAGA”) for hourly, non-exempt employees who worked for Defendants during the PAGA Period (November 23, 2021 to December 31, 2023) (“Aggrieved Employees”).

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

Based on Defendants’ records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$<<IndividualClassPaymentAmount>> (less withholding) and your Individual PAGA Payment is estimated to be \$<<IndividualPAGAPaymentAmount>>.** The estimated dollar value of a Pay Period is <<@PayPeriodValue>>. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendants’ records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.) The individual payments amounts will vary. However, the average Individual Class Payment to a Class Member is estimated to be <<\$Average Individual Class Payment Amount>>. The average Individual PAGA Payment to a Class Member is estimated to be <<\$Average Individual PAGA Payment Amount>>. The highest Individual Class Payment to a Class Member is estimated to be <<\$Highest Individual Class Payment Amount>> and the lowest is estimated to be <<\$Lowest Individual Class Payment Amount>>. The highest Individual PAGA Payment to a Class Member is estimated to be <<\$Highest Individual PAGA Payment Amount>> and the lowest is estimated to be <<\$Lowest Individual PAGA Payment Amount>>.

The above estimates are based on Defendants’ records showing that **you worked <<__>> Pay Periods** during the Class Period and **you worked <<__>> Pay Periods** during the PAGA Period. If you believe that you worked more Pay Periods during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the Final Approval Hearing. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Defendants to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendants.

If you worked for Defendants during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

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

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting a written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period claims for California labor law violations against Defendants, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

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

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

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Defendants. The Action accuses Defendants of violating California labor laws by failure to pay wages, failure to pay required overtime, failure to provide meal periods, failure to authorize and permit rest periods, failure to issue proper wage statements, failure to timely pay wages, and related violations of the Labor Code. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the PAGA (Labor Code section 2698 and sections that follow) (“PAGA”). Plaintiff is represented by attorneys in the Action: David Glenn Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law Group (“Class Counsel.”)

Defendants strongly deny violating any laws or failing to pay any wages and contend they complied with all applicable laws.

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

So far, the Court has made no determination whether Defendants or Plaintiff are correct on the merits. In the meantime, Plaintiff and Defendants hired ☐ an experienced, neutral mediator ☐ a retired judge ☐ (describe alternative means of negotiation) in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendants have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendants have agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

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

A. Gross Settlement Amount. Defendants Will Pay \$375,000.00 as the Gross Settlement Amount (Gross Settlement). Defendants have agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendants will fund the Gross Settlement not more than 14 days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

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

1. Attorney Fees and Costs. Up to \$125,000.00 (33.33% of the Gross Settlement to Class Counsel for attorneys’ fees and up to \$12,500.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

2. Class Representative Service Payment. Up to \$15,000.00 as a Class

1 Representative Service Payment for filing the Action, working with Class Counsel and
2 representing the Class. A Class Representative Service Payment will be the only monies Plaintiff
will receive other than Plaintiff's Individual Class Payments and any Individual PAGA Payments.

3 3. Administration Expenses. Up to \$13,000.00 to the Administrator for
4 services administering the Settlement.

5 4. PAGA Penalties. Up to \$4,000.00 for PAGA Penalties, allocated 75% to
6 the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees
based on their PAGA Period Pay Periods.

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

9 Based on their records, Defendants estimated that, as of the date of the Settlement, there
10 are 209 Class Members who collectively worked a total of 6,290 Pay Periods, and 150 Aggrieved
Employees who worked a total of 2,900 PAGA Pay Periods.

11 C. Net Settlement Distributed to Class Members. After making the above deductions
12 in amounts approved by the Court, the Administrator will distribute the rest of the Gross
Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class
13 Members based on their Class Period Pay Periods.

14 D. Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking
15 the Court to approve an allocation of 33.33% of each Individual Class Payment to taxable wages
("Wage Portion") and 66.67% to interest and penalties ("Non-Wage Portion."). The Wage Portion
16 is subject to withholdings and will be reported on IRS W-2 Forms. Defendants will separately
pay employer payroll taxes they owe on the Wage Portion. The Individual PAGA Payments are
17 counted as penalties rather than wages for tax purposes. The Administrator will report the
Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS
18 1099 Forms.

19 Although Plaintiff and Defendants have agreed to these allocations, neither side is giving
20 you any advice on whether your Payments are taxable or how much you might owe in taxes. You
are responsible for paying all taxes (including penalties and interest on back taxes) on any
21 Payments received from the proposed Settlement. You should consult a tax advisor if you have
any questions about the tax consequences of the proposed Settlement.
22

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

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

4 F. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated
5 as a Participating Class Member, participating fully in the Class Settlement, unless you notify the
6 Administrator in writing, not later than <<RESPONSE DEADLINE>>, that you wish to opt-out.
7 The easiest way to notify the Administrator is to email, fax, or mail a written and signed Request
8 for Exclusion by the <<RESPONSE DEADLINE>> Response Deadline. The Request for
9 Exclusion should be a letter from a Class Member or his/her representative setting forth a Class
10 Member's name, present address, telephone number, and a simple statement electing to be
11 excluded from the Settlement. You may use the enclosed Election Not To Participate In
12 Settlement form for this purpose. Excluded Class Members (i.e., Non-Participating Class
13 Members) will not receive Individual Class Payments, but will preserve their rights to personally
14 pursue claims against Defendants for violations of California's labor laws.

15 You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude
16 themselves from the Class Settlement (Non-Participating Class Members) remain eligible for
17 Individual PAGA Payments and Plaintiff release Defendants from civil penalties they may owe
18 to the Aggrieved Employees.

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

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

I. Participating Class Members' Release. After the Judgment is final and Defendants
have fully funded the Gross Settlement (and separately paid all employer payroll taxes),
Participating Class Members will be legally barred from asserting any of the claims released under
the Settlement. This means that unless you opted out by validly excluding yourself from the Class
Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or
their officers, directors, employees, and agents for wages based on the Class Period facts and
PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this
Settlement.

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1 The Participating Class Members will be bound by the following release:

2 All Participating Class Members, on behalf of himself and their respective former
3 and present representatives, agents, attorneys, heirs, administrators, successors,
4 and assigns, release Released Parties from all claims stated in the Operative
5 Complaint and those based solely upon the facts alleged in the Operative
6 Complaint. Except as set forth in Section 6.3 of the Settlement Agreement,
7 Participating Class Members do not release any other claims, including claims for
vested benefits, wrongful termination, violation of the Fair Employment and
Housing Act, unemployment insurance, disability, social security, workers'
compensation, or claims based on facts occurring outside the Class Period.

8 J. The PAGA Release. After the Court's judgment is final, and Defendants have paid
9 the Gross Settlement (and separately paid the employer-side payroll taxes), Plaintiff release all
10 claims for civil penalties that could have been sought by the Labor Commissioner for the
11 violations identified in Plaintiff's pre-filing letter to the LWDA; Plaintiff does not release the
claim for wages or damages of any Aggrieved Employee unless such Aggrieved Employee is a
Participating Class Member.

12 **4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

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

16 B. Individual PAGA Payments. The Administrator will calculate Individual PAGA
17 Payments by (a) dividing \$1,000.00 by the total number of PAGA Pay Periods worked by all
18 Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods
worked by each individual Aggrieved Employee.

19 C. Pay Period Challenges. The number of Class Pay Periods you worked during the
20 Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as
21 recorded in Defendants' records, are stated in the first page of this Notice. You have until
22 <<RESPONSE DEADLINE>> to challenge the number of Pay Periods and/or Pay Periods
23 credited to you. You can submit your challenge by signing and sending a letter to the
Administrator by email, fax or regular U.S. mail. You can use the enclosed Dispute form for this
purpose. Section 9 of this Notice has the Administrator's contact information.

24 You need to support your challenge by submitting copies of pay stubs or other records.
25 The Administrator will accept Defendants' calculation of Pay Periods based on Defendants'
26 records as accurate unless you send copies of records containing contrary information. You
27 should send copies rather than originals because the documents will not be returned to you. The
Administrator will resolve Pay Period challenges based on your submission and on input from

Class Counsel (who will advocate on behalf of Participating Class Members) and Defendants' Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

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

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

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

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

Email, fax, or mail a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. You may use the enclosed Election Not To Participate In Settlement form for this purpose. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Justin Eric Lopez vs. Edward Walter Sunseri*, Case No. 22STCV37939, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. You should send your Request for Exclusion to the Administrator by email, fax, or send by regular U.S. mail. **The Administrator must be sent your request to be excluded by <<RESPONSE DEADLINE>>, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information. If you are an Aggrieved Employee, you will still receive an Individual PAGA Payment.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendants are asking the Court to approve. At least 16 days before the Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Payment. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will

1 send you copies of these documents at no cost to you. You can also view them and the Settlement
2 Agreement on the Administrator's Website <<ADMINISTRATOR WEBSITE>> or the Court's
website <<COURT WEBSITE>>.

3 A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for
4 Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to
5 object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class
6 Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the
Administrator is <<RESPONSE DEADLINE>>.** Be sure to tell the Administrator what you
7 object to, why you object, and any facts that support your objection. Make sure you identify the
8 Action, *Justin Eric Lopez vs. Edward Walter Sunseri*, case no. 22STCV37939, and include your
9 name, current address, telephone number, and approximate dates of employment for Defendants
and sign the objection. Section 9 of this Notice has the Administrator's contact information. You
may use the enclosed Objection form for this purpose. You should send your objection to the
Administrator by email, fax, or send by regular U.S. mail.

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

13 **8. CAN I ATTEND THE FINAL APPROVAL HEARING?**

14 You can, but don't have to, attend the Final Approval Hearing on <<FINAL APPROVAL
15 HEARING DATE>> at <<FINAL APPROVAL HEARING TIME>> in Department Dept. 14 of the
16 Los Angeles Superior Court, located at Spring Street Courthouse, 312 North Spring Street, Los
17 Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the
18 Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and
the Administrator. The Court will invite comment from objectors, Class Counsel and Defense
19 Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally
or virtually by <<CourtConnect/CourtCall/MicrosoftTeams>>
20 (https://www.<<CourtVirtualAppearanceLink>>). Check the Court's website for the most current
information.

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

23 **9. HOW CAN I GET MORE INFORMATION?**

24 The Agreement sets forth everything Defendants and Plaintiff have promised to do under the
25 proposed Settlement. The easiest way to read the Agreement, the Judgment or any other
26 Settlement documents is to go to the Administrator's website at _____.
27 You can also telephone or send an email to Class Counsel or the Administrator using the contact
information listed below, or consult the Superior Court website by going to _____ .com

1 and entering the Case Number for the Action, Case No. 22STCV37939. You can also make an
2 appointment to personally review court documents in the Clerk's Office at the Spring Street
Courthouse by calling <<CLERK OF COURT'S PHONE NUMBER>>.

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

5 Class Counsel:

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

11 Administrator:

12 Name of Company: Phoenix Class Action Settlement Solutions, Inc.
13 Email Address: _____
14 Mailing Address: _____
Telephone: _____
Fax Number: _____

15 **10. WHAT IF I LOSE MY SETTLEMENT CHECK?**

16 If you lose or misplace your settlement check before cashing it, the Administrator will replace it
17 as long as you request a replacement before the void date on the face of the original check. If
18 your check is already void

19 ☐ you should consult the Unclaimed Property Fund (https://www.sco.ca.gov/search_upd.html) for
instructions on how to retrieve the funds. You can contact the Unclaimed Property Fund at (800)
20 992-4647.

21 ☐ you will have no way to recover the money.

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

23 To receive your check, you should immediately notify the Administrator if you move or otherwise
24 change your mailing address.

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EXHIBIT B

Lopez v. Edward Walter Sunseri
Superior Court of the State of California, County of Los Angeles
Case No. 22STCV37939

ELECTION NOT TO PARTICIPATE IN SETTLEMENT FORM

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

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

Lopez v. Edward Walter Sunseri Class Action Administrator
c/o _____

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

(Typed or _____ Printed Name)

(_____
(Address)

(City, State, _____ Zip Code)

(Telephone Number, _____ Including Area Code)

(_____
(Identification Number)

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

Dated: ____.
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(Signature)

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EXHIBIT C

PAY PERIOD DISPUTE FORM

Superior Court of The State of California
For The County of Los Angeles
Justin Eric Lopez v. Edward Walter Sunseri, Case No. 22STCV37939

Indicate Name/Address Changes, if any:

<<Name>>

<<Address>>

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

XX - XX -

TO ALL HOURLY, NON-EXEMPT CALIFORNIA EMPLOYEES OF SUNSERI'S BAR AND BEVERAGE CATERING FROM DECEMBER 6, 2018 THROUGH DECEMBER 31, 2023.

The amount of your estimated Settlement Award is based upon the number of Eligible Pay Periods you worked between December 06, 2018 and December 31, 2023 and Eligible Pay Periods you worked between November 23, 2021 and December 31, 2023. "Individual Class Pay Periods" are defined as any Work Week in which you worked at least one (1) day as an hourly, non-exempt of Edward Walter Sunseri and Michael Sereno ("Defendants") in California during the calendar week. "Individual PAGA Pay Periods" are defined as any Pay Period in which you worked at least one (1) day as an hourly, non-exempt of Defendants in California during the calendar week during the period of November 23, 2021 through December 31, 2023. The number of Class and PAGA Pay Periods applicable to your claim are set forth below.

YOUR ELIGIBLE PAY PERIODS

Defendants' records indicate that you worked <<number of Pay Periods>> Pay Periods between December 06, 2018 and December 31, 2023 and <<number of Pay Periods>> Pay Periods between November 23, 2021 through December 31, 2023.

YOUR ESTIMATED SETTLEMENT AWARD AND DISPUTE PROCEDURE

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

If you wish to dispute the number of Pay Periods or credited to you, or anything else about your employment status, you must complete and return this form by indicating what you believe is incorrect on the blank lines below and return it on or before <<RESPONSE DEADLINE>> to the Administrator by email, fax, or regular U.S. Mail with proof of the submission date (such as

1 a postmark or delivery service date stamp). You may use this Pay Period Dispute form for this
2 purpose. You must also send any documents or other information that you contend supports your
3 belief that the information set forth above is incorrect. The Administrator will resolve any dispute
4 based upon Defendants' records and any information you provide. Please be advised that the
information on this Pay Period Dispute Form is presumed to be correct unless the documents you
submit are company records from Defendants.

7 **UNLESS YOU ARE FILING A DISPUTE REGARDING THE NUMBER OF PAY**
8 **PERIODS, RECEIPT OF A SETTLEMENT PAYMENT, OR YOUR EMPLOYMENT**
9 **STATUS, YOU DO NOT NEED TO TAKE ANY ACTION**

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OBJECTION FORM

Justin Eric Lopez v. Edward Walter Sunseri
Superior Court of the State California, County of Los Angeles
Case No. 22STCV37939

Please verify and/or complete any missing identifying information:

CPT ID: <<CPT ID>>

<<Name>>

<<Address1>>

<<Address2>>

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

CORRECT NAME AND ADDRESS HERE:

Telephone Number: (____) ____ - ____

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

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

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

[] I OBJECT to the *Justin Eric Lopez v. Edward Walter Sunseri* Settlement on the following grounds (if additional space necessary, please include additional sheets of paper):

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

3 _____
4 _____
5 _____
6 _____
7 _____

8
9 Executed on _____, 2024

(Signature)

<<Name>>

(Printed Name)

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15 Error!

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

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

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

Justin Eric Lopez v. Edward Walter Sunseri Administrator

[ADDRESS]

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

JUSTIN ERIC LOPEZ, on behalf of himself and all others similarly situated, and as “aggrieved employees” on behalf of other “aggrieved employees” under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

EDWARD WALTER SUNSERI, a natural person doing business as Sunseri’s Bar and Beverage Catering; MICHAEL SERENO, a natural person; and DOES 1–50, inclusive,

Defendant(s).

Case No. 22STCV37939

[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT

Action filed: December 05, 2022
Dept: Dept. 14, The Honorable
Kenneth R. Freeman

1 The Motion of Plaintiff Justin Eric Lopez (hereafter referred to as “Plaintiff”) for
2 Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court,
3 The Honorable Kenneth R. Freeman presiding. The Court having considered the Motion, the
4 Class Action and PAGA Settlement Agreement and Class Notice (“Settlement” or “Settlement
5 Agreement”), and supporting papers, HEREBY ORDERS THE FOLLOWING:

6
7 1. The Court grants preliminary approval of the Settlement and the Settlement Class
8 based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary
9 Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court
10 has determined only that there is sufficient evidence to suggest that the proposed settlement
11 might be fair, adequate, and reasonable, and that any final determination of those issues
12 will be made at the final hearing. The Court will make a determination at the hearing on the
13 motion for final approval of class action settlement (the “Final Approval Hearing”) as to whether
14 the Settlement is fair, adequate and reasonable to the Settlement Class.

15
16 2. For purposes of this Preliminary Approval Order, the “Settlement Class” means a
17 member of the Class, as either a Participating Class Member or Non-Participating Class Member
18 (including a Non- Participating Class Member who qualifies as an Aggrieved Employee)
19 (collectively “Class Members”), who worked anytime during the Class Period. The “Class
20 Period” shall mean the period of time from December 06, 2018, through December 31, 2023.

21
22 3. Based on its records, Defendants estimate that, as of the date of the Settlement
23 Agreement, there are 209 Class Members who collectively worked a total of 6,290 Pay Periods,
24 and 150 Aggrieved Employees who worked a total of 2,900 PAGA Pay Periods during the PAGA
25 Period.

26 4. “Effective Date” means the latest of the following occurrences: (a) if any timely
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1 objections are filed and not subsequently withdrawn, the 60th day after the Court
2 enters an order granting final approval of the Joint Stipulation of Class Action and
3 PAGA Settlement; (b) if any timely appeals are filed, the date of the resolution (or
4 withdrawal) of any such appeal in a way that does not alter the terms of the
5 Settlement; or (c) if no timely objections are filed, or if all objections are withdrawn,
6 the date upon which the Court enters an order granting final approval of the Joint
7 Stipulation of Class Action and PAGA Settlement

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9
10 5. This action is provisionally certified pursuant to section 382 of the California Code
11 of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action for
12 purposes of settlement only with respect to the proposed Settlement Class.

13
14 6. Not later than 15 days after the Court grants Preliminary Approval of the
15 Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the
16 form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the
17 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
18 of the Settlement and for no other purpose, and restrict access to the Class Data to Administrator
19 employees who need access to the Class Data to effect and perform under the Settlement
20 Agreement. Defendants have a continuing duty to immediately notify Class Counsel if they
21 discover that the Class Data omitted class member identifying information and to provide
22 corrected or updated Class Data as soon as reasonably feasible. Without any extension of the
23 deadline by which Defendants must send the Class Data to the Administrator, the Parties and their
24 counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any
25 issues related to missing or omitted Class Data.
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1 7. No later than three (3) business days after receipt of the Class Data, the
2 Administrator shall notify Class Counsel that the list has been received and state the number of
3 Class Members, PAGA Members, and Pay Periods in the Class Data.

4 8. Using best efforts to perform as soon as possible, and in no event later than 14
5 days after receiving the Class Data, the Administrator will send to all Class Members identified
6 in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Notice Packet
7 substantially in the forms attached to this order as **Exhibits A, B, C, and D**. The first page of the
8 Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or
9 Individual PAGA Payment payable to the Class Member, and the number of Class Pay Periods and
10 PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Notice Packets,
11 the Administrator shall update Class Member addresses using the National Change of Address
12 database.
13

14 9. Not later than 3 business days after the Administrator’s receipt of any Notice
15 Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice Packet
16 using any forwarding address provided by the USPS. If the USPS does not provide a forwarding
17 address, the Administrator shall conduct a Class Member Address Search, and re-mail the Notice
18 Packet to the most current address obtained. The Administrator has no obligation to make further
19 attempts to locate or send Notice Packet to Class Members whose Notice Packet is returned by
20 the USPS a second time.
21

22 10. Class Counsel’s contact information is David Glenn Spivak, Esq., The Spivak Law
23 Firm, 8605 Santa Monica Bl, PMB 42554, West Hollywood, CA 90069. Defense Counsel’s
24 contact information is Ronald W. Novotny, Esq., Atkinson, Andelson, Loya, Rudd & Romo,
25 12800 Center Court Drive South, Suite 300, Cerritos, CA, 90703-9364.
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1 11. The deadlines for Class Members' written objections, Challenges to Pay Periods
2 (disputes), and Requests for Exclusion will be extended an additional 14 days beyond the 60 days
3 otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The
4 Administrator will inform the Class Member of the extended deadline with the re-mailed Notice
5 Packet.

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

14 13. Requests for Exclusion. Class Members who wish to exclude themselves (opt-out
15 of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written
16 Request for Exclusion not later than 60 days after the Administrator mails the Notice Packet (plus
17 an additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for
18 Exclusion is a letter from a Class Member or his/her representative that reasonably communicates
19 the Class Member's election to be excluded from the Settlement and includes the Class Member's
20 name, address and email address or telephone number. To be valid, a Request for Exclusion must
21 be timely faxed, emailed, or postmarked by the Response Deadline. An Election Not to Participate
22 in Settlement form, attached as Exhibit B, may be used for this purpose but is not required.

23 14. The Administrator may not reject a Request for Exclusion as invalid because it
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1 fails to contain all the information specified in the Class Notice. The Administrator shall accept
2 any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of
3 the person as a Class Member and the Class Member's desire to be excluded. The Administrator's
4 determination shall be final and not appealable or otherwise susceptible to challenge. If the
5 Administrator has reason to question the authenticity of a Request for Exclusion, the
6 Administrator may demand additional proof of the Class Member's identity. The Administrator's
7 determination of authenticity shall be final and not appealable or otherwise susceptible to
8 challenge.
9

10 15. Every Class Member who does not submit a timely and valid Request for Exclusion
11 is deemed to be a Participating Class Member under the Settlement Agreement, entitled to all
12 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
13 Members' Releases under Paragraphs 6.2 and 6.3 of the Settlement, regardless whether the
14 Participating Class Member actually receives the Class Notice or objects to the Settlement.
15

16 16. Every Class Member who submits a valid and timely Request for Exclusion is a
17 Non-Participating Class Member and shall not receive an Individual Class Payment or have the
18 right to object to the class action components of the Settlement. Plaintiff releases all claims for
19 civil penalties that could have been sought by the Labor Commissioner for the violations
20 identified in Plaintiff's pre-filing letter to the LWDA; Plaintiff do not release the claim for wages
21 or damages of any Aggrieved Employee unless such Aggrieved Employee is a Participating Class
22 Member.
23

24 17. Challenges to Calculation of Pay Periods. Each Class Member and Aggrieved
25 Employee shall have 60 days after the Administrator mails the Notice Packet (plus an additional
26 14 days for Class Members whose Notice Packet is re-mailed) to challenge the number of Class
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1 Pay Periods and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice.
2 This is also known as a dispute. A Pay Period Dispute form, attached as Exhibit C, may be used
3 for this purpose but is not required. The Class Member may challenge the allocation by
4 communicating with the Administrator via fax, email or mail. The Administrator must encourage
5 the challenging Class Member to submit supporting documentation. In the absence of any
6 contrary documentation, the Administrator is entitled to presume that the Pay Periods contained
7 in the Class Notice are correct so long as they are consistent with the Class Data. The
8 Administrator's determination of each Class Member's allocation of Pay Periods shall be final
9 and not appealable or otherwise susceptible to challenge. The Administrator shall promptly
10 provide copies of all challenges to calculation of Pay Periods to Defense Counsel and Class
11 Counsel and the Administrator's determination the challenges.
12

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

18 19. Participating Class Members may send written objections to the Administrator, by
19 fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire
20 an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A
21 Participating Class Member who elects to send a written objection to the Administrator must do
22 so not later than 60 days after the Administrator's mailing of the Notice Packet (plus an additional
23 14 days for Class Members whose Notice Packet was re-mailed). An The Objection form attached
24 as Exhibit D may be used for this purpose but is not required.
25

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

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

13 22. The Court approves, as to form and content, the Class Notice in substantially the
14 form attached as Exhibit A to this Order, the Election Not to Participate in Settlement form in
15 substantially the form attached as Exhibit B to this Order, the Pay Period Dispute form in
16 substantially the form attached as Exhibit C to this Order, and the Objection form in substantially
17 the form attached as Exhibit D to this Order.
18

19 23. The Court approves, for settlement purposes only, David Glenn Spivak of The
20 Spivak Law Firm and Walter L. Haines of United Employees Law Group as Class Counsel.
21

22 24. The Court approves, for settlement purposes only, Justin Eric Lopez as the Class
23 Representative.
24

25 25. The Court approves Phoenix Class Action Administration Solutions, Inc. as the
26 Administrator.
27

28 26. The Court preliminarily approves Class Counsel's request for attorneys' fees and

costs subject to final review by the Court.

27. The Court preliminarily approves the estimated Administrator costs payable to the Administrator subject to final review by the Court.

28. The Court preliminarily approves Plaintiff's Class Representative Service Payments subject to final review by the Court.

29. A Final Approval Hearing shall be held on ____ at ____.m. in Department Dept. 14 of the Superior Court for the State of California, County of Los Angeles, located at the Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012 to consider the fairness, adequacy and reasonableness of the proposed Settlement preliminarily approved by this Preliminary Approval Order, and to consider the application of Class Counsel for attorneys' fees and costs and the Class Representative Service Payments to the Class Representatives. The notice of motion and all briefs and materials in support of the motion for final approval of class action settlement and motion for attorneys' fees and litigation costs shall be served and filed with this Court on or before _____. Plaintiff's counsel must give notice to any objecting party of any continuance of the hearing of the motion for final approval.

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

31. The Court expressly reserves the right to adjourn or continue the Final Approval Hearing from time to time without further notice to members of the Class. The Plaintiff shall give prompt notice of any continuance to Settlement Class Members who object to the Settlement.

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IT IS SO ORDERED.

DATE

**THE HONORABLE KENNETH R.
FREEMAN
SUPERIOR COURT JUDGE**

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EXHIBIT F

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

JUSTIN ERIC LOPEZ, on behalf of himself and all others similarly situated, and as “aggrieved employees” on behalf of other “aggrieved employees” under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

EDWARD WALTER SUNSERI, a natural person doing business as Sunseri’s Bar and Beverage Catering; MICHAEL SERENO, a natural person; and DOES 1–50, inclusive,

Defendant(s).

Case No. 22STCV37939

[PROPOSED] FINAL ORDER AND JUDGMENT APPROVING CLASS ACTION SETTLEMENT

Action filed: December 05, 2022
Dept: Dept. 14, The Honorable
Kenneth R. Freeman

1.1. This matter came on for hearing on ____ at ____ .m. in Department Dept. 14 of the above-captioned court on Plaintiff’s Motion for Final Approval of a Class Action Settlement pursuant to California Rules of Court, Rule 3.769, as set forth in the Joint Stipulation of Class Action Settlement and Release of Claims (the “Settlement”) filed herewith which provides for a Gross Settlement Amount (“GSA”) of up to \$375,000.00 in compromise of all disputed claims on behalf of all persons employed by Defendants in California and classified as an hourly, non-exempt who worked for Defendants during the Class Period.

1 of December 06, 2018 to December 31, 2023 ("Settlement Class Period"). All
2 capitalized terms used herein shall have the same meaning as defined in the Settlement.

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

11
12 1. The Court has jurisdiction over the subject matter of the Action and over all Parties
13 to the Action, including all Class Members. Pursuant to this Court's Order Granting Preliminary
14 Approval of Class Action Settlement of ___, the Notice Packet was sent to each Class Member
15 by First Class U.S. mail. The Notice Packet informed Class Members of the terms of the
16 Settlement, their right to receive their proportional share of the Settlement, their right to request
17 exclusion, their right to comment upon or object to the Settlement, and their right to appear in
18 person or by counsel at the final approval hearing and be heard regarding final approval of the
19 Settlement. Adequate periods of time were provided by each of these procedures. No member of
20 the Settlement Class presented written objections to the proposed Settlement as part of this notice
21 process, stated an intention to appear, or actually appeared at the final approval hearing.
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25 _____
26 ¹ A true and correct copy of the Court's ruling on the Motion for Final Approval of Class Action
27 Settlement entered on [REDACTED] is attached hereto as **Exhibit A** and incorporated by reference. A true
28 and correct copy of the Court's Minute Order dated [REDACTED] is attached hereto as **Exhibit B** and
incorporated by reference.

1 2. For purposes of this Final Order and Judgment, the Class Members are during the
2 Class Period. at any time during the period of December 06, 2018 to December 31, 2023
3 (“Settlement Class Period”).

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

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

18 **PAGA Release.** Plaintiff releases all claims for civil penalties that could have been
19 sought by the Labor Commissioner for the violations identified in Plaintiff’s pre-filing letter to
20 the LWDA; Plaintiff do not release the claim for wages or damages of any Aggrieved Employee
21 unless such Aggrieved Employee is a Participating Class Member.
22

23 **“Released Claims”** shall mean all claims stated in the Operative Complaint and based
24 solely on the facts alleged in the Operative Complaint. **“Released Parties”** shall mean
25 Defendants, their employees and agents.

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

12 3. The Court finds and determines that (a) the Settlement Shares to be paid to
13 Participating Class Members and (b) the LWDA payment as civil penalties under the California
14 Labor Code Private Attorneys General Act of 2004, as amended, California Labor Code sections
15 2699 *et seq.*, as provided for by the Settlement are fair and reasonable. The Court hereby grants
16 final approval to, and orders the payment of, those amounts be made to the Participating Class
17 Members and to the California Labor & Workforce Development Agency (“LWDA”), in
18 accordance with the terms of the Settlement.

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

23 a. Class Counsel fees & costs of \$125,000.00 in attorneys’ fees and
24 \$12,500.00 in litigation costs to Class Counsel;

25 b. \$15,000.00 as a Class Representative Service Payment award payable to
26 Plaintiff for his services as Class Representative;

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

3 d. Payment of \$3,000.00 (75% of the (\$4,000.00 PAGA penalty) to the
4 LWDA.

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

11 8. Within 14 calendar days of the Effective Date of Settlement, Defendants shall
12 deposit the Settlement proceeds in an account designated by the Administrator: (i) the total
13 amount of all Individual Class Payments to Participating Class Members, (ii) the Court approved
14 amount of all Individual Class Payments to Participating Class Members, (ii) the Court approved
15 Class Counsel fees & costs, (iii) the Court-approved Class Representative Service Payment, (iv)
16 the Court-approved costs of the Administrator, (v) the payment to the LWDA, and (vi) (i) the
17 total amount of all Individual PAGA Payments to Aggrieved Employees, including the employer
18 side payroll taxes on the wage portion of the settlement.

19 9. Other than their employer side payroll taxes, Defendants' payment of such sums
20 shall be the sole financial obligation of Defendants under the Settlement, and shall be in full
21 satisfaction of all claims released herein, including, without limitation, all claims for wages,
22 penalties, interest, attorneys' fees, costs and expenses.

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

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

16 12. Nothing in this Final Order and Judgment shall preclude any action to enforce the
17 Parties' obligations under the Settlement or hereunder, including the requirement that Defendants
18 deposit funds for distribution by the Administrator to Participating Class Members in accordance
19 with the Settlement.
20

21 13. The Court hereby enters final judgment in this case in accordance with the terms
22 of the Settlement, Order Granting Preliminary Approval of Class Action Settlement, and this Final
23 Order and Judgment.
24

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

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

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

18
19 17. This document shall constitute a Judgment for purposes of California Rule of
20 Court 3.769(h).
21

22 **IT IS SO ORDERED, ADJUDGED AND DECREED.**
23

24 _____
25 **DATE**

26 **THE HONORABLE KENNETH R.**
27 **FREEMAN**
28 **SUPERIOR COURT JUDGE**

1 DAVID GLENN SPIVAK (SBN 179684)

david@spivaklaw.com

2 LAUREN R. DAVIS (SBN 245366)

lauren@spivaklaw.com

3 THE SPIVAK LAW FIRM

4 8605 Santa Monica Bl

PMB 42554

5 West Hollywood, CA 90069

Telephone: (213) 725-9094

6 Facsimile: (213) 634-2485

7 Attorneys for Plaintiff(s),

8 JUSTIN LOPEZ, and all others similarly situated

9 (Additional attorneys for parties on following page)

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

11 **FOR THE COUNTY OF LOS ANGELES**

12 **(UNLIMITED JURISDICTION)**

13 JUSTIN LOPEZ, on behalf of himself and all
14 others similarly situated, and as “aggrieved
15 employees” on behalf of other “aggrieved
16 employees” under the Labor Code Private
Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 EDWARD WALTER SUNSERI, a natural
20 person doing business as Sunseri’s Bar and
21 Beverage Catering; MICHAEL SERENO, a
natural person; and DOES 1–50, inclusive,

22 *Defendant(s).*

Case No. 22STCV37939

ADDENDUM TO THE CLASS ACTION
AND PAGA SETTLEMENT
AGREEMENT AND CLASS NOTICE

Action filed: December 05, 2022

Dept: Dept. 14, The Honorable
Kenneth R. Freeman



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

WALTER L. HAINES (SBN 71075)
walter@uelglaw.com
UNITED EMPLOYEES LAW GROUP
8605 Santa Monica Bl.
PMB 63354
West Hollywood, CA 90069
Telephone: (562) 256-1047
Facsimile: (562) 256-1006

Attorneys for Plaintiff(s),
JUSTIN LOPEZ, and all others similarly situated

ATTORNEYS FOR DEFENDANT(S)

RONALD W. NOVOTNY (SBN 100041)
rnovotny@aalrr.com
JOSHUA N. LANGE (SBN 269016)
Joshua.Lange@aalrr.com
ATKINSON, ANDELSON, LOYA, RUDD & ROMO
12800 Center Court Drive South
Suite 300
Cerritos CA 90703-9364
Telephone: (562) 653-3200
Facsimile: (562) 653-3655

Attorneys for Defendant(s),
EDWARD WALTER SUNSERI and MICHAEL SERENO



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

ADDENDUM TO THE CLASS ACTION AND PAGA SETTLEMENT
AGREEMENT

This ADDENDUM to the Class Action and PAGA Settlement Agreement (“Agreement”) and Class Notice is made by and between plaintiff Justin Lopez (“Plaintiff”) and defendants Edward Walter Sunseri and Michael Sereno (collectively “Defendants”). Plaintiff and Defendants are collectively the “Parties.” The Parties fully executed the Agreement on or about April 8, 2024. The Agreement is hereby modified as to Paragraph 3.2.2 of the Agreement, Paragraph 3.B.1 of Exhibit A of the Agreement, and Paragraph 4.a of Exhibit F of the Agreement so as to correct the amount allocated to attorneys’ actual costs (\$16,000.00 instead of \$12,500.00). In addition, the Agreement is hereby modified to refer to Plaintiff as “Justin Lopez” instead of “Justin Eric Lopez” to conform with the operative First Amended Complaint filed on February 10, 2023.

The new Paragraph 3.2.2 now reads as follows:

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 33.33%, which is currently estimated to be \$125,000.00 and a Class Counsel Litigation Expenses Payment of not more than \$16,000.00. Defendants will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff’s Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments.

The new Paragraph 3.B.1 of Exhibit A of the Agreement now reads as follows:



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 1. Attorney Fees and Costs. Up to \$125,000.00 (33.33% of the Gross
2 Settlement to Class Counsel for attorneys' fees and up to \$16,000.00 for their litigation expenses.
3 To date, Class Counsel have worked and incurred expenses on the Action without payment.

4 The new Paragraph 4.a of Exhibit F of the Agreement now reads as follows:

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

7 a. Class Counsel fees & costs of \$125,000.00 in attorneys' fees and
8 \$16,000.00 in litigation costs to Class Counsel.

9 The Class Action and PAGA Settlement Agreement remains unchanged in all other
10 respects.

11
12 IN WITNESS WHEREOF: the undersigned have duly executed this Addendum as of
13 the date set forth below:

14
15
16
17 Dated: 04 / 25 / 2024

By: 

JUSTIN LOPEZ

18
19
20 Dated:

By:

EDWARD WALTER SUNSERI

21
22 Dated:

By:

MICHAEL SERENO

23
24
25
26 THE SPIVAK LAW FIRM

27
28 Dated:

By:



SPIVAK LAW
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West Hollywood, CA 90069
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17 Dated:

By: _____

JUSTIN LOPEZ

18
19
20 Dated: 4.25.24

By: _____

EDWARD WALTER SUNSERI

21
22 Dated: 4-24-2024

By: _____

MICHAEL SERENO



23
24 SPIVAK LAW
25 EMPLOYEE RIGHTS

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West Hollywood, CA 90069
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SpivakLaw.com

28 Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

THE SPIVAK LAW FIRM

Dated: _____

By: _____

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By: _____

EDWARD WALTER SUNSERI

21
22 Dated:

By: _____

MICHAEL SERENO



23
24 SPIVAK LAW
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Los Angeles, CA 90067

THE SPIVAK LAW FIRM

Dated:

04 / 25 / 2024

By: _____

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DAVID GLENN SPIVAK, Attorneys
for Plaintiff(s), JUSTIN LOPEZ, and all
others similarly situated

UNITED EMPLOYEES LAW GROUP

Dated: April 25, 2024

By: 
WALTER L. HAINES, Attorneys for
Plaintiff(s), JUSTIN LOPEZ, and all
others similarly situated

ATKINSON, ANDELSON, LOYA, RUDD &
ROMO

Dated:

By: _____
RONALD W. NOVOTNY, Attorneys
for Defendant(s), EDWARD WALTER
SUNSERI and MICHAEL SERENO



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DAVID GLENN SPIVAK, Attorneys
for Plaintiff(s), JUSTIN LOPEZ, and all
others similarly situated

UNITED EMPLOYEES LAW GROUP

Dated:

By:

WALTER L. HAINES, Attorneys for
Plaintiff(s), JUSTIN LOPEZ, and all
others similarly situated

ATKINSON, ANDELSON, LOYA, RUDD &
ROMO

Dated: April 25, 2024

By:

RONALD W. NOVOTNY, Attorneys
for Defendant(s), EDWARD WALTER
SUNSERI and MICHAEL SERENO



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EXHIBIT A

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

(case name: Justin Lopez v. Edward Walter Sunseri and number 22STCV37939)

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

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Edward Walter Sunseri and Michael Sereno (“Defendants” is used herein as a placeholder) for alleged violations of California’s labor laws. The Action was filed by Defendants’ employee, Justin Lopez (“Plaintiff”), and seeks payment of (1) wages and other relief for a class of hourly, non-exempt employees (“Class Members”) who worked for Defendants during the Class Period (December 06, 2018 to December 31, 2023); and (2) penalties under the California Private Attorney General Act (“PAGA”) for hourly, non-exempt employees who worked for Defendants during the PAGA Period (November 23, 2021 to December 31, 2023) (“Aggrieved Employees”).

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

Based on Defendants’ records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$<<IndividualClassPaymentAmount>> (less withholding) and your Individual PAGA Payment is estimated to be \$<<IndividualPAGAPaymentAmount>>.** The estimated dollar value of a Pay Period is <<@PayPeriodValue>>. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendants’ records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.) The individual payments amounts will vary. However, the average Individual Class Payment to a Class Member is estimated to be <<\$Average Individual Class Payment Amount>>. The average Individual PAGA Payment to a Class Member is estimated to be <<\$Average Individual PAGA Payment Amount>>. The highest Individual Class Payment to a Class Member is estimated to be <<\$Highest Individual Class Payment Amount>> and the lowest is estimated to be <<\$Lowest Individual Class Payment Amount>>. The highest Individual PAGA Payment to a Class Member is estimated to be <<\$Highest Individual PAGA Payment Amount>> and the lowest is estimated to be <<\$Lowest Individual PAGA Payment Amount>>.

The above estimates are based on Defendants’ records showing that **you worked <<__>> Pay Periods** during the Class Period and **you worked <<__>> Pay Periods** during the PAGA Period. If you believe that you worked more Pay Periods during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

1 The Court has already preliminarily approved the proposed Settlement and approved this
2 Notice. The Court has not yet decided whether to grant final approval. The Court has
3 determined only that there is sufficient evidence to suggest that the proposed settlement
4 might be fair, adequate, and reasonable, and that any final determination of those issues
5 will be made at the Final Approval Hearing. Your legal rights are affected whether you act or
6 not act. Read this Notice carefully. You will be deemed to have carefully read and understood it.
7 At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement
8 and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class
9 Counsel"). The Court will also decide whether to enter a judgment that requires Defendants to
10 make payments under the Settlement and requires Class Members and Aggrieved Employees to
11 give up their rights to assert certain claims against Defendants.

12 If you worked for Defendants during the Class Period and/or the PAGA Period, you have
13 two basic options under the Settlement:

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

18 (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class
19 Settlement (opt-out) by submitting a written Request for Exclusion or otherwise notifying the
20 Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual
21 Class Payment. You will, however, preserve your right to personally pursue Class Period claims
22 for California labor law violations against Defendants, and, if you are an Aggrieved Employee,
23 remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of
24 the proposed Settlement.

25 **Defendants will not retaliate against you for any actions you take with respect to the**
26 **proposed Settlement.**

27 SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

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

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

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Defendants. The Action accuses Defendants of violating California labor laws by failure to pay wages, failure to pay required overtime, failure to provide meal periods, failure to authorize and permit rest periods, failure to issue proper wage statements, failure to timely pay wages, and related violations of the Labor Code. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the PAGA (Labor Code section 2698 and sections that follow) (“PAGA”). Plaintiff is represented by attorneys in the Action: David Glenn Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law Group (“Class Counsel.”)

Defendants strongly deny violating any laws or failing to pay any wages and contend they complied with all applicable laws.

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

So far, the Court has made no determination whether Defendants or Plaintiff are correct on the merits. In the meantime, Plaintiff and Defendants hired ☐ an experienced, neutral mediator ☐ a retired judge ☐ (describe alternative means of negotiation) in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendants have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendants have agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

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

A. Gross Settlement Amount. Defendants Will Pay \$375,000.00 as the Gross Settlement Amount (Gross Settlement). Defendants have agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendants will fund the Gross Settlement not more than 14 days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

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

1. Attorney Fees and Costs. Up to \$125,000.00 (33.33% of the Gross Settlement to Class Counsel for attorneys’ fees and up to \$16,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

2. Class Representative Service Payment. Up to \$15,000.00 as a Class

1 Representative Service Payment for filing the Action, working with Class Counsel and
2 representing the Class. A Class Representative Service Payment will be the only monies Plaintiff
will receive other than Plaintiff's Individual Class Payments and any Individual PAGA Payments.

3 3. Administration Expenses. Up to \$13,000.00 to the Administrator for
4 services administering the Settlement.

5 4. PAGA Penalties. Up to \$4,000.00 for PAGA Penalties, allocated 75% to
6 the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees
based on their PAGA Period Pay Periods.

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

9 Based on their records, Defendants estimated that, as of the date of the Settlement, there
10 are 209 Class Members who collectively worked a total of 6,290 Pay Periods, and 150 Aggrieved
Employees who worked a total of 2,900 PAGA Pay Periods.

11 C. Net Settlement Distributed to Class Members. After making the above deductions
12 in amounts approved by the Court, the Administrator will distribute the rest of the Gross
Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class
13 Members based on their Class Period Pay Periods.

14 D. Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking
15 the Court to approve an allocation of 33.33% of each Individual Class Payment to taxable wages
("Wage Portion") and 66.67% to interest and penalties ("Non-Wage Portion."). The Wage Portion
16 is subject to withholdings and will be reported on IRS W-2 Forms. Defendants will separately
pay employer payroll taxes they owe on the Wage Portion. The Individual PAGA Payments are
17 counted as penalties rather than wages for tax purposes. The Administrator will report the
Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS
18 1099 Forms.

19 Although Plaintiff and Defendants have agreed to these allocations, neither side is giving
20 you any advice on whether your Payments are taxable or how much you might owe in taxes. You
are responsible for paying all taxes (including penalties and interest on back taxes) on any
21 Payments received from the proposed Settlement. You should consult a tax advisor if you have
any questions about the tax consequences of the proposed Settlement.
22

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

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

3 F. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated
4 as a Participating Class Member, participating fully in the Class Settlement, unless you notify the
Administrator in writing, not later than <<RESPONSE DEADLINE>>, that you wish to opt-out.
5 The easiest way to notify the Administrator is to email, fax, or mail a written and signed Request
6 for Exclusion by the <<RESPONSE DEADLINE>> Response Deadline. The Request for
Exclusion should be a letter from a Class Member or his/her representative setting forth a Class
7 Member's name, present address, telephone number, and a simple statement electing to be
excluded from the Settlement. You may use the enclosed Election Not To Participate In
8 Settlement form for this purpose. Excluded Class Members (i.e., Non-Participating Class
Members) will not receive Individual Class Payments, but will preserve their rights to personally
9 pursue claims against Defendants for violations of California's labor laws.

10 You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude
11 themselves from the Class Settlement (Non-Participating Class Members) remain eligible for
Individual PAGA Payments and Plaintiff release Defendants from civil penalties they may owe
12 to the Aggrieved Employees.

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

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

20 I. Participating Class Members' Release. After the Judgment is final and Defendants
21 have fully funded the Gross Settlement (and separately paid all employer payroll taxes),
Participating Class Members will be legally barred from asserting any of the claims released under
22 the Settlement. This means that unless you opted out by validly excluding yourself from the Class
Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or
23 their officers, directors, employees, and agents for wages based on the Class Period facts and
PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this
24 Settlement.

25 ///

26 ///

27 ///

1 The Participating Class Members will be bound by the following release:

2 All Participating Class Members, on behalf of himself and their respective former
3 and present representatives, agents, attorneys, heirs, administrators, successors,
4 and assigns, release Released Parties from all claims stated in the Operative
5 Complaint and those based solely upon the facts alleged in the Operative
6 Complaint. Except as set forth in Section 6.3 of the Settlement Agreement,
7 Participating Class Members do not release any other claims, including claims for
vested benefits, wrongful termination, violation of the Fair Employment and
Housing Act, unemployment insurance, disability, social security, workers'
compensation, or claims based on facts occurring outside the Class Period.

8 J. The PAGA Release. After the Court's judgment is final, and Defendants have paid
9 the Gross Settlement (and separately paid the employer-side payroll taxes), Plaintiff release all
10 claims for civil penalties that could have been sought by the Labor Commissioner for the
11 violations identified in Plaintiff's pre-filing letter to the LWDA; Plaintiff does not release the
claim for wages or damages of any Aggrieved Employee unless such Aggrieved Employee is a
Participating Class Member.

12 **4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

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

16 B. Individual PAGA Payments. The Administrator will calculate Individual PAGA
17 Payments by (a) dividing \$1,000.00 by the total number of PAGA Pay Periods worked by all
18 Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods
worked by each individual Aggrieved Employee.

19 C. Pay Period Challenges. The number of Class Pay Periods you worked during the
20 Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as
21 recorded in Defendants' records, are stated in the first page of this Notice. You have until
22 <<RESPONSE DEADLINE>> to challenge the number of Pay Periods and/or Pay Periods
23 credited to you. You can submit your challenge by signing and sending a letter to the
Administrator by email, fax or regular U.S. mail. You can use the enclosed Dispute form for this
purpose. Section 9 of this Notice has the Administrator's contact information.

24 You need to support your challenge by submitting copies of pay stubs or other records.
25 The Administrator will accept Defendants' calculation of Pay Periods based on Defendants'
26 records as accurate unless you send copies of records containing contrary information. You
27 should send copies rather than originals because the documents will not be returned to you. The
Administrator will resolve Pay Period challenges based on your submission and on input from

1 Class Counsel (who will advocate on behalf of Participating Class Members) and Defendants'
2 Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final
3 decision.

4 **5. HOW WILL I GET PAID?**

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

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

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

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

16 Email, fax, or mail a written and signed letter with your name, present address, telephone
17 number, and a simple statement that you do not want to participate in the Settlement. You may
18 use the enclosed Election Not To Participate In Settlement form for this purpose. The
19 Administrator will exclude you based on any writing communicating your request be excluded.
20 Be sure to personally sign your request, identify the Action as *Justin Lopez vs. Edward Walter
21 Sunseri*, Case No. 22STCV37939, and include your identifying information (full name, address,
22 telephone number, approximate dates of employment, and social security number for verification
23 purposes). You must make the request yourself. If someone else makes the request for you, it
24 will not be valid. You should send your Request for Exclusion to the Administrator by email, fax,
25 or send by regular U.S. mail. **The Administrator must be sent your request to be excluded by
26 <<RESPONSE DEADLINE>>, or it will be invalid.** Section 9 of the Notice has the
27 Administrator's contact information. If you are an Aggrieved Employee, you will still receive an
28 Individual PAGA Payment.

29 **7. HOW DO I OBJECT TO THE SETTLEMENT?**

30 Only Participating Class Members have the right to object to the Settlement. Before deciding
31 whether to object, you may wish to see what Plaintiff and Defendants are asking the Court to
32 approve. At least 16 days before the Final Approval Hearing, Class Counsel and/or Plaintiff will
33 file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why
34 the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award
35 stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and
36 (ii) the amount Plaintiff is requesting as a Class Representative Service Payment. Upon
37 reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will

1 send you copies of these documents at no cost to you. You can also view them and the Settlement
2 Agreement on the Administrator's Website <<ADMINISTRATOR WEBSITE>> or the Court's
website <<COURT WEBSITE>>.

3 A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for
4 Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to
5 object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class
Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the
6 Administrator is <<RESPONSE DEADLINE>>.** Be sure to tell the Administrator what you
7 object to, why you object, and any facts that support your objection. Make sure you identify the
Action, *Justin Lopez vs. Edward Walter Sunseri*, case no. 22STCV37939, and include your name,
8 current address, telephone number, and approximate dates of employment for Defendants and
9 sign the objection. Section 9 of this Notice has the Administrator's contact information. You may
use the enclosed Objection form for this purpose. You should send your objection to the
Administrator by email, fax, or send by regular U.S. mail.

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

13 **8. CAN I ATTEND THE FINAL APPROVAL HEARING?**

14 You can, but don't have to, attend the Final Approval Hearing on <<FINAL APPROVAL
15 HEARING DATE>> at <<FINAL APPROVAL HEARING TIME>> in Department Dept. 14 of the
16 Los Angeles Superior Court, located at Spring Street Courthouse, 312 North Spring Street, Los
17 Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the
Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and
18 the Administrator. The Court will invite comment from objectors, Class Counsel and Defense
Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally
19 or virtually by <<CourtConnect/CourtCall/MicrosoftTeams>>
(https://www.<<CourtVirtualAppearanceLink>>). Check the Court's website for the most current
20 information.

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

23 **9. HOW CAN I GET MORE INFORMATION?**

24 The Agreement sets forth everything Defendants and Plaintiff have promised to do under the
25 proposed Settlement. The easiest way to read the Agreement, the Judgment or any other
Settlement documents is to go to the Administrator's website at _____.
26 You can also telephone or send an email to Class Counsel or the Administrator using the contact
27 information listed below, or consult the Superior Court website by going to _____ .com
28

1 and entering the Case Number for the Action, Case No. 22STCV37939. You can also make an
2 appointment to personally review court documents in the Clerk's Office at the Spring Street
Courthouse by calling <<CLERK OF COURT'S PHONE NUMBER>>.

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

5 Class Counsel:

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

11 Administrator:

12 Name of Company: Phoenix Class Action Settlement Solutions, Inc.
13 Email Address: _____
14 Mailing Address: _____
Telephone: _____
Fax Number: _____

15 **10. WHAT IF I LOSE MY SETTLEMENT CHECK?**

16 If you lose or misplace your settlement check before cashing it, the Administrator will replace it
17 as long as you request a replacement before the void date on the face of the original check. If
18 your check is already void

19 ☐ you should consult the Unclaimed Property Fund (https://www.sco.ca.gov/search_upd.html) for
instructions on how to retrieve the funds. You can contact the Unclaimed Property Fund at (800)
20 992-4647.

21 ☐ you will have no way to recover the money.

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

23 To receive your check, you should immediately notify the Administrator if you move or otherwise
24 change your mailing address.
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EXHIBIT F

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

JUSTIN LOPEZ, on behalf of himself and all others similarly situated, and as “aggrieved employees” on behalf of other “aggrieved employees” under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

EDWARD WALTER SUNSERI, a natural person doing business as Sunseri’s Bar and Beverage Catering; MICHAEL SERENO, a natural person; and DOES 1–50, inclusive,

Defendant(s).

Case No. 22STCV37939

[PROPOSED] FINAL ORDER AND JUDGMENT APPROVING CLASS ACTION SETTLEMENT

Action filed: December 05, 2022
Dept: Dept. 14, The Honorable
Kenneth R. Freeman

1.1. This matter came on for hearing on ____ at ____ .m. in Department Dept. 14 of the above-captioned court on Plaintiff's Motion for Final Approval of a Class Action Settlement pursuant to California Rules of Court, Rule 3.769, as set forth in the Joint Stipulation of Class Action Settlement and Release of Claims (the "Settlement") filed herewith which provides for a Gross Settlement Amount ("GSA") of up to \$375,000.00 in compromise of all disputed claims on behalf of all persons employed by Defendants in California and classified as an hourly, non-exempt who worked for Defendants during the Class Period of December 06, 2018 to December 31, 2023 ("Settlement Class Period"). All capitalized terms used herein shall have the same meaning as defined in the Settlement.

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

2. The Court has jurisdiction over the subject matter of the Action and over all Parties to the Action, including all Class Members. Pursuant to this Court's Order Granting Preliminary Approval of Class Action Settlement of ____, the Notice Packet was sent to each Class Member by First Class U.S. mail. The Notice Packet informed Class Members of the terms of the Settlement, their right to receive their proportional share of the Settlement, their right to request exclusion, their right to comment upon or object to the Settlement, and their right to appear in person or by counsel at the final approval hearing and be heard regarding final approval of the Settlement. Adequate periods of time were provided by each of these procedures. No member of

¹ A true and correct copy of the Court's ruling on the Motion for Preliminary Approval of Class Action Settlement entered on [REDACTED] is attached hereto as **Exhibit A** and incorporated by reference. A true and correct copy of the Court's Minute Order dated [REDACTED] is attached hereto as **Exhibit B** and incorporated by reference.

1 the Settlement Class presented written objections to the proposed Settlement as part of this notice
2 process, stated an intention to appear, or actually appeared at the final approval hearing.

3 3. For purposes of this Final Order and Judgment, the Class Members are during the
4 Class Period. at any time during the period of December 06, 2018 to December 31, 2023
5 (“Settlement Class Period”).

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

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

18 **PAGA Release.** Plaintiff releases all claims for civil penalties that could have been
19 sought by the Labor Commissioner for the violations identified in Plaintiff’s pre-filing letter to
20 the LWDA; Plaintiff do not release the claim for wages or damages of any Aggrieved Employee
21 unless such Aggrieved Employee is a Participating Class Member.

22 **“Released Claims”** shall mean all claims stated in the Operative Complaint and based
23 solely on the facts alleged in the Operative Complaint. **“Released Parties”** shall mean
24 Defendants, their employees and agents.

25 2. The Court further finds and determines that the terms of the Settlement are fair,
26 reasonable and adequate, that the Settlement is ordered finally approved, and that all terms and
27 provisions of the Settlement, including the release of claims contained therein, should be and
28 hereby are ordered to be consummated, and directs the Parties to effectuate the Settlement

1 according to its terms. As of the Effective Date of Settlement, and for the duration of the
2 Settlement Class Period, all Class Members are hereby deemed to have waived and released all
3 Released Claims and are forever barred and enjoined from prosecuting the Released Claims
4 against the Released Parties as fully set forth in the Settlement. No objections were received by
5 the Parties or the Court through the date of this Final Order and Judgment. The Court finds ____
6 Class Member(s) - ____ - submitted a request for exclusion from the Settlement as determined by
7 the Administrator and therefore is/are not in the Settlement Class.

8 3. The Court finds and determines that (a) the Settlement Shares to be paid to
9 Participating Class Members and (b) the LWDA payment as civil penalties under the California
10 Labor Code Private Attorneys General Act of 2004, as amended, California Labor Code sections
11 2699 *et seq.*, as provided for by the Settlement are fair and reasonable. The Court hereby grants
12 final approval to, and orders the payment of, those amounts be made to the Participating Class
13 Members and to the California Labor & Workforce Development Agency (“LWDA”), in
14 accordance with the terms of the Settlement.

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

17 a. Class Counsel fees & costs of \$125,000.00 in attorneys’ fees and
18 \$16,000.00 in litigation costs to Class Counsel;

19 b. \$15,000.00 as a Class Representative Service Payment award payable to
20 Plaintiff for his services as Class Representative;

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

23 d. Payment of \$3,000.00 (75% of the (\$4,000.00 PAGA penalty) to the
24 LWDA.

25 7. The settlement shall proceed as directed in the Settlement, and no payments
26 pursuant to the Settlement shall be distributed until after the Effective Date of Settlement. Without
27 affecting the finality of this Final Order and Judgment in any way, the Court retains jurisdiction
28 of all matters relating to the interpretation, administration, implementation, effectuation and

1 enforcement of this Final Order and Judgment and the Settlement pursuant to California Rule of
2 Court 3.769(h).

3 8. Within 14 calendar days of the Effective Date of Settlement, Defendants shall
4 deposit the Settlement proceeds in an account designated by the Administrator: (i) the total
5 amount of all Individual Class Payments to Participating Class Members, (ii) the Court approved
6 Class Counsel fees & costs, (iii) the Court-approved Class Representative Service Payment, (iv)
7 the Court-approved costs of the Administrator, (v) the payment to the LWDA, and (vi) (i) the
8 total amount of all Individual PAGA Payments to Aggrieved Employees, including the employer
9 side payroll taxes on the wage portion of the settlement.

10 9. Other than their employer side payroll taxes, Defendants' payment of such sums
11 shall be the sole financial obligation of Defendants under the Settlement, and shall be in full
12 satisfaction of all claims released herein, including, without limitation, all claims for wages,
13 penalties, interest, attorneys' fees, costs and expenses.

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

20 11. The Parties shall file a final accounting report by _____. A non-appearance case
21 review re submission of a final report is scheduled for ____ at _____.m. in Department Dept. 14.
22 The Parties shall also prepare and file a stipulation and proposed order and proposed Amended
23 Final Order and Judgment by _____ which includes the amount of distribution of unpaid cash
24 Residue, and unclaimed or abandoned funds to the non-party, the accrued interest on that sum.
25 The stipulation shall be signed by counsel for the class and defense counsel in accord with the
26 proposed Amended Final Order and Judgment. If there are objections by any party or non-party,
27 class counsel shall immediately notify the Court and the matter will be set for further hearing. A
28 non-appearance hearing for the lodging of the stipulation and proposed order and separate

1 amended judgment is scheduled for ____ at ____ .m. in Department Dept. 14.

2 12. Nothing in this Final Order and Judgment shall preclude any action to enforce the
3 Parties' obligations under the Settlement or hereunder, including the requirement that Defendants
4 deposit funds for distribution by the Administrator to Participating Class Members in accordance
5 with the Settlement.

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

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

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

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

27 ///

28 ///

1 17. This document shall constitute a Judgment for purposes of California Rule of
2 Court 3.769(h).

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

4
5
6 _____
7 **DATE**

8 **THE HONORABLE KENNETH R.**
9 **FREEMAN**
10 **SUPERIOR COURT JUDGE**

EXHIBIT 2



THE SPIVAK LAW FIRM

EMPLOYEE RIGHTS

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

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

November 23, 2022

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

Re: Justin Lopez / Sunseri's Bar and Beverage Catering

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Justin Lopez (hereafter "Lopez" or "Complainant") provides notice that Edward Walter Sunseri, a natural person doing business as Sunseri's Bar and Beverage Catering, Michael Sereno, and related entities (collectively "the Sunseri Catering Employers" or "the Employers") violated his rights and those of all other individuals the Sunseri Catering Employers have employed or otherwise contracted with in California as hourly, non-exempt employees, including bartenders, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the "Aggrieved Employees") under Labor Code sections 201, 202, 203, 204, 226.7, 510, 512, 1194, and other Labor Code statutes. On behalf of himself and all other Aggrieved Employees, Lopez hereby provides this notice to the Labor & Workforce Development Agency and the Sunseri Catering Employers and their agents and representatives.

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

Statement of Facts

On approximately December 31, 2009, the Sunseri Catering Employers began to employ Lopez in Los Angeles County in the position of hourly, non-exempt bartender. The Sunseri Catering Employers continuously employed him in that capacity until on or about June 2, 2022, when his employment ended.

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

The Sunseri Catering Employers regularly scheduled Lopez and all other Aggrieved Employees to work shifts over 8 hours in a day and over 40 hours in a week. The Sunseri Catering Employers failed to compensate Lopez and all other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek.

The Sunseri Catering Employers employed Lopez and all other Aggrieved Employees for periods in excess of eight hours in a workday and 40 hours in a workweek. The Sunseri Catering Employers also employed Lopez and all other Aggrieved Employees in excess of 12 hours in a workday. The Sunseri Catering Employers failed to compensate Lopez and all other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The Sunseri Catering Employers charged their customers a mandatory gratuity which they distributed among Plaintiff and the other Aggrieved Employees as compensation for their work in lieu of the tips the Sunseri Catering Employers discouraged their customers and their guests from paying. However, the Sunseri Catering Employers did not factor these wages in when calculating the regular rates of pay of Lopez and all other Aggrieved Employees. Therefore, the Sunseri Catering Employers denied Lopez and all other Aggrieved Employees all overtime wages they earned for work in excess of eight hours per day and 40 hours per week. Furthermore, the Sunseri Catering Employers denied Lopez and all other Aggrieved Employees all doubletime wages they earned for work in excess of 12 hours per day.

At all relevant times, the Sunseri Catering Employers failed to provide Lopez and all other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Sunseri Catering Employers required Lopez and all other Aggrieved Employees to remain in their assigned work areas at all times. The Sunseri Catering Employers prohibited Lopez and the other Aggrieved Employees from leaving their work area unless someone else was available to cover their position. Generally, no one was available to provide such cover because of the Sunseri Catering Employers' understaffing practices. Consequently, the Sunseri Catering Employers prevented Lopez and all other Aggrieved Employees from taking their duty free 30-minute meal periods. The Sunseri Catering Employers also failed to pay premium wages for days on which they failed to provide Lopez and all other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Sunseri Catering Employers failed to authorize and permit Lopez and all other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Sunseri Catering Employers required Lopez and all other Aggrieved Employees to remain in their assigned work areas at all times. The Sunseri Catering Employers prohibited Lopez and the other Aggrieved Employees from leaving their work area unless someone else was available to cover their position. Generally, no one was available to provide such cover because of the Sunseri Catering Employers' understaffing practices. Consequently, the Sunseri Catering Employers prevented Lopez and all other Aggrieved Employees from taking their 10-minute rest breaks. The Sunseri Catering Employers also failed to pay premium wages for days on which they failed to authorize and permit Lopez and all other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Sunseri Catering Employers failed to issue to Lopez and all other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay and all wages earned. The Sunseri Catering Employers knowingly and intentionally failed to state on the wage statements they issued to Lopez and all other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, and other required information.

The Sunseri Catering Employers also failed to timely pay Lopez and all other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

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

- (a) The Sunseri Catering Employers failed to pay Lopez and all other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (b) The Sunseri Catering Employers failed to provide Lopez and all other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Sunseri Catering Employers failed to authorize and permit Lopez and all other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Sunseri Catering Employers failed to compensate Lopez and all other Aggrieved Employees at one hour's pay for each day in which the Sunseri Catering Employers failed to provide them with one or more meal periods as required by law;
- (e) The Sunseri Catering Employers failed to compensate Lopez and all other Aggrieved Employees at one hour's pay for each day in which the Sunseri Catering Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Sunseri Catering Employers knowingly and intentionally failed to provide Lopez and all other Aggrieved Employees with accurate wage statements;
- (g) The Sunseri Catering Employers willfully failed to timely pay Lopez and all other Aggrieved Employees all earned and unpaid wages during their employment with the Sunseri Catering Employers and when their employment ended; and

- (h) The Sunseri Catering Employers failed to maintain accurate employment records pertaining to Lopez and all other Aggrieved Employees.

Accordingly, Lopez now seeks civil penalties on behalf of himself and all other Aggrieved Employees based on the Sunseri Catering Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

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

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

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

- (6) Establishments contracting for development, maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units; and
- (7) Establishments providing veterinary or other animal care services.

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Sunseri Catering Employers, Lopez, and all other Aggrieved Employees were covered by the Wage Order because the Sunseri Catering Employers operated, and Lopez, and all other Aggrieved Employees, worked for one or more catering businesses. Accordingly, Lopez and all other Aggrieved Employees are entitled to the protections the Wage Order provides.

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

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

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

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

In relevant part, Labor Code section 1194 states:

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

In relevant part, Labor Code section 510 states:

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

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

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

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

If an employee's only straight-time compensation is based on an hourly rate of pay, the hourly rate is his regular rate. However, if he also receives other compensation, his regular rate is computed by dividing his total compensation by his total hours worked. The regular rate of pay under California law includes "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (*quoting* 29 U.S.C. § 207(e)). This requirement includes, but is not limited to, commissions and non-discretionary bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court*, 131 Cal.App.4th 893, 904-905 (2005).

Labor Code § 350(e) defines "Gratuity" to include "any tip, gratuity, money, or part thereof that has been paid or given to or left for an employee by a patron of a business over and above the actual amount due the business for services rendered or for goods, food, drink, or articles sold or served to the patron." At all relevant times, the Sunseri Catering Employers required Lopez and all other Aggrieved Employees to work events where the Sunseri Catering Employers charged its customers a mandatory gratuity for their services. The Sunseri Catering Employers paid Lopez and all other Aggrieved Employees a percentage of the mandatory gratuity as partial compensation for their services to the customer. However, the Sunseri Catering Employers falsely characterized this compensation as a "gratuity" in their records to customers and on Lopez's and all other Aggrieved Employees' paychecks. This mandatory gratuity is not a gratuity at all, but a mandatory service charge based on the agreement between the Sunseri Catering Employers and the customer. The Sunseri Catering Employers did not leave the amount of the mandatory gratuity to the customer's discretion, but rather it is a contractually agreed upon sum that the Sunseri Catering Employers required the customer to pay for their services. Therefore, the "mandatory gratuity" charge specified in the agreement between the Sunseri Catering Employers and its customers are not gratuities within the meaning of the Labor Code.

The state and federal wage-hour enforcement authorities treat mandatory service charges as amounts owed the establishment by the patron and, consequently, not as voluntary gratuities that necessarily belong to a particular employee. 29 C.F.R. § 531.55; F.O.H. § 30d03 (compulsory service charge is not considered a tip); Wage-Hour Opinion Letter No. FLSA 2005-31 (Sept. 2, 2005) (15% "imposed gratuity" added to every chauffeur reservation is not a tip). Moreover, when an employer distributes any portion of these amounts to non-exempt employees, the amounts must be included in the employees' regular rates of pay for purposes of computing their overtime compensation. The DLSE does not regard mandatory service charges, such as the

Sunseri Catering Employers' mandatory service charges, as gratuities. They are considered part of the employer's gross receipts and may be incorporated as part of its wage obligations to employees. As a result, they must be included as part of the regular rate of pay for the purpose of computing overtime. D.L.S.E. Management Memo 89-2 (June 9, 1989). See also 29 C.F.R. §§ 531.55(b).

The Sunseri Catering Employers employed Lopez and all other Aggrieved Employees for periods in excess of eight hours in a workday and 40 hours in a workweek. The Sunseri Catering Employers also employed Lopez and all other Aggrieved Employees in excess of 12 hours in a workday. The Sunseri Catering Employers failed to compensate Lopez and all other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The Sunseri Catering Employers charged their customers a mandatory gratuity which they distributed among Lopez and all other Aggrieved Employees as compensation for their work in lieu of the tips the Sunseri Catering Employers discouraged their customers and their guests from paying. However, the Sunseri Catering Employers did not factor these wages in when calculating the regular rates of pay of Lopez and all other Aggrieved Employees. Therefore, the Sunseri Catering Employers denied Lopez and all other Aggrieved Employees all overtime wages they earned for work in excess of eight hours per day and 40 hours per week. Furthermore, the Sunseri Catering Employers denied Lopez and all other Aggrieved Employees all doubletime wages they earned for work in excess of 12 hours per day.

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

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

With respect to overtime wages, the regular rate of pay under California law must include "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes but is not limited to bonuses. See, e.g., *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th

893, 904–905. Bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Sunseri Catering Employers, Lopez and all other Aggrieved Employees earned automatic or mandatory gratuities, meal period premium wages, and rest period premium wages during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Sunseri Catering Employers failed to pay to Lopez and all other Aggrieved Employees meal period premium wages, rest period premium wages, overtime, and double time premium pay on such automatic or mandatory gratuities, meal period premium wages, rest period premium wages, and other non-discretionary compensation.

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

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

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

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

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

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

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

In relevant part, Labor Code section 512 states:

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

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

Meal Periods:

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

by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. . . .

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

In addition, Labor Code section 226.7 states:

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

At all relevant times, the Sunseri Catering Employers failed to provide Lopez and all other Aggrieved Employees with all timely meal periods. The Sunseri Catering Employers denied Lopez and all other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Sunseri Catering Employers required Lopez and all other Aggrieved Employees to remain in their assigned work areas at all times. The Sunseri Catering Employers prohibited Lopez and the other Aggrieved Employees from leaving their work area unless someone else was available to cover their position. Generally, no one was available to provide such cover because of the Sunseri Catering Employers’ understaffing practices. Consequently, the Sunseri

Catering Employers prevented Lopez and all other Aggrieved Employees from taking their duty-free 30-minute meal periods. Furthermore, the Sunseri Catering Employers failed to pay premium wages for days on which they failed to provide Lopez and all other Aggrieved Employees with timely meal periods. Accordingly, Lopez now seeks civil penalties for these Labor Code violations that the Sunseri Catering Employers have committed against him and all other Aggrieved Employees as follows:

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

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

Section 2(K) of the Wage Order states,

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

In relevant part, Labor Code section 1198 states,

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

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

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

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

The Sunseri Catering Employers failed to authorize and permit Lopez and all other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Sunseri Catering Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Sunseri Catering Employers required Lopez and all other Aggrieved Employees to remain in their assigned work areas at all times. The Sunseri Catering Employers prohibited Lopez and the other Aggrieved Employees from leaving their work area unless someone else was available to cover their position. Generally, no one was available to provide such cover because of the Sunseri Catering Employers' understaffing practices. Consequently, the Sunseri Catering Employers prevented Lopez and all other Aggrieved Employees from taking their 10-minute rest breaks. Moreover, the Sunseri Catering Employers failed to pay Lopez and all other Aggrieved Employees premium wages on workdays the Sunseri Catering Employers failed to provide Lopez and all other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Lopez now seeks civil penalties for these Labor Code violations that the Sunseri Catering Employers have committed against him and all other Aggrieved Employees as follows:

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

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

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

1. Gross wages earned;

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

At all relevant times during the applicable limitations period, the Sunseri Catering Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Sunseri Catering Employers failed to state in the wage statements they issued to Lopez and all other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Sunseri Catering Employers knowingly and intentionally failed to state on the wage statements they issued to Lopez and all other Aggrieved Employees the earned, but unpaid wages described above. The wage

statements do not state all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, and other required information.

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

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

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

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

/ / /

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 202, and 203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

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

The Sunseri Catering Employers failed to pay Lopez and all other Aggrieved Employees whose employment ended all earned, but unpaid wages described above by the conclusion of their employment including unprovided meal period premium wages, unprovided rest break premium wages, overtime wages, doubletime wages, and other compensation. Additionally, the Sunseri Catering Employers failed to issue to Lopez and all other Aggrieved Employees whose employment ended their final paychecks until one week following the termination. By failing to pay Lopez and all other Aggrieved Employees as set forth above at the end of employment, the Sunseri Catering Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all other Aggrieved Employees, Lopez seeks civil penalties from the Sunseri Catering Employers as follows:

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

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

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

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

Every person employing labor in this state shall:

...

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

Labor Code section 1174.5 states:

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

Section 7 of Wage Order states,

- (A) Every employer shall keep accurate information with respect to each employee including the following:
- (1) Full name, home address, occupation and social security number.
 - (2) Birth date, if under 18 years, and designation as a minor.
 - (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
 - (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
 - (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
 - (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to

employees. An accurate production record shall be maintained by the employer.

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

The Sunseri Catering Employers failed to compensate Lopez and all other Aggrieved Employees for all hours worked at the correct rates of pay, including all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, and related compensation. As a result, the Sunseri Catering Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Lopez and all other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Lopez seeks civil penalties on behalf of himself and all other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Person Acting on Behalf of Employers who Violates Labor Code
(Labor Code § 558.1)

In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or

LWDA / The Sunseri Catering Employers

Re: Justin Lopez

November 23, 2022

Page 22 of 23

managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil
(b) Code.

At all relevant times, Michael Sereno was an employer of Lopez and all other Aggrieved Employees, and/or “owner,” “managing agent,” and/or “officer” of the Sunseri Catering Employers and the other employers identified above. Michael Sereno directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above. On behalf of himself and all other Aggrieved Employees, Lopez seeks the same civil penalties against Michael Sereno on the same grounds for which he seeks civil penalties against the Sunseri Catering Employers.

Conclusion

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

Sincerely,



David Spivak, Esq.

David@spivaklaw.com

cc: Justin Lopez

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

// /

LWDA / The Sunseri Catering Employers

Re: Justin Lopez

November 23, 2022

Page 23 of 23

Edward Walter Sunseri
10617 Garvey Ave.
El Monte, CA 91733-2203

Edward Walter Sunseri
P.O. Box 83
Glendora, CA 91740

Michael Sereno
875 E 24th St.
Upland, CA 91784

Michael Sereno
P.O. Box 83
Glendora, CA 91740

EXHIBIT 3

Electronically FILED by Superior Court of California, County of Los Angeles on 12/05/2022 01:01 PM Sherri R. Carter, Executive Officer/Clerk of Court, by G. Carini, Deputy Clerk

DAVID G. SPIVAK (SBN 179684)

david@spivaklaw.com

JENICA LEONARD (SBN 245366)

jenica@spivaklaw.com

THE SPIVAK LAW FIRM

8605 Santa Monica Bl

PMB 42554

West Hollywood, CA 90069

Telephone: (213) 725-9094

Facsimile: (213) 634-2485

Attorneys for Plaintiff(s),

JUSTIN LOPEZ, and all others similarly situated

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

(UNLIMITED JURISDICTION)

JUSTIN LOPEZ, on behalf of himself and all
others similarly situated, and the general public,

Plaintiff(s),

vs.

EDWARD WALTER SUNSERI, a natural
person doing business as Sunseri's Bar and
Beverage Catering; MICHAEL SERENO, a
natural person; and DOES 1-50, inclusive,

Defendant(s).

Case No. **22STCV37939**

CLASS ACTION

COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 221, 510, 1194, 1197, and 1198);
2. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
3. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
4. Wage Statement Penalties (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code § 203); and
6. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.)

JURY TRIAL DEMANDED



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Floor
Los Angeles, CA 90067

ADDITIONAL ATTORNEY(S) FOR PLAINTIFF(S)

WALTER L. HAINES (SBN 71075)
walter@uelglaw.com
UNITED EMPLOYEES LAW GROUP
4276 Katella Ave
Suite 301
Los Alamitos, CA 90720
Telephone: (562) 256-1047
Facsimile: (562) 256-1006



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Floor
Los Angeles, CA 90067

1 Plaintiff, Justin Lopez (hereafter “Plaintiff” or “Lopez”), on behalf of himself and all
2 others similarly situated, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this class action for alleged violations of the California Labor
5 Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”), and the
6 California Business and Professions Code against Defendants Edward Walter Sunseri, a natural
7 person doing business as Sunseri’s Bar and Beverage Catering, Michael Sereno, a natural person,
8 and Does 1 through 50, inclusive (collectively “Defendants”).

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

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

14 (B) Provide all meal periods;

15 (C) Authorize and permit all rest breaks;

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

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

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

19 (G) Timely pay wages upon termination of employment;

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

22 **II. THE PARTIES**

23 3. Plaintiff Justin Lopez is a resident of California.

24 4. Defendant Edward Walter Sunseri is a natural person doing business as Sunseri’s
25 Bar and Beverage Catering and a citizen of California based on Plaintiff’s information and belief.

26 5. Defendant Michael Sereno is a natural person and a citizen of California based on
27 Plaintiff’s information and belief.

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



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1 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
2 when ascertained.

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

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

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

17 **III. CLASS ALLEGATIONS**

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

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

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



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

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

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

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

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

15 D. Whether Defendants knowingly and intentionally failed to provide the
16 class with accurate and complete itemized wage statements;

17 E. Whether Defendants willfully failed to provide the class with timely final
18 wages;

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

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

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

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



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

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

IV. STATEMENT OF FACTS

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

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

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



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

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

20. On approximately December 31, 2009, the Defendants began to employ Plaintiff in greater Los Angeles County in the position of hourly, non-exempt bartender. The Defendants continuously employed him in that capacity until on or about June 2, 2022, when his employment ended.

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

22. Defendants employed Plaintiff and the Class Members for periods in excess of eight hours in a workday and 40 hours in a workweek. Defendants also employed Plaintiff and the Class Members in excess of 12 hours in a workday. The Defendants failed to compensate Plaintiff and all other Class Members at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The Defendants charged their customers a mandatory gratuity which they distributed among Plaintiff



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1 and the other Class Members as compensation for their work in lieu of the tips the Defendants
2 discouraged their customers and their guests from paying. However, the Defendants did not factor
3 these mandatory gratuities - essentially service charges which Defendant paid to Plaintiff and the
4 other Class Members as wages - when calculating the regular rates of pay and overtime premium
5 wages of Plaintiff and the Class Members. Therefore, Defendants denied Plaintiff and the Class
6 Members all overtime wages they earned for work in excess of eight hours per day and 40 hours
7 per week. Furthermore, Defendants denied Plaintiff and the Class Members all doubletime wages
8 they earned for work in excess of 12 hours per day.

9 23. At all relevant times, the Defendants failed to provide Plaintiff and all other Class
10 Members with all timely 30-minute, off-duty meal periods. The Defendants required Plaintiff and
11 all Class Members to remain in their assigned work areas at all times. The Defendants prohibited
12 Plaintiff and the other Class Members from leaving their work areas unless another employee was
13 available to cover their position. Generally, no one was available to cover because it was the
14 practice of the Defendants to understaff their events. Consequently, the Defendants prevented
15 Plaintiff and all other Class Members from taking their duty free 30-minute meal periods. The
16 Defendants also failed to pay premium wages for days on which they failed to provide Plaintiff
17 and all other Class Members with meal periods as required by law.

18 24. At all relevant times, the Defendants failed to authorize and permit Plaintiff and
19 all other Class Members to take 10-minute, off-duty, paid rest breaks every four hours worked or
20 major portion thereof. The Defendants required Plaintiff and all Class Members to remain in their
21 assigned work areas at all times. The Defendants prohibited Plaintiff and the other Class
22 Members from leaving their work areas unless another employee was available to cover their
23 position. Generally, no one was available to cover because it was the practice of the Defendants
24 to understaff their events. Consequently, the Defendants prevented Plaintiff and all other Class
25 Members from taking their 10-minute rest breaks. The Defendants also failed to pay premium
26 wages for days on which they failed to authorize and permit Plaintiff and all other Class Members
27 to take rest breaks as required by law.

28 25. At all relevant times, the Defendants failed to issue to Plaintiff and all other Class
Members complete and accurate wage statements that state all hours worked at the correct rates
of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on the
wage statements they issued to Plaintiff and all other Class Members the unpaid wages discussed



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1 above. The wage statements fail to state all regular wages earned, all overtime wages earned, all
2 doubletime wages earned, all meal period premium wages earned, all rest break premium wages
3 earned, and related information.

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

6 27. At all relevant times, the Defendants failed to maintain accurate employee records
7 of Plaintiff and all other Class Members.

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

- 10 A. Not paid all earned wages;
- 11 B. Not provided with all off duty meal periods;
- 12 C. Not authorized and permitted to take all rest break periods;
- 13 D. Not paid one hour's pay for each workday in which Defendants failed to
14 authorize and permit them to take one or more timely rest periods;
- 15 E. Not paid one hour's pay for each workday in which Defendants failed to
16 provide them with one or more timely meal periods;
- 17 F. Not paid all wages earned, including, but not limited to, minimum, regular,
18 overtime, and doubletime wages for work performed while clocked out;
- 19 G. Not provided with accurate and complete wage statements; and
- 20 H. Not timely paid all earned and unpaid wages at the time their employment
21 ended.

22 **FIRST CAUSE OF ACTION**

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

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

25 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

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

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

29 **A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT** 30 **THE CORRECT RATES OF PAY**

31. Section 2 of the Wage Order defines "hours worked" as "the time during which an



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1 employee is subject to the control of an employer and includes all the time the employee is
2 suffered or permitted to work, whether or not required to do so.”

3 32. Section 3 of the Wage Order states:

4 (A) Daily Overtime - General Provisions

5 (1) The following overtime provisions are applicable to
6 employees 18 years of age or over and to employees 16 or
7 17 years of age who are not required by law to attend
8 school and are not otherwise prohibited by law from
9 engaging in the subject work. Such employees shall not be
10 employed more than eight (8) hours in any workday or
11 more than 40 hours in any workweek unless the employee
12 receives one and one-half (1 ½) times such employee’s
13 regular rate of pay for all hours worked over 40 hours in
14 the workweek. Eight (8) hours of labor constitutes a day’s
15 work. Employment beyond eight (8) hours in any workday
16 or more than six (6) days in any workweek is permissible
17 provided the employee is compensated for such overtime
18 at not less than:

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

25 (b) Double the employee’s regular rate of pay for all
26 hours worked in excess of 12 hours in any workday
27 and for all hours worked in excess of eight (8) hours
28 on the seventh (7th) consecutive day of work in a
workweek.

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

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



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1 34. Labor Code section 510 states:

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

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

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

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

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

25 39. At all relevant times during the applicable limitation period, Defendants employed
26 Plaintiff and the Class Members for periods in excess of eight hours in a workday and 40 hours
27 in a workweek. Defendants also employed Plaintiff and the Class Members in excess of 12 hours
28 in a workday and on the 7th day of the workweek. The Defendants failed to compensate Plaintiff
 and all other Class Members at the correct rates of pay for all hours worked over eight in a day,
 over 40 in a week, and for the first eight hours of the seventh day of the workweek. The
 Defendants charged their customers a mandatory gratuity which they distributed among Plaintiff
 and the other Class Members as compensation for their work in lieu of the tips the Defendants
 discouraged their customers and their guests from paying. However, the Defendants did not factor



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1 these wages in when calculating the regular rates of pay of Plaintiff and the Class Members.
2 Therefore, Defendants denied Plaintiff and the Class Members all overtime wages they earned
3 for work in excess of eight hours per day and 40 hours per week. Furthermore, Defendants denied
4 Plaintiff and the Class Members all doubletime wages they earned for work in excess of 12 hours
5 per day.

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

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

14 **B. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES**
15 **THE LABOR CODE**

16 42. In relevant part, Labor Code section 558.1 states:

- 17 (a) Any employer or other person acting on behalf of an employer,
18 who violates, or causes to be violated, any provision regulating
19 minimum wages or hours and days of work in any order of the
20 Industrial Welfare Commission, or violates, or causes to be
21 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
22 held liable as the employer for such violation.
- 23 (b) For purposes of this section, the term "other person acting on
24 behalf of an employer" is limited to a natural person who is an
25 owner, director, officer, or managing agent of the employer, and
26 the term "managing agent" has the same meaning as in subdivision
27 (b) of Section 3294 of the Civil Code.

28 At all relevant times, Defendant Michael Sereno was an employer of Plaintiff and all other Class
Members, and/or "owner," "managing agent," and/or "officer" of the Defendants and the other
employers identified above. Defendant Sereno directly or indirectly, or through an agent or other
person, employed and exercised control over the wages, hours, and/or working conditions of
Plaintiff and the Class Members, and caused the violations to the Labor Code and the Wage Order
described above. On behalf of himself and all other Class Members, Plaintiff seeks an award of



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1 unpaid wages, interest, restitution, statutory penalties, liquidated damages, attorneys' fees, costs,
2 and related relief against Defendant Sereno that is the same as the award of against the other
3 Defendants on the same grounds for which Plaintiff seeks against the Defendants.

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PROVIDE MEAL PERIODS**

6 **Lab. Code §§ 226.7 and 512**

7 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

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

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

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

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

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

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

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

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

Meal Periods

(A) No employer shall employ any person for a work period of



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1 more than five (5) hours without a meal period of not less
2 than 30 minutes, except that when a work period of not
3 more than six (6) hours will complete the day's work the
4 meal period may be waived by mutual consent of the
5 employee and the employee. Unless the employee is
6 relieved of all duty during a 30 minute meal period, the
7 meal period shall be considered an 'on duty' meal period
8 and counted as time worked. An 'on duty' meal period shall
9 be permitted only when the nature of the work prevents an
10 employee from being relieved of all duty and when by
11 written agreement between the parties an on-the-job paid
12 meal period is agreed to. The written agreement shall state
13 that the employee may, in writing, revoke the agreement at
14 any time.

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

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

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

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

49. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day
they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled



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1 to a second 30-minute meal period when they worked more than 10 hours in a workday.

2 50. Defendants intentionally failed to provide Plaintiff and the Class Members with
3 all required 30-minute duty-free meal periods in accordance with the Wage Order. The
4 Defendants required Plaintiff and all other Class Members to remain in their assigned work areas
5 at all times. The Defendants prohibited Plaintiff and the other Class Members from leaving their
6 work areas unless another employee was available to cover their position. Generally, no one was
7 available to cover because it was the practice of the Defendants to understaff their events.
8 Consequently, the Defendants prevented Plaintiff and all other Class Members from taking their
9 duty free 30-minute meal periods.

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

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

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

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

25 **A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
26 **LABOR CODE**

27 55. In relevant part, Labor Code section 558.1 states:

- 28 (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for



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such violation.

(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Defendant Michael Sereno was an employer of Plaintiff and all other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other employers identified above. He directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Class Members, and caused the violations to the Labor Code and the Wage Order described above. On behalf of himself and all other Class Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related relief against Defendant Sereno that is the same as the award against the other Defendants on the same grounds for which Plaintiff seeks against the Defendants.

THIRD CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT REST BREAKS

Lab. Code § 226.7

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

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

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

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

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

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



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

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

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



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1 Wage Order.

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

6 64. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
7 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
8 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
9 Wage Order from the California Division of Labor Standards Enforcement. The Defendants
10 required Plaintiff and all other Class Members to remain in their assigned work areas at all times.
11 The Defendants prohibited Plaintiff and the other Class Members from leaving their work areas
12 unless another employee was available to cover their position. Generally, no one was available to
13 cover because it was the practice of the Defendants to understaff their events. Consequently, the
14 Defendants prevented Plaintiff and all other Class Members from taking their duty free 10-minute
15 rest breaks. Moreover, Defendants failed to pay Plaintiff and the Class Members premium wages
16 on workdays they failed to authorize and permit them to take 10-minute rest periods every four
17 hours worked or major fraction thereof.

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

22 66. Defendants failed to provide Plaintiff with all required rest breaks in accordance
23 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
24 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
25 which resulted in Defendants not providing the Class Members with all rest breaks required by
26 California law.

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



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1 California Labor Code § 226.7.

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

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

8 **A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
9 **LABOR CODE**

10 70. In relevant part, Labor Code section 558.1 states:

11 (a) Any employer or other person acting on behalf of an employer, who
12 violates, or causes to be violated, any provision regulating minimum
13 wages or hours and days of work in any order of the Industrial Welfare
14 Commission, or violates, or causes to be violated, Sections 203, 226,
15 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for
16 such violation.

17 (b) For purposes of this section, the term "other person acting on behalf
18 of an employer" is limited to a natural person who is an owner,
19 director, officer, or managing agent of the employer, and the term
20 "managing agent" has the same meaning as in subdivision (b) of
21 Section 3294 of the Civil Code.

22 At all relevant times, Defendant Michael Sereno was an employer of Plaintiff and all other Class
23 Members, and/or "owner," "managing agent," and/or "officer" of the Defendants and the other
24 employers identified above. Defendant Sereno directly or indirectly, or through an agent or other
25 person, employed and exercised control over the wages, hours, and/or working conditions of the
26 Class Members, and caused the violations to the Labor Code and the Wage Order described above.
27 On behalf of himself and all other Class Members, Plaintiff seeks an award of unpaid wages,
28 interest, restitution, statutory penalties, liquidated damages, attorneys' fees, costs, and related
relief against Defendant Sereno that is the same as the award against the other Defendants on the
same grounds for which Plaintiff seeks against the Defendants.

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1 **FOURTH CAUSE OF ACTION**

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

3 **Lab. Code § 226**

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

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

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

9 A. Gross wages earned;

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

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

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

17 E. Net wages earned;

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

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

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

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

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

A. The amount of the gross wages or net wages paid to the employee during



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1 the pay period or any of the other information required to be provided on the itemized wage
2 statement pursuant to California Labor Code § 226(a);

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

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

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

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

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

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

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

77. As a result of being provided with inaccurate wage statements by Defendants,
Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate



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

9 **A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
10 **LABOR CODE**

11 78. In relevant part, Labor Code section 558.1 states:

- 12 (a) Any employer or other person acting on behalf of an employer, who
13 violates, or causes to be violated, any provision regulating minimum
14 wages or hours and days of work in any order of the Industrial Welfare
15 Commission, or violates, or causes to be violated, Sections 203, 226,
16 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for
17 such violation.
18 (b) For purposes of this section, the term "other person acting on behalf
19 of an employer" is limited to a natural person who is an owner,
20 director, officer, or managing agent of the employer, and the term
21 "managing agent" has the same meaning as in subdivision (b) of
22 Section 3294 of the Civil Code.

23 At all relevant times, Defendant Michael Sereno was an employer of Plaintiff and all other Class
24 Members, and/or "owner," "managing agent," and/or "officer" of the Defendants and the other
25 employers identified above. He directly or indirectly, or through an agent or other person,
26 employed and exercised control over the wages, hours, and/or working conditions of the Class
27 Members, and caused the violations to the Labor Code and the Wage Order described above. On
28 behalf of himself and all other Class Members, Plaintiff seeks an award of unpaid wages, interest,
restitution, statutory penalties, liquidated damages, attorneys' fees, costs, and related relief against
Defendant Sereno that is the same as the award against the other Defendants on the same grounds
for which Plaintiff seeks against the Defendants.

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FIFTH CAUSE OF ACTION
WILLFUL FAILURE TO TIMELY PAY FINAL WAGES
Lab. Code §§ 201, 202, and 203

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

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

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

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

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

83. The Defendants failed to pay Plaintiff and all other Class Members whose employment ended all the earned, but unpaid wages described above by the conclusion of their employment with Lopez, including unprovided meal period premium wages, unprovided rest break premium wages, and overtime wages. Additionally, the Defendants failed to issue to Plaintiff and all other Class members whose employment ended their final paychecks until one week after the termination.

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

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

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



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1 **A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
2 **LABOR CODE**

3 87. In relevant part, Labor Code section 558.1 states:

4 (a) Any employer or other person acting on behalf of an employer, who
5 violates, or causes to be violated, any provision regulating minimum
6 wages or hours and days of work in any order of the Industrial Welfare
7 Commission, or violates, or causes to be violated, Sections 203, 226,
8 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for
9 such violation.

10 (b) For purposes of this section, the term “other person acting on behalf
11 of an employer” is limited to a natural person who is an owner,
12 director, officer, or managing agent of the employer, and the term
13 “managing agent” has the same meaning as in subdivision (b) of
14 Section 3294 of the Civil Code.

15 At all relevant times, Defendant Michael Sereno was an employer of Plaintiff and all other Class
16 Members, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other
17 employers identified above. He directly or indirectly, or through an agent or other person,
18 employed and exercised control over the wages, hours, and/or working conditions of the Class
19 Members, and caused the violations to the Labor Code and the Wage Order described above. On
20 behalf of himself and all other Class Members, Plaintiff seeks an award of unpaid wages, interest,
21 restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related relief against
22 Defendant Sereno that is the same as the award against the other Defendants on the same grounds
23 for which Plaintiff seeks against the Defendants.

24 **SIXTH CAUSE OF ACTION**

25 **UNFAIR COMPETITION**

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

27 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

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

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

90. The unlawful conduct of Defendants alleged herein amount to and constitutes
unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*



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1 seq. Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
2 gained a competitive advantage over other comparable companies doing business in California
3 that comply with their legal obligations to compensate employees for all earned wages.

4 91. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
5 Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class
6 Members were deprived of missed meal period premium wages, missed rest period premium
7 wages, doubletime wages, overtime wages, and comparable money and property.

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

12 93. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
13 connection with their unfair competition claims pursuant to California Code of Civil Procedure §
14 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

15 **V. PRAYER FOR RELIEF**

16 94. WHEREFORE, Plaintiff, on behalf of himself and the Class Members, prays for
17 relief and judgment against Defendants as follows:

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

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

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

22 D. Unpaid wages, including minimum, regular, overtime, doubletime, missed
23 meal period, and missed rest period;

24 E. Liquidated damages;

25 F. Statutory penalties, including waiting time penalties;

26 G. Restitution;

27 H. Declaratory relief;

28 I. Actual damages;

J. Pre-judgment interest;

K. Costs of suit;

L. Reasonable attorneys' fees; and



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M. Such other relief as the Court deems just and proper.

VI. DEMAND FOR JURY TRIAL

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: 12 / 05 / 2022

By: 

DAVID G. SPIVAK, Attorneys for
Plaintiff(s), JUSTIN LOPEZ, and all
others similarly situated



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Office:
1801 Century Park East
25th Floor
Los Angeles, CA 90067

EXHIBIT 4

02/10/2023

David W. Slayton, Executive Officer / Clerk of Court

By: R. Lozano Deputy

1 DAVID G. SPIVAK (SBN 179684)

david@spivaklaw.com

2 JENICA LEONARD (SBN 245366)

jenica@spivaklaw.com

3 THE SPIVAK LAW FIRM

4 8605 Santa Monica Bl

PMB 42554

5 West Hollywood, CA 90069

6 Telephone: (213) 725-9094

7 Facsimile: (213) 634-2485

8 Attorneys for Plaintiff(s),

JUSTIN LOPEZ, and all others similarly situated

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

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

11 **FOR THE COUNTY OF LOS ANGELES**

12 **(UNLIMITED JURISDICTION)**

13 JUSTIN LOPEZ, on behalf of himself and all
14 others similarly situated, and the general public,
15 and as an "Aggrieved Employee" on behalf of
16 other "Aggrieved Employees" under the Private
Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 EDWARD WALTER SUNSERI, a natural
20 person doing business as Sunseri's Bar and
Beverage Catering; MICHAEL SERENO, a
21 natural person; and DOES 1-50, inclusive,

22 *Defendant(s).*

Case No. 22STCV37939

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 221, 510, 1194, 1197, and 1198);
2. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
3. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
4. Wage Statement Penalties (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code § 203);
6. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.; and
7. Civil Penalties (Lab. Code §§ 2698, et seq.)

JURY TRIAL DEMANDED



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(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Floor
Los Angeles, CA 90067

ADDITIONAL ATTORNEY(S) FOR PLAINTIFF(S)

WALTER L. HAINES (SBN 71075)
walter@uelglaw.com
UNITED EMPLOYEES LAW GROUP
4276 Katella Ave
Suite 301
Los Alamitos, CA 90720
Telephone: (562) 256-1047
Facsimile: (562) 256-1006



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8605 Santa Monica Bl
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West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
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1 Plaintiff, Justin Lopez (hereafter “Plaintiff” or “Lopez”), on behalf of himself and all
2 others similarly situated, the general public, and as an “aggrieved employee” on behalf of other
3 “aggrieved employees” and the State of California under the Labor Code Private Attorneys
4 General Act of 2004, complains and alleges as follows:

5 **I. INTRODUCTION**

6 1. Plaintiff brings this class and representative action for alleged violations of the
7 California Labor Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage
8 Order”), and the California Business and Professions Code against Defendants Edward Walter
9 Sunseri, a natural person doing business as Sunseri’s Bar and Beverage Catering, Michael
10 Sereno, a natural person, and Does 1 through 50, inclusive (collectively “Defendants”).

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

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

16 (B) Provide all meal periods;

17 (C) Authorize and permit all rest breaks;

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

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

20 (F) Issue only accurate and complete itemized wage statements; and

21 (G) Timely pay wages upon termination of employment;

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

25 **II. THE PARTIES**

26 3. Plaintiff Justin Lopez is a resident of California. At all relevant times, Plaintiff
27 was an “employee” within the meaning of Title 8 California Code of Regulations section 11050
28 and an “aggrieved employee” within the meaning of Labor Code section 2699(c).

4. Defendant Edward Walter Sunseri is a natural person doing business as Sunseri’s
Bar and Beverage Catering and a citizen of California based on Plaintiff’s information and belief.

5. Defendant Michael Sereno is a natural person and a citizen of California based



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1 on Plaintiff's information and belief.

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

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

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

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

22 III. CLASS ALLEGATIONS

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

28 11. **Class Definition:** The Class is defined as follows: All persons Defendants
employed in California as hourly, non-exempt employees, including bartenders, individuals
performing work comparable to the aforementioned, compensated comparably to the
aforementioned, individuals in similar positions, at any time during the period beginning four



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PMB 42554
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Office:
1801 Century Park East
25th Floor
Los Angeles, CA 90067

1 years prior to the filing of this action and ending on the date that final judgment is entered in this
2 action (“Class” or “Class Members”).

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

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

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

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

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

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

20 D. Whether Defendants knowingly and intentionally failed to provide the
21 class with accurate and complete itemized wage statements;

22 E. Whether Defendants willfully failed to provide the class with timely final
23 wages;

24 F. Whether Defendants engaged in unfair competition within the meaning of
25 Business and Professions Code sections 17200, *et seq.*, with respect to the Class; and

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

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



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

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

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

IV. STATEMENT OF FACTS

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

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

(1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either solid or liquid form is prepared and served to be consumed on the premises;

(2) Catering, banquet, box lunch service, and similar establishments



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25th Floor
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which prepare food for consumption on or off the premises;

(3) Hotels, motels, apartment houses, rooming houses, camps, clubs, trailer parks, office or loft buildings, and similar establishments offering rental of living, business, or commercial quarters;

(4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;

(5) Private schools, colleges, or universities, and similar establishments which provide board or lodging in addition to educational facilities;

(6) Establishments contracting for development, maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units; and

(7) Establishments providing veterinary or other animal care services.

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

20. On approximately December 31, 2009, the Defendants began to employ Plaintiff in greater Los Angeles County in the position of hourly, non-exempt bartender. The Defendants continuously employed him in that capacity until on or about June 2, 2022, when his employment ended.

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

22. Defendants employed Plaintiff and the Class Members for periods in excess of eight hours in a workday and 40 hours in a workweek. Defendants also employed Plaintiff and the Class Members in excess of 12 hours in a workday. The Defendants failed to compensate



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1 Plaintiff and all other Class Members at the correct rates of pay for all hours worked over eight
2 in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The
3 Defendants charged their customers a mandatory gratuity which they distributed among Plaintiff
4 and the other Class Members as compensation for their work in lieu of the tips the Defendants
5 discouraged their customers and their guests from paying. However, the Defendants did not factor
6 these mandatory gratuities - essentially service charges which Defendant paid to Plaintiff and the
7 other Class Members as wages - when calculating the regular rates of pay and overtime premium
8 wages of Plaintiff and the Class Members. Therefore, Defendants denied Plaintiff and the Class
9 Members all overtime wages they earned for work in excess of eight hours per day and 40 hours
10 per week. Furthermore, Defendants denied Plaintiff and the Class Members all doubletime wages
they earned for work in excess of 12 hours per day.

11 23. At all relevant times, the Defendants failed to provide Plaintiff and all other Class
12 Members with all timely 30-minute, off-duty meal periods. The Defendants required Plaintiff and
13 all Class Members to remain in their assigned work areas at all times. The Defendants prohibited
14 Plaintiff and the other Class Members from leaving their work areas unless another employee was
15 available to cover their position. Generally, no one was available to cover because it was the
16 practice of the Defendants to understaff their events. Consequently, the Defendants prevented
17 Plaintiff and all other Class Members from taking their duty free 30-minute meal periods. The
18 Defendants also failed to pay premium wages for days on which they failed to provide Plaintiff
and all other Class Members with meal periods as required by law.

19 24. At all relevant times, the Defendants failed to authorize and permit Plaintiff and
20 all other Class Members to take 10-minute, off-duty, paid rest breaks every four hours worked or
21 major portion thereof. The Defendants required Plaintiff and all Class Members to remain in their
22 assigned work areas at all times. The Defendants prohibited Plaintiff and the other Class Members
23 from leaving their work areas unless another employee was available to cover their position.
24 Generally, no one was available to cover because it was the practice of the Defendants to
25 understaff their events. Consequently, the Defendants prevented Plaintiff and all other Class
26 Members from taking their 10-minute rest breaks. The Defendants also failed to pay premium
27 wages for days on which they failed to authorize and permit Plaintiff and all other Class Members
28 to take rest breaks as required by law.

25 25. At all relevant times, the Defendants failed to issue to Plaintiff and all other Class



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Members complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on the wage statements they issued to Plaintiff and all other Class Members the unpaid wages discussed above. The wage statements fail to state all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, and related information.

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

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

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

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

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES AT THE CORRECT RATES

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

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

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

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



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PMB 42554
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1801 Century Park East
25th Floor
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1 **A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT**
2 **THE CORRECT RATES OF PAY**

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

6 32. Section 3 of the Wage Order states:

7 (A) Daily Overtime - General Provisions

8 (1) The following overtime provisions are applicable to
9 employees 18 years of age or over and to employees 16 or
10 17 years of age who are not required by law to attend
11 school and are not otherwise prohibited by law from
12 engaging in the subject work. Such employees shall not be
13 employed more than eight (8) hours in any workday or
14 more than 40 hours in any workweek unless the employee
15 receives one and one-half (1 ½) times such employee’s
16 regular rate of pay for all hours worked over 40 hours in
17 the workweek. Eight (8) hours of labor constitutes a day’s
18 work. Employment beyond eight (8) hours in any workday
19 or more than six (6) days in any workweek is permissible
20 provided the employee is compensated for such overtime
21 at not less than:

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

28 (b) Double the employee’s regular rate of pay for all
hours worked in excess of 12 hours in any workday
and for all hours worked in excess of eight (8) hours
on the seventh (7th) consecutive day of work in a
workweek.

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



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

4 34. Labor Code section 510 states:

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

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

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

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

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

23 39. At all relevant times during the applicable limitation period, Defendants employed
24 Plaintiff and the Class Members for periods in excess of eight hours in a workday and 40 hours
25 in a workweek. Defendants also employed Plaintiff and the Class Members in excess of 12 hours
26 in a workday and on the 7th day of the workweek. The Defendants failed to compensate Plaintiff
27 and all other Class Members at the correct rates of pay for all hours worked over eight in a day,
28 over 40 in a week, and for the first eight hours of the seventh day of the workweek. The



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1 Defendants charged their customers a mandatory gratuity which they distributed among Plaintiff
2 and the other Class Members as compensation for their work in lieu of the tips the Defendants
3 discouraged their customers and their guests from paying. However, the Defendants did not factor
4 these wages in when calculating the regular rates of pay of Plaintiff and the Class Members.
5 Therefore, Defendants denied Plaintiff and the Class Members all overtime wages they earned
6 for work in excess of eight hours per day and 40 hours per week. Furthermore, Defendants denied
7 Plaintiff and the Class Members all doubletime wages they earned for work in excess of 12 hours
8 per day.

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

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

17 **B. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
18 **LABOR CODE**

19 42. In relevant part, Labor Code section 558.1 states:

- 20 (a) Any employer or other person acting on behalf of an employer,
21 who violates, or causes to be violated, any provision regulating
22 minimum wages or hours and days of work in any order of the
23 Industrial Welfare Commission, or violates, or causes to be
24 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
25 held liable as the employer for such violation.
- 26 (b) For purposes of this section, the term "other person acting on
27 behalf of an employer" is limited to a natural person who is an
28 owner, director, officer, or managing agent of the employer, and
the term "managing agent" has the same meaning as in subdivision
(b) of Section 3294 of the Civil Code.

At all relevant times, Defendant Michael Sereno was an employer of Plaintiff and all other Class
Members, and/or "owner," "managing agent," and/or "officer" of the Defendants and the other
employers identified above. Defendant Sereno directly or indirectly, or through an agent or other



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1 person, employed and exercised control over the wages, hours, and/or working conditions of
2 Plaintiff and the Class Members, and caused the violations to the Labor Code and the Wage Order
3 described above. On behalf of himself and all other Class Members, Plaintiff seeks an award of
4 unpaid wages, interest, restitution, statutory penalties, liquidated damages, attorneys' fees, costs,
5 and related relief against Defendant Sereno that is the same as the award of against the other
6 Defendants on the same grounds for which Plaintiff seeks against the Defendants.

7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PROVIDE MEAL PERIODS**

9 **Lab. Code §§ 226.7 and 512**

10 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

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

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

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

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

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

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

27 An employer shall not employ an employee for a work period of more than
28 10 hours per day without providing the employee with a second meal period
of not less than 30 minutes, except that if the total hours worked is no more
than 12 hours, the second meal period may be waived by mutual consent of
the employer and the employee only if the first meal period was not waived.

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



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1801 Century Park East
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Meal Periods

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employee and the employer. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked. An 'on duty' meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

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

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

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

50. Defendants intentionally failed to provide Plaintiff and the Class Members with



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Office:
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1 all required 30-minute duty-free meal periods in accordance with the Wage Order. The
2 Defendants required Plaintiff and all other Class Members to remain in their assigned work areas
3 at all times. The Defendants prohibited Plaintiff and the other Class Members from leaving their
4 work areas unless another employee was available to cover their position. Generally, no one was
5 available to cover because it was the practice of the Defendants to understaff their events.
6 Consequently, the Defendants prevented Plaintiff and all other Class Members from taking their
duty free 30-minute meal periods.

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

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

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

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

21 **PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
22 **LABOR CODE**

23 55. In relevant part, Labor Code section 558.1 states:

24 (a) Any employer or other person acting on behalf of an employer, who
25 violates, or causes to be violated, any provision regulating minimum
26 wages or hours and days of work in any order of the Industrial
27 Welfare Commission, or violates, or causes to be violated, Sections
28 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the
employer for such violation.

(b) For purposes of this section, the term "other person acting on behalf



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of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Defendant Michael Sereno was an employer of Plaintiff and all other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other employers identified above. He directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Class Members, and caused the violations to the Labor Code and the Wage Order described above. On behalf of himself and all other Class Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related relief against Defendant Sereno that is the same as the award against the other Defendants on the same grounds for which Plaintiff seeks against the Defendants.

THIRD CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT REST BREAKS

Lab. Code § 226.7

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

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

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

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

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

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

Rest Periods

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



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PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
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Office:
1801 Century Park East
25th Floor
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work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

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

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

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

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

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

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

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



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1 64. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
2 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
3 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
4 Wage Order from the California Division of Labor Standards Enforcement. The Defendants
5 required Plaintiff and all other Class Members to remain in their assigned work areas at all times.
6 The Defendants prohibited Plaintiff and the other Class Members from leaving their work areas
7 unless another employee was available to cover their position. Generally, no one was available
8 to cover because it was the practice of the Defendants to understaff their events. Consequently,
9 the Defendants prevented Plaintiff and all other Class Members from taking their duty free 10-
10 minute rest breaks. Moreover, Defendants failed to pay Plaintiff and the Class Members
11 premium wages on workdays they failed to authorize and permit them to take 10-minute rest
periods every four hours worked or major fraction thereof.

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

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

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

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

28 69. By reason of the above, Plaintiff and the Class Members are entitled to premium



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1 wages for workdays in which one or more rest breaks were not provided to them pursuant to
2 California Labor Code § 226.7.

3 **PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
4 **LABOR CODE**

5 70. In relevant part, Labor Code section 558.1 states:

6 (a) Any employer or other person acting on behalf of an employer, who
7 violates, or causes to be violated, any provision regulating minimum
8 wages or hours and days of work in any order of the Industrial
9 Welfare Commission, or violates, or causes to be violated, Sections
203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the
employer for such violation.

10 (b) For purposes of this section, the term “other person acting on behalf
11 of an employer” is limited to a natural person who is an owner,
12 director, officer, or managing agent of the employer, and the term
13 “managing agent” has the same meaning as in subdivision (b) of
Section 3294 of the Civil Code.

14 At all relevant times, Defendant Michael Sereno was an employer of Plaintiff and all other Class
15 Members, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other
16 employers identified above. Defendant Sereno directly or indirectly, or through an agent or other
17 person, employed and exercised control over the wages, hours, and/or working conditions of the
18 Class Members, and caused the violations to the Labor Code and the Wage Order described above.
19 On behalf of himself and all other Class Members, Plaintiff seeks an award of unpaid wages,
20 interest, restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related
21 relief against Defendant Sereno that is the same as the award against the other Defendants on the
same grounds for which Plaintiff seeks against the Defendants.

22 **FOURTH CAUSE OF ACTION**

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

24 **Lab. Code § 226**

25 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

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

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



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- 1 A. Gross wages earned;
- 2 B. Total hours worked by the employee, except for any employee whose
- 3 compensation is solely based on a salary and who is exempt from payment of overtime under
- 4 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
- 5 C. The number of piece rate units earned and any applicable piece rate if the
- 6 employee is paid on a piece-rate basis;
- 7 D. All deductions, provided that all deductions made on written orders of the
- 8 Employee may be aggregated and shown as one item;
- 9 E. Net wages earned;
- 10 F. The inclusive dates of the period for which the employee is paid;
- 11 G. The name of the employee and his or her social security number, except
- 12 that by January 1, 2008, only the last four digits of his or her social security number or an
- 13 employee identification number other than a social security number may be shown on the itemized
- 14 statement;
- 15 H. The name and address of the legal entity that is the employer; and
- 16 I. All applicable hourly rates in effect during the pay period and the
- 17 corresponding number of hours worked at each hourly rate by the employee.

18 73. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury

19 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if

20 the employer fails to provide accurate and complete information as required by California Labor

21 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement

22 alone one or more of the following:

- 23 A. The amount of the gross wages or net wages paid to the employee during
- 24 the pay period or any of the other information required to be provided on the itemized wage
- 25 statement pursuant to California Labor Code § 226(a);
- 26 B. Which deductions the employer made from gross wages to determine the
- 27 net wages paid to the employee during the pay period;
- 28 C. The name and address of the employer and, if the employer is a farm labor
- contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
- and address of the legal entity that secured the services of the employer during the pay period;
- D. The name of the employee and only the last four digits of his or her social



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1 security number or an employee identification number other than a social security number; and

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

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

6 75. As alleged herein, at all relevant times during the applicable limitations period,
7 Defendants violated California Labor Code section 226 because they did not properly and
8 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
9 the corresponding number of hours worked at each rate by the employee and other requirements
10 of California Labor Code section 226. Defendants failed to state in the wage statements they
11 issued to Plaintiff and the other Class Members all their hours worked and wages earned,
12 including, but not limited to, regular and overtime wages for work they performed off-the-clock
13 after clocking-out (as described above). Defendants knowingly and intentionally did not issue
14 either as a detachable part of the check, draft, or voucher paying the employee’s wages, or
15 separately if wages are paid by personal check or cash, statements to Plaintiff and the Class
16 Members that state all regular wages earned, all overtime wages earned, all doubletime wages
17 earned, all meal period premium wages earned, and all rest break premium wages earned.

18 76. Defendants’ failure to provide Plaintiff and the other Class Members with accurate
19 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
20 the other Class Members with accurate wage statements but intentionally provided wage
21 statements that Defendants knew were not accurate.

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



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Office:
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25th Floor
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1 **PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
2 **LABOR CODE**

3 78. In relevant part, Labor Code section 558.1 states:

- 4 (a) Any employer or other person acting on behalf of an employer, who
5 violates, or causes to be violated, any provision regulating minimum
6 wages or hours and days of work in any order of the Industrial
7 Welfare Commission, or violates, or causes to be violated, Sections
8 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the
9 employer for such violation.
10 (b) For purposes of this section, the term “other person acting on behalf
11 of an employer” is limited to a natural person who is an owner,
12 director, officer, or managing agent of the employer, and the term
13 “managing agent” has the same meaning as in subdivision (b) of
14 Section 3294 of the Civil Code.

15 At all relevant times, Defendant Michael Sereno was an employer of Plaintiff and all other Class
16 Members, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other
17 employers identified above. He directly or indirectly, or through an agent or other person,
18 employed and exercised control over the wages, hours, and/or working conditions of the Class
19 Members, and caused the violations to the Labor Code and the Wage Order described above. On
20 behalf of himself and all other Class Members, Plaintiff seeks an award of unpaid wages, interest,
21 restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related relief
22 against Defendant Sereno that is the same as the award against the other Defendants on the same
23 grounds for which Plaintiff seeks against the Defendants.

24 **FIFTH CAUSE OF ACTION**

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

26 **Lab. Code §§ 201, 202, and 203**

27 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

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

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

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



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

5 83. The Defendants failed to pay Plaintiff and all other Class Members whose
6 employment ended all the earned, but unpaid wages described above by the conclusion of their
7 employment with Lopez, including unprovided meal period premium wages, unprovided rest
8 break premium wages, and overtime wages. Additionally, the Defendants failed to issue to
9 Plaintiff and all other Class members whose employment ended their final paychecks until one
10 week after the termination.

11 84. By failing to pay such earned wages to Plaintiff and the Class Members,
12 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
13 § 201 or § 202.

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

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

22 **PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
23 **LABOR CODE**

24 87. In relevant part, Labor Code section 558.1 states:

- 25 (a) Any employer or other person acting on behalf of an employer, who
26 violates, or causes to be violated, any provision regulating minimum
27 wages or hours and days of work in any order of the Industrial
28 Welfare Commission, or violates, or causes to be violated, Sections
203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the
employer for such violation.
- (b) For purposes of this section, the term "other person acting on behalf
of an employer" is limited to a natural person who is an owner,



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1 director, officer, or managing agent of the employer, and the term
2 “managing agent” has the same meaning as in subdivision (b) of
Section 3294 of the Civil Code.

3 At all relevant times, Defendant Michael Sereno was an employer of Plaintiff and all other Class
4 Members, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other
5 employers identified above. He directly or indirectly, or through an agent or other person,
6 employed and exercised control over the wages, hours, and/or working conditions of the Class
7 Members, and caused the violations to the Labor Code and the Wage Order described above. On
8 behalf of himself and all other Class Members, Plaintiff seeks an award of unpaid wages, interest,
9 restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related relief against
10 Defendant Sereno that is the same as the award against the other Defendants on the same grounds
for which Plaintiff seeks against the Defendants.

11 **SIXTH CAUSE OF ACTION**

12 **UNFAIR COMPETITION**

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

14 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

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

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

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

23 91. As a result of Defendants’ unfair competition as alleged herein, Plaintiff and the
24 Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class
25 Members were deprived of missed meal period premium wages, missed rest period premium
26 wages, doubletime wages, overtime wages, and comparable money and property.

27 92. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
28 Class Members are entitled to restitution of all monies rightfully belonging to them that



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1 Defendants did not pay them or otherwise retained by means of their unlawful and unfair
2 business practices.

3 93. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
4 connection with their unfair competition claims pursuant to California Code of Civil Procedure
5 § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

6 **SEVENTH CAUSE OF ACTION**

7 **CIVIL PENALTIES**

8 **Lab Code §§2698, *et seq.***

9 **(By Plaintiff and the Aggrieved Employees against all Defendants)**

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

11 95. The "Aggrieved Employees" are all members of the Class defined above who
12 Defendants employed during the period beginning December 5, 2022, and ending on the date
13 that final judgment is entered in this action.

14 96. Labor Code § 204 states:

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

24 ...

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

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



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

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

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

10 98. During the applicable time period, Defendants violated California Labor Code §§
11 201, 202, 203, 204, 226, 226.7, 510, 512, and 1194.

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

15 100. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are
16 entitled to recover civil penalties for each of the Defendants' violations of California Labor Code
17 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, and 1194 during the applicable limitations period
in the following amounts:

18 101. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for
19 each Aggrieved Employee for each initial violation and two hundred dollars (\$200.00) for each
20 Aggrieved Employee for each subsequent, willful, or intentional violation (penalty amounts
21 established by California Labor Code § 210).

22 102. For violations of California Labor Code § 226(a), two hundred fifty dollars
23 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars
24 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
established by California Labor Code § 226.3).

25 103. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for
26 each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for each
27 Aggrieved Employee for each subsequent violation, per pay period (penalty amounts established
28 by California Labor Code § 558).



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

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

106. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated November 23, 2022, Plaintiff filed written notice online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of the notice to the LWDA dated November 23, 2022, is attached as Exhibit A. Plaintiff accompanied her LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in response within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing her that it does not intend to investigate these allegations.

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

V. PRAYER FOR RELIEF

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

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

B. An order that Plaintiff be appointed class representative;

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

D. Unpaid wages, including minimum, regular, overtime, doubletime, missed meal period, and missed rest period;



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

10 **VI. DEMAND FOR JURY TRIAL**

11 Plaintiff, on behalf of himself and all other Class Members, hereby demands a jury trial
12 on all issues so triable.

13 Respectfully submitted,

14 THE SPIVAK LAW FIRM

15 Dated: February 10, 2023

16 By:



17 DAVID G. SPIVAK,
18 JENICA P. LEONARD, Attorneys for
19 Plaintiff(s), JUSTIN LOPEZ, and all
20 others similarly situated



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26 EMPLOYEE RIGHTS

27 Mail:
28 8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Floor
Los Angeles, CA 90067

EXHIBIT A



THE SPIVAK LAW FIRM

EMPLOYEE RIGHTS

8605 Santa Monica Bl PMB 42554 West Hollywood CA 90069

15303 Ventura Bl Ste 900 Sherman Oaks CA 91403

(213) 725-9094

(213) 634-2485

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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

November 23, 2022

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

Re: Justin Lopez / Sunseri's Bar and Beverage Catering

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Justin Lopez (hereafter "Lopez" or "Complainant") provides notice that Edward Walter Sunseri, a natural person doing business as Sunseri's Bar and Beverage Catering, Michael Sereno, and related entities (collectively "the Sunseri Catering Employers" or "the Employers") violated his rights and those of all other individuals the Sunseri Catering Employers have employed or otherwise contracted with in California as hourly, non-exempt employees, including bartenders, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the "Aggrieved Employees") under Labor Code sections 201, 202, 203, 204, 226.7, 510, 512, 1194, and other Labor Code statutes. On behalf of himself and all other Aggrieved Employees, Lopez hereby provides this notice to the Labor & Workforce Development Agency and the Sunseri Catering Employers and their agents and representatives.

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

Statement of Facts

On approximately December 31, 2009, the Sunseri Catering Employers began to employ Lopez in Los Angeles County in the position of hourly, non-exempt bartender. The Sunseri Catering Employers continuously employed him in that capacity until on or about June 2, 2022, when his employment ended.

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

The Sunseri Catering Employers regularly scheduled Lopez and all other Aggrieved Employees to work shifts over 8 hours in a day and over 40 hours in a week. The Sunseri Catering Employers failed to compensate Lopez and all other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek.

The Sunseri Catering Employers employed Lopez and all other Aggrieved Employees for periods in excess of eight hours in a workday and 40 hours in a workweek. The Sunseri Catering Employers also employed Lopez and all other Aggrieved Employees in excess of 12 hours in a workday. The Sunseri Catering Employers failed to compensate Lopez and all other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The Sunseri Catering Employers charged their customers a mandatory gratuity which they distributed among Plaintiff and the other Aggrieved Employees as compensation for their work in lieu of the tips the Sunseri Catering Employers discouraged their customers and their guests from paying. However, the Sunseri Catering Employers did not factor these wages in when calculating the regular rates of pay of Lopez and all other Aggrieved Employees. Therefore, the Sunseri Catering Employers denied Lopez and all other Aggrieved Employees all overtime wages they earned for work in excess of eight hours per day and 40 hours per week. Furthermore, the Sunseri Catering Employers denied Lopez and all other Aggrieved Employees all doubletime wages they earned for work in excess of 12 hours per day.

At all relevant times, the Sunseri Catering Employers failed to provide Lopez and all other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Sunseri Catering Employers required Lopez and all other Aggrieved Employees to remain in their assigned work areas at all times. The Sunseri Catering Employers prohibited Lopez and the other Aggrieved Employees from leaving their work area unless someone else was available to cover their position. Generally, no one was available to provide such cover because of the Sunseri Catering Employers' understaffing practices. Consequently, the Sunseri Catering Employers prevented Lopez and all other Aggrieved Employees from taking their duty free 30-minute meal periods. The Sunseri Catering Employers also failed to pay premium wages for days on which they failed to provide Lopez and all other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Sunseri Catering Employers failed to authorize and permit Lopez and all other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Sunseri Catering Employers required Lopez and all other Aggrieved Employees to remain in their assigned work areas at all times. The Sunseri Catering Employers prohibited Lopez and the other Aggrieved Employees from leaving their work area unless someone else was available to cover their position. Generally, no one was available to provide such cover because of the Sunseri Catering Employers' understaffing practices. Consequently, the Sunseri Catering Employers prevented Lopez and all other Aggrieved Employees from taking their 10-minute rest breaks. The Sunseri Catering Employers also failed to pay premium wages for days on which they failed to authorize and permit Lopez and all other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Sunseri Catering Employers failed to issue to Lopez and all other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay and all wages earned. The Sunseri Catering Employers knowingly and intentionally failed to state on the wage statements they issued to Lopez and all other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, and other required information.

The Sunseri Catering Employers also failed to timely pay Lopez and all other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

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

- (a) The Sunseri Catering Employers failed to pay Lopez and all other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (b) The Sunseri Catering Employers failed to provide Lopez and all other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Sunseri Catering Employers failed to authorize and permit Lopez and all other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Sunseri Catering Employers failed to compensate Lopez and all other Aggrieved Employees at one hour's pay for each day in which the Sunseri Catering Employers failed to provide them with one or more meal periods as required by law;
- (e) The Sunseri Catering Employers failed to compensate Lopez and all other Aggrieved Employees at one hour's pay for each day in which the Sunseri Catering Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Sunseri Catering Employers knowingly and intentionally failed to provide Lopez and all other Aggrieved Employees with accurate wage statements;
- (g) The Sunseri Catering Employers willfully failed to timely pay Lopez and all other Aggrieved Employees all earned and unpaid wages during their employment with the Sunseri Catering Employers and when their employment ended; and

- (h) The Sunseri Catering Employers failed to maintain accurate employment records pertaining to Lopez and all other Aggrieved Employees.

Accordingly, Lopez now seeks civil penalties on behalf of himself and all other Aggrieved Employees based on the Sunseri Catering Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

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

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

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

- (6) Establishments contracting for development, maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units; and
- (7) Establishments providing veterinary or other animal care services.

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Sunseri Catering Employers, Lopez, and all other Aggrieved Employees were covered by the Wage Order because the Sunseri Catering Employers operated, and Lopez, and all other Aggrieved Employees, worked for one or more catering businesses. Accordingly, Lopez and all other Aggrieved Employees are entitled to the protections the Wage Order provides.

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

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

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

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

In relevant part, Labor Code section 1194 states:

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

In relevant part, Labor Code section 510 states:

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

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

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

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

If an employee's only straight-time compensation is based on an hourly rate of pay, the hourly rate is his regular rate. However, if he also receives other compensation, his regular rate is computed by dividing his total compensation by his total hours worked. The regular rate of pay under California law includes "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (*quoting* 29 U.S.C. § 207(e)). This requirement includes, but is not limited to, commissions and non-discretionary bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court*, 131 Cal.App.4th 893, 904-905 (2005).

Labor Code § 350(e) defines "Gratuity" to include "any tip, gratuity, money, or part thereof that has been paid or given to or left for an employee by a patron of a business over and above the actual amount due the business for services rendered or for goods, food, drink, or articles sold or served to the patron." At all relevant times, the Sunseri Catering Employers required Lopez and all other Aggrieved Employees to work events where the Sunseri Catering Employers charged its customers a mandatory gratuity for their services. The Sunseri Catering Employers paid Lopez and all other Aggrieved Employees a percentage of the mandatory gratuity as partial compensation for their services to the customer. However, the Sunseri Catering Employers falsely characterized this compensation as a "gratuity" in their records to customers and on Lopez's and all other Aggrieved Employees' paychecks. This mandatory gratuity is not a gratuity at all, but a mandatory service charge based on the agreement between the Sunseri Catering Employers and the customer. The Sunseri Catering Employers did not leave the amount of the mandatory gratuity to the customer's discretion, but rather it is a contractually agreed upon sum that the Sunseri Catering Employers required the customer to pay for their services. Therefore, the "mandatory gratuity" charge specified in the agreement between the Sunseri Catering Employers and its customers are not gratuities within the meaning of the Labor Code.

The state and federal wage-hour enforcement authorities treat mandatory service charges as amounts owed the establishment by the patron and, consequently, not as voluntary gratuities that necessarily belong to a particular employee. 29 C.F.R. § 531.55; F.O.H. § 30d03 (compulsory service charge is not considered a tip); Wage-Hour Opinion Letter No. FLSA 2005-31 (Sept. 2, 2005) (15% "imposed gratuity" added to every chauffeur reservation is not a tip). Moreover, when an employer distributes any portion of these amounts to non-exempt employees, the amounts must be included in the employees' regular rates of pay for purposes of computing their overtime compensation. The DLSE does not regard mandatory service charges, such as the

Sunseri Catering Employers' mandatory service charges, as gratuities. They are considered part of the employer's gross receipts and may be incorporated as part of its wage obligations to employees. As a result, they must be included as part of the regular rate of pay for the purpose of computing overtime. D.L.S.E. Management Memo 89-2 (June 9, 1989). See also 29 C.F.R. §§ 531.55(b).

The Sunseri Catering Employers employed Lopez and all other Aggrieved Employees for periods in excess of eight hours in a workday and 40 hours in a workweek. The Sunseri Catering Employers also employed Lopez and all other Aggrieved Employees in excess of 12 hours in a workday. The Sunseri Catering Employers failed to compensate Lopez and all other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The Sunseri Catering Employers charged their customers a mandatory gratuity which they distributed among Lopez and all other Aggrieved Employees as compensation for their work in lieu of the tips the Sunseri Catering Employers discouraged their customers and their guests from paying. However, the Sunseri Catering Employers did not factor these wages in when calculating the regular rates of pay of Lopez and all other Aggrieved Employees. Therefore, the Sunseri Catering Employers denied Lopez and all other Aggrieved Employees all overtime wages they earned for work in excess of eight hours per day and 40 hours per week. Furthermore, the Sunseri Catering Employers denied Lopez and all other Aggrieved Employees all doubletime wages they earned for work in excess of 12 hours per day.

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

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

With respect to overtime wages, the regular rate of pay under California law must include "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes but is not limited to bonuses. See, e.g., *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th

893, 904–905. Bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Sunseri Catering Employers, Lopez and all other Aggrieved Employees earned automatic or mandatory gratuities, meal period premium wages, and rest period premium wages during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Sunseri Catering Employers failed to pay to Lopez and all other Aggrieved Employees meal period premium wages, rest period premium wages, overtime, and double time premium pay on such automatic or mandatory gratuities, meal period premium wages, rest period premium wages, and other non-discretionary compensation.

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

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

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

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

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

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

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

In relevant part, Labor Code section 512 states:

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

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

Meal Periods:

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

by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. . . .

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

In addition, Labor Code section 226.7 states:

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

At all relevant times, the Sunseri Catering Employers failed to provide Lopez and all other Aggrieved Employees with all timely meal periods. The Sunseri Catering Employers denied Lopez and all other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Sunseri Catering Employers required Lopez and all other Aggrieved Employees to remain in their assigned work areas at all times. The Sunseri Catering Employers prohibited Lopez and the other Aggrieved Employees from leaving their work area unless someone else was available to cover their position. Generally, no one was available to provide such cover because of the Sunseri Catering Employers’ understaffing practices. Consequently, the Sunseri

Catering Employers prevented Lopez and all other Aggrieved Employees from taking their duty-free 30-minute meal periods. Furthermore, the Sunseri Catering Employers failed to pay premium wages for days on which they failed to provide Lopez and all other Aggrieved Employees with timely meal periods. Accordingly, Lopez now seeks civil penalties for these Labor Code violations that the Sunseri Catering Employers have committed against him and all other Aggrieved Employees as follows:

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

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

Section 2(K) of the Wage Order states,

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

In relevant part, Labor Code section 1198 states,

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

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

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

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

The Sunseri Catering Employers failed to authorize and permit Lopez and all other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Sunseri Catering Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Sunseri Catering Employers required Lopez and all other Aggrieved Employees to remain in their assigned work areas at all times. The Sunseri Catering Employers prohibited Lopez and the other Aggrieved Employees from leaving their work area unless someone else was available to cover their position. Generally, no one was available to provide such cover because of the Sunseri Catering Employers' understaffing practices. Consequently, the Sunseri Catering Employers prevented Lopez and all other Aggrieved Employees from taking their 10-minute rest breaks. Moreover, the Sunseri Catering Employers failed to pay Lopez and all other Aggrieved Employees premium wages on workdays the Sunseri Catering Employers failed to provide Lopez and all other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Lopez now seeks civil penalties for these Labor Code violations that the Sunseri Catering Employers have committed against him and all other Aggrieved Employees as follows:

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

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

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

1. Gross wages earned;

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

At all relevant times during the applicable limitations period, the Sunseri Catering Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Sunseri Catering Employers failed to state in the wage statements they issued to Lopez and all other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Sunseri Catering Employers knowingly and intentionally failed to state on the wage statements they issued to Lopez and all other Aggrieved Employees the earned, but unpaid wages described above. The wage

statements do not state all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, and other required information.

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

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

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

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

/ / /

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 202, and 203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

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

The Sunseri Catering Employers failed to pay Lopez and all other Aggrieved Employees whose employment ended all earned, but unpaid wages described above by the conclusion of their employment including unprovided meal period premium wages, unprovided rest break premium wages, overtime wages, doubletime wages, and other compensation. Additionally, the Sunseri Catering Employers failed to issue to Lopez and all other Aggrieved Employees whose employment ended their final paychecks until one week following the termination. By failing to pay Lopez and all other Aggrieved Employees as set forth above at the end of employment, the Sunseri Catering Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all other Aggrieved Employees, Lopez seeks civil penalties from the Sunseri Catering Employers as follows:

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

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

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

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

Every person employing labor in this state shall:

...

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

Labor Code section 1174.5 states:

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

Section 7 of Wage Order states,

- (A) Every employer shall keep accurate information with respect to each employee including the following:
 - (1) Full name, home address, occupation and social security number.
 - (2) Birth date, if under 18 years, and designation as a minor.
 - (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
 - (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
 - (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
 - (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to

employees. An accurate production record shall be maintained by the employer.

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

The Sunseri Catering Employers failed to compensate Lopez and all other Aggrieved Employees for all hours worked at the correct rates of pay, including all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, and related compensation. As a result, the Sunseri Catering Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Lopez and all other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Lopez seeks civil penalties on behalf of himself and all other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Person Acting on Behalf of Employers who Violates Labor Code
(Labor Code § 558.1)

In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or

LWDA / The Sunseri Catering Employers

Re: Justin Lopez

November 23, 2022

Page 22 of 23

managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil
(b) Code.

At all relevant times, Michael Sereno was an employer of Lopez and all other Aggrieved Employees, and/or “owner,” “managing agent,” and/or “officer” of the Sunseri Catering Employers and the other employers identified above. Michael Sereno directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above. On behalf of himself and all other Aggrieved Employees, Lopez seeks the same civil penalties against Michael Sereno on the same grounds for which he seeks civil penalties against the Sunseri Catering Employers.

Conclusion

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

Sincerely,



David Spivak, Esq.

David@spivaklaw.com

cc: Justin Lopez

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

// /

LWDA / The Sunseri Catering Employers

Re: Justin Lopez

November 23, 2022

Page 23 of 23

Edward Walter Sunseri
10617 Garvey Ave.
El Monte, CA 91733-2203

Edward Walter Sunseri
P.O. Box 83
Glendora, CA 91740

Michael Sereno
875 E 24th St.
Upland, CA 91784

Michael Sereno
P.O. Box 83
Glendora, CA 91740

1 PROOF OF SERVICE

2
3 State of California,
4 County of Los Angeles

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

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

9 On Friday, February 10, 2023, I served the foregoing document described
10 as **FIRST AMENDED COMPLAINT** on interested parties by placing a true and correct
11 copy thereof enclosed in a sealed envelope, with postage fully prepaid,
addressed as follows:

12 Cynthia M. Germano, Esq.
13 Cecilia Martin, Esq.
14 Patricia Alshabazz
Best Best and Krieger
PO Box 1028
Riverside, CA 92502-1028
15 Cynthia.Germano@bbklaw.com
16 Cecilia.Martin@bbklaw.com
Patricia.Alshabazz@bbklaw.com

17
18 (BY MAIL) I caused such an envelope to be mailed by placing it for
collection and mailing, in the course of ordinary business practice, with other
19 correspondence of The Spivak Law Firm, 1801 Century Park East, 25th Fl, Los
Angeles, CA 90067.

20
21 XXXX(BY EMAIL) I caused the documents to be sent to the persons at the electronic
service addresses listed above from my electronic service address
22 nora@spivaklaw.com.

23 EXECUTED on Friday, February 10, 2023, at Burbank, California.

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

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

27


NORA GREER

EXHIBIT 5

1 CYNTHIA M. GERMANO, Bar No. 151360
cynthia.germano@bbklaw.com
2 CECILIA L. MARTIN, Bar No. 301027
cecilia.martin@bbklaw.com
3 BEST BEST & KRIEGER LLP
3390 University Avenue, 5th Floor
4 P.O. Box 1028
Riverside, California 92502
5 Telephone: (951) 686-1450
Facsimile: (951) 686-3083
6

Attorneys for Defendants
7 EDWARD WALTER SUNSERI, dba SUNSERI'S
BAR AND BEVERAGE CATERING and MICHAEL
8 SERENO

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF LOS ANGELES

12 JUSTIN LOPEZ, on behalf of himself and all
13 others similarly situated, and the general
public,

14 Plaintiffs,

15 v.

16 EDWARD WALTER SUNSERI, a natural
17 person doing business as Sunseri's Bar and
Beverage Catering; MICHAEL SERENO, a
18 natural person; and DOES 1-50, inclusive,

19 Defendants.
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Case No. 22STCV37939
Judge: Stuart M. Rice

UNLIMITED JURISDICTION

**ANSWER TO PLAINTIFF'S FIRST
AMENDED COMPLAINT**

Action Filed: 12/05/2022

Defendants EDWARD WALTER SUNSERI, dba SUNSERI'S BAR AND BEVERAGE CATERING and MICHAEL SERENO ("Defendants") hereby answers the unverified first amended complaint (hereinafter "Complaint" or "FAC") filed by Plaintiff JUSTIN LOPEZ, on behalf of himself and all others similarly situated, and the general public, as follows:

GENERAL DENIAL

Pursuant to Code of Civil Procedure section 431.30(d), Defendant denies, generally and specifically, each, every, and all of the allegations set forth in the Complaint, and further denies that Plaintiffs or any Putative Class Member has sustained, or will sustain, any injuries, damages, or other losses in any sum or at all by reason of any act, omission, negligence, or any other conduct, or absence thereof, on the part of Defendant, or is entitled to recovery or any relief or remedy as requested or in any other from whatsoever against Defendant.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

1. As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs and Putative Class Members' claims fail to state facts sufficient to constitute a cause of action against Defendant.

SECOND AFFIRMATIVE DEFENSE

(Failure to Mitigate)

2. As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs' and Putative Class Members' claims are barred either in whole or in part, by reason of Plaintiffs' or Putative Class Members' failure to mitigate such alleged damages.

THIRD AFFIRMATIVE DEFENSE

(Waiver)

3. As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs' and Putative Class Members' claims are barred by operation of the equitable doctrine of waiver.

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FOURTH AFFIRMATIVE DEFENSE

(Estoppel)

4. As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs' and Putative Class Members' claims are barred or estopped from any recovery from Defendant based upon their own fault, whether active, primary, direct, or otherwise.

FIFTH AFFIRMATIVE DEFENSE

(Laches)

5. As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs' and Putative Class Members' claims are barred by the equitable doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

6. As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs' and Putative Class Members' claims are barred by the applicable statute of limitations, including, but not limited to, those stated in Code of Civil Procedure sections 338 and 340, Labor Code section 203, and Business and Professions Code section 17208.

SEVENTH AFFIRMATIVE DEFENSE

(Unjust Enrichment)

7. As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs and Putative Class Members are barred from recovery from Defendant because it would result in the unjust enrichment of Plaintiffs and Putative Class Members.

EIGHTH AFFIRMATIVE DEFENSE

(Unclean Hands)

8. As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs and Putative Class Members have unclean hands, and are therefore barred from asserting any causes of action against Defendant or from recovering damages from Defendant.

NINTH AFFIRMATIVE DEFENSE

(Excessive Penalties)

9. As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs and

1 Putative Class Members' claim for civil penalties is unconstitutional and excessive under the
2 United States Constitution, and specifically under the Excessive Fines Clause of the Eighth
3 Amendment, U.S. Const. Amend. VIII, and the Due Process Clause of the Fourteenth Amendment,
4 U.S. Const. Amend. XIV, Section 1.

5 **TENTH AFFIRMATIVE DEFENSE**

6 **(Lack of Proximate Cause)**

7 10. As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs and
8 Putative Class Members have not sustained, and will not sustain, any injuries, damages, or other
9 losses in any sum or sums, or at all, as a proximate result of any act, omission, negligence or any
10 other conduct by Defendant.

11 **ELEVENTH AFFIRMATIVE DEFENSE**

12 **(Good Faith Dispute)**

13 11. As a separate and distinct affirmative defense, and without conceding that there are
14 any wages due, Defendant alleges that there exists a good faith dispute regarding the payment of
15 wages. Therefore, penalties are not warranted.

16 **TWELFTH AFFIRMATIVE DEFENSE**

17 **(Failure to Make Demand for Wages Due)**

18 12. As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs and
19 Putative Class Members did not make a prompt and timely demand for wages due pursuant to
20 California Labor Code section 216(a) and are therefore barred from recovering any alleged unpaid
21 wages, penalties, or other remuneration from Defendant pursuant to such code section.

22 **THIRTEENTH AFFIRMATIVE DEFENSE**

23 **(Improper Disgorgement/Restitution Claims)**

24 13. As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs and
25 Putative Class Members improperly seeks disgorgement and restitution of sums not related to any
26 alleged loss attributable to Plaintiffs or otherwise not legally recoverable.

27 ///

28 ///

FOURTEENTH AFFIRMATIVE DEFENSE

(Failure to Accurately Report Hours Worked)

14. As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs and Putative Class Members did not accurately report the hours for which they seek allegedly unpaid wages, overtime and penalties. Therefore, Plaintiffs and Putative Class Members are barred from seeking to recover any such amounts from Defendant.

FIFTEENTH AFFIRMATIVE DEFENSE

(Plaintiffs at Fault for any Failure to Take Meal and/or Rest Periods)

15. As a separate and distinct affirmative defense, Defendant alleges that Defendant made Plaintiffs and Putative Class Members aware of their rights to, and encouraged Plaintiffs and Putative Class Members to take meals and/or rest periods, made meal and rest periods available, and did not require Plaintiffs and Putative Class Members to work during meals and/or rest periods. Accordingly, Defendant is not liable if Plaintiff and Putative Class Members failed to take such meal and/or rest periods.

SIXTEENTH AFFIRMATIVE DEFENSE

(Not Willful)

16. As a separate and distinct affirmative defense, Defendant alleges that the conduct and/or violation of law alleged against Defendant is not sufficient to be “willful” within the meaning of California Labor Code section 203.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Reasonable Wages/Quantum Meruit)

17. As a separate and distinct affirmative defense, Defendant alleges that the actual wages paid to Plaintiffs and Putative Class Members, which are the subject of this action, were reasonable, appropriate, and commensurate with the services and work actually performed.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Reasonable Interpretation of Applicable Law)

18. As a separate and distinct affirmative defense, Defendant alleges that Defendant acted in good faith reliance upon the reasonable interpretation of applicable law and the opinion(s)

of the office of the Labor Commissioner.

NINETEENTH AFFIRMATIVE DEFENSE

(Accord and Satisfaction)

19. As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs and Putative Class Members' claims are barred, in whole or in part, because Plaintiffs and Putative Class Members have been fully compensated for any wages owed, and by accepting the payments, Plaintiffs and Putative Class Members have effectuated an accord and satisfaction of their claims.

TWENTIETH AFFIRMATIVE DEFENSE

(Improper Joinder of Plaintiffs and Claims)

20. As a separate and distinct affirmative defense, Defendant alleges that the Complaint improperly joins disparate plaintiffs and claims, in that Plaintiffs and Putative Class Members do not possess a joint right to relief against Defendant, if any, and the claims pled in the Complaint arise out of separate transactions and occurrences.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(No Common Circumstances of Interest)

21. As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs and Putative Class Members do not share common circumstances of interest. Therefore, Plaintiffs and Putative Class Members as a class cannot fairly and adequately represent or protect the interests of any individual Plaintiff or Putative Class Members.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Insufficient Facts for Class Action)

22. As a separate and distinct affirmative defense, Defendant alleges that the identification of the class in the Complaint is not sufficiently definite such that it can be determined whether or not a particular person is or is not a member.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Inadequate/Improper Class Representation)

23. As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs have no standing to sue as a representative of Putative Class Members, and Plaintiffs will not fairly and

adequately represent or protect the interests of Putative Class Members.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Class Action Elements Not Satisfied)

24. As a separate and distinct affirmative defense, Defendant alleges that the action has not been properly pled as a class action, and the elements required for a class action, including numerosity, predominance of common questions of fact and law, typicality, adequacy of representation and superiority to other available methods of adjudication are not satisfied.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Compliance with Law)

25. As a separate and distinct affirmative defense, Defendant alleges that any recovery by Plaintiffs and Putative Class Members may be barred by Defendant's compliance or substantial compliance with all applicable laws underlying Plaintiffs' claim of unfair or unlawful business practices pursuant to California Business & Professions Code section 17200. Accordingly, Defendant's business practices were not unfair or unlawful within the meaning of California Business & Professions Code section 17200.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Business Justification Defense)

26. As a separate and distinct affirmative defense, Defendant alleges that any recovery by Plaintiffs and Putative Class Members may be barred by the business justification defense to any alleged unfair business practices under California Business & Professions Code section 17200.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Business Judgment Rule)

27. As a separate and distinct affirmative defense, Defendant alleges that any recovery by Plaintiffs and Putative Class Members that any recovery on Plaintiffs' Complaint, or any cause of action contained therein, may be barred by the Business Judgment Rule applicable to claims of unlawful business practices under California Business & Professions Code section 17200.

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TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Safe Harbor)

28. As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs and Putative Class Members claims under Business and Professions Code section 17200, et seq. are barred because the conduct alleged falls within a safe harbor.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Benefits Outweigh Impact)

29. As a separate and distinct affirmative defense, Defendant alleges that any recovery by Plaintiffs and Putative Class Members may be barred because the benefits of the alleged unfair business practices outweigh whatever particular harm or impact it may cause to an alleged victim and therefore the business practice is not unfair under California Business & Professions Code section 17200.

THIRTIETH AFFIRMATIVE DEFENSE

(Frivolous Action)

30. As a separate and distinct affirmative defense, Defendant alleges that this lawsuit is frivolous, unreasonable, and without foundation. As a result, Defendant is entitled to recover its costs and attorneys' fees from Plaintiffs and Putative Class Members, and hereby seeks that recovery.

THIRTY-FIRST AFFIRMATIVE DEFENSE

(Doctrine of In Pari Delicto)

31. As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs and Putative Class Members' claims are barred, in whole or in part, because Plaintiffs and Putative Class Members have engaged in acts and courses of conduct which rendered Plaintiffs' and Putative Class Members in pari delicto.

THIRTY-SECOND AFFIRMATIVE DEFENSE

(Practices Not Likely to Deceive)

32. As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs and Putative Class Members claims are barred because the alleged deceptive business practices under

California Business & Professions Code section 17200 are not likely to deceive.

THIRTY-THIRD AFFIRMATIVE DEFENSE

(Adequate Remedy at Law)

33. As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs and Putative Class Members are not entitled to equitable relief insofar as they have an adequate remedy at law.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

(Class Not Manageable)

34. As a separate and distinct affirmative defense, Defendant alleges that this action is not properly maintained as a class action because of the difficulties likely to be encountered in the management of a class action.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

(Class Action Not Practical)

35. As a separate and distinct affirmative defense, Defendant alleges that this action is not properly maintained as a class action because the prosecution of separate actions by individual members of the putative class would not create a risk of inconsistent or varying adjudications or adjudications that, as a practical matter, would be dispositive of the interests of other members not parties to the action.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

(Class Action Not Proper)

36. As a separate and distinct affirmative defense, Defendant alleges that this action is not properly maintained as a class action because concentrating the litigation of the Plaintiffs' claims, as to which individualized facts and proof will predominate, in one particular forum is not desirable.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

(Speculative Damages)

37. As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs and Putative Class Members did not suffer any damages as such damages are trivial and speculative.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

(After-Acquired Evidence)

38. As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs and Putative Class Members are awarded damages, based on the causes of action alleged in the Complaint, their damages should be limited based on after-acquired evidence discovered by Defendant, if any.

THIRTY-NINTH AFFIRMATIVE DEFENSE

(Detrimental Reliance)

39. Defendant alleges that the relief prayed for in the Complaint is barred because of the wages paid, which are the subject of this action, and/or calculation of same, were accepted and/or approved by the receiving party and relied upon by Defendant.

FORTIETH AFFIRMATIVE DEFENSE

(Reserved Affirmative Defense)

40. As a separate and distinct affirmative defense, Defendant alleges that Defendant presently has insufficient knowledge or insufficient information upon which to form a belief as to whether it may have additional, but as of yet un-asserted, affirmative defenses. Defendant therefore reserves the right to assert additional affirmative defenses in the event discovery indicates it would be appropriate.

PRAYER FOR RELIEF

WHEREFORE, Defendants pray as follows:

1. That the COMPLAINT be dismissed with prejudice;
2. That Plaintiff take nothing by this proceeding;
3. That Defendants be awarded their costs of suit incurred in this defense of this action;
4. That Defendants be awarded reasonable attorneys' fees incurred in the defense of this action; and

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5. For such other and further relief as the Court deems just and proper.

Dated: April 10, 2023

BEST BEST & KRIEGER LLP

By: 
CYNTHIA M. GERMANO
CECILIA L. MARTIN
Attorneys for Defendants
EDWARD WALTER SUNSERI, dba
SUNSERI'S BAR AND BEVERAGE
CATERING and MICHAEL SERENO

PROOF OF SERVICE

I, Patricia Alshabazz, declare:

I am a citizen of the United States and employed in Sacramento County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 500 Capitol Mall, Suite 1700, Sacramento, CA 95814. On April 10, 2023, I served a copy of the within document(s):

ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT

- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Sacramento, California addressed as set forth below.
- ☒ by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

David G. Spivak
Jenica Leonard
THE SPIVAK LAW FIRM
8605 Santa Monica Bl.
West Hollywood, CA 90069
Tel: (213) 725-9094
Fax: (213) 634-2485

Attorneys for Plaintiffs

Email: david@spivaklaw.com
jenica@spivaklaw.com
laura@spivaklaw.com;
nora@spivaklaw.com
LopezSunserisBarBeverageCateringZ10
819377@projects.filevine.com

Walter L. Hines
UNITED EMPLOYEES LAW GROUP
4276 Katella Avenue, Suite 301
Los Alamitos, CA 90720
Tel: (562) 256-1047
Fax: (562) 256-1006

Additional Attorneys for Plaintiffs

Email: walter@uelglaw.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 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 10, 2023, at Sacramento, California.


Patricia Alshabazz

EXHIBIT 6



Sample size calculator

What margin of error can you accept?

5% is a common choice

32 %

The margin of error is the amount of error that you can tolerate. If 90% of respondents answer *yes*, while 10% answer *no*, you may be able to tolerate a larger amount of error than if the respondents are split 50-50 or 45-55.

Lower margin of error requires a larger sample size.

What confidence level do you need?

Typical choices are 90%, 95%, or 99%

95 %

The confidence level is the amount of uncertainty you can tolerate. Suppose that you have 20 yes-no questions in your survey. With a confidence level of 95%, you would expect that for one of the questions (1 in 20), the percentage of people who answer *yes* would be more than the margin of error away from the true answer. The true answer is the percentage you would get if you exhaustively interviewed everyone.

Higher confidence level requires a larger sample size.

What is the population size?

If you don't know, use 20000

203

How many people are there to choose your random sample from? The sample size doesn't change much for populations larger than 20,000.

What is the response distribution?

Leave this as 50%

50 %

For each question, what do you expect the results will be? If the sample is skewed highly one way or the other, the population probably is, too. If you don't know, use 50%, which gives the largest sample size. See below under **More information** if this is confusing.

Your recommended sample size is

10

This is the minimum recommended size of your survey. If you create a sample of this many people and get responses from everyone, you're more likely to get a correct answer than you would from a large sample where only a small percentage of the sample responds to your survey.

Online surveys with **Vovici** have completion rates of 66%!

Alternate scenarios

With a sample size of	100	200	300	With a confidence level of	90	95	99
Your margin of error would be	7.00%	0.84%	0.00%	Your sample size would need to be	7	10	16

Save effort, save time. Conduct your survey online with Vovici.

More information

If 50% of all the people in a population of 20000 people drink coffee in the morning, and if you were repeat the survey of 377 people ("Did you drink coffee this morning?") many times, then 95% of the time, your survey would find that between 45% and 55% of the people in your sample answered "Yes".

The remaining 5% of the time, or for 1 in 20 survey questions, you would expect the survey response to more than the margin of error away from the true answer.

When you survey a sample of the population, you don't know that you've found the correct answer, but you do know that there's a 95% chance that you're within the margin of error of the correct answer.

Try changing your sample size and watch what happens to the *alternate scenarios*. That tells you what happens if you don't use the recommended sample size, and how M.O.E and confidence level (that 95%) are related.

To learn more if you're a beginner, read **Basic Statistics: A Modern Approach** and **The Cartoon Guide to Statistics**. Otherwise, look at the **more advanced books**.

In terms of the numbers you selected above, the sample size n and margin of error E are given by

$$x = Z(c/100)^2 r(100-r)$$

$$n = N x / ((N-1)E^2 + x)$$

$$E = \text{Sqrt}[(N - n)x / n(N-1)]$$

where N is the population size, r is the fraction of responses that you are interested in, and $Z(c/100)$ is the **critical value** for the confidence level c .

If you'd like to see how we perform the calculation, view the page source. This calculation is based on the **Normal distribution**, and assumes you have more than about 30 samples.

About **Response distribution**: If you ask a random sample of 10 people if they like donuts, and 9 of them say, "Yes", then the prediction that you make about the general population is different than it would be if 5 had said, "Yes", and 5 had said, "No". Setting the response distribution to 50% is the most conservative assumption. So just leave it at 50% unless you know what you're doing. The sample size calculator computes the critical value for the normal distribution. Wikipedia has good articles on statistics.

How do you like this web page? ☐ Good as-is ☐ Could be even better

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[Questions? Please let us know.](#)

Print

Done

EXHIBIT 7

Confidential Settlement Communication

By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions

Case title:	Justin Eric Lopez v. Edward Walter Sunseri
Case no.:	22STCV37939
Court:	Los Angeles
Judge:	The Honorable Kenneth R. Freeman, Dept. SSC-014
Page subject:	Data

Important Dates

Unfair Competition, Bus.&Prof. § 17200 ("UCL") period begins:	Thursday, December 6, 2018
Lab.Code § 203 (waiting time penalties) period begins:	Friday, December 6, 2019
Lab.Code § 2699 (civil penalties) period begins:	Tuesday, November 23, 2021
Lab.Code § 226 (pay stub penalties) period begins:	Sunday, December 5, 2021
LWDA Notice:	Wednesday, November 23, 2022
Lawsuit:	Monday, December 5, 2022
Sample begin:	Friday, January 12, 2018
Sample end:	Friday, December 30, 2022
Sample calendar days:	1,813
Mediation:	Friday, July 28, 2023
Anticipated Settlement Period end date:	Saturday, November 25, 2023
Settlement Period to Sample Period:	100.11%

Sample data

Sample employee population:	31
Class population to Sample employee population:	6.55
Sample UCL workweeks:	830
Sample UCL workdays:	1,690
Sample UCL hours:	14,030.73
	15.27%

Classes / Groups sizes

UCL Class Members:	203
UCL Workweeks:	5,435
UCL Wage Statements:	5,443
UCL Workdays:	11,067
UCL Calendar days:	1,695
UCL Months:	55.73

Waiting Time Penalties Class Members:	41
---------------------------------------	----

PAGA Aggrieved Employees:	82
PAGA Wage Statements:	2,195.19

Wage Statement Class Members:	81
Wage Statement Class Wage Statements:	2,159

Averages

Average Hourly Rate:	\$	15.27
Average Overtime Rate:	\$	22.91
Average Doubletime Rate:	\$	30.54

Average Work Hours Per Day:	8.50
Average Work Hours Per Week:	16.90
Average Workdays Per Week:	2.04
Workdays to Calendar Days (%):	29.14%

First Paycycle:	weekly
>> Paychecks per year:	52
Start Date:	Thursday, December 6, 2018
End Date:	Sunday, March 15, 2020
Number of pay dates in cycle:	66.25

Ssecond paycycle:	biweekly
>> Paychecks per year:	26

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Start Date:

Monday, June 1, 2020

End Date:

Saturday, November 25, 2023

Number of pay dates in cycle:

90.61

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Case title:	Justin Eric Lopez v. Edward Walter Sunseri
Case no.:	22STCV37939
Court:	Los Angeles
Judge:	The Honorable Kenneth R. Freeman, Dept. SSC-014
Page subject:	Unpaid Weekly Overtime wages
Authority:	Lab.Code §§ 510, 1194, and 1198

Average Hourly Rate:	\$	15.27
Weekly overtime hours pay week:		1.02
Actionable workweeks:		5,443
Overtime rate unpaid:		0.50
Interest:		10%

Unpaid weekly overtime wages:	\$	46,627.30
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Case title:	Justin Eric Lopez v. Edward Walter Sunseri
Case no.:	22STCV37939
Court:	Los Angeles
Judge:	The Honorable Kenneth R. Freeman, Dept. SSC-014
Page subject:	Unpaid Doubletime Wages
Authority:	Lab.Code §§ 510, 1194, and 1198

Sample workdays with unpaid doubletime wages:	67
Percentage of sample workdays:	3.96%
Sample hours over 12 in a workday	82.25
Unpaid doubletime premium rate:	0.50
Class population to Sample employee population:	6.55
Hourly rate:	\$ 15.27
Interest:	10%

Unpaid doubletime wages:	\$ 4,523.47
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Case title:	Justin Eric Lopez v. Edward Walter Sunseri
Case no.:	22STCV37939
Court:	Los Angeles
Judge:	The Honorable Kenneth R. Freeman, Dept. SSC-014
Page subject:	Unpaid Overtime on Nondiscretionary Service Charge Tips

Average Hourly Rate:	\$	15.27
Average Overtime Rate:	\$	22.91
Average Doubletime Rate:	\$	30.54
Average Work Hours Per Day:		8.50
Average Work Hours Per Week:		16.90
Average Workdays Per Week:		2.04
Workday service charge tips:	\$	72.71
Hourly service charge tips:	\$	4.30
Unpaid hourly non-discretionary overtime pay on nondiscretionary compensation:	\$	2.15
Average overtime hours per day:	\$	0.50
Average overtime hours per week:		1.02
UCL Workweeks:		5,435.16
Interest rate:		10%
Unpaid non-discretionary overtime pay on service charge tips:	\$	13,118.46

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Case title:	Justin Eric Lopez v. Edward Walter Sunseri
Case no.:	22STCV37939
Court:	Los Angeles
Judge:	The Honorable Kenneth R. Freeman, Dept. SSC-014
Page subject:	Unprovided Meal Periods
Authority:	Lab.Code §§ 226.7, 512, and 1198
Average Hourly Rate:	\$ 15.27
Actionable workdays:	11,067
>>Percentage qualifying for meal periods:	96.75%
Violation rate (%)	100%
Meal period premium wages:	\$ 163,497.48

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Case title:	Justin Eric Lopez v. Edward Walter Sunseri
Case no.:	22STCV37939
Court:	Los Angeles
Judge:	The Honorable Kenneth R. Freeman, Dept. SSC-014
Page subject:	Unprovided Rest Periods
Authority:	Lab.Code §§ 226.7 and 1198
Average Hourly Rate:	\$ 15.27
Actionable workdays:	11,067
>>Percentage qualifying for rest periods:	100%
Violation rate (%)	100%
Rest period premium wages:	\$ 168,989.64

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Case title:	Justin Eric Lopez v. Edward Walter Sunseri
Case no.:	22STCV37939
Court:	Los Angeles
Judge:	The Honorable Kenneth R. Freeman, Dept. SSC-014
Page subject:	Itemized Wage Statements
Authority:	Lab.Code § 226

Wage Statement Period to UCL Period Ratio:		39.67%
Wage Statement Class Members:		81
Wage Statement Class Wage Statements:		2,159
Initial penalty:	\$	50.00
Subsequent penalty:	\$	100.00
Statutory wage statement penalties:	\$	211,894.21

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Case title:	Justin Eric Lopez v. Edward Walter Sunseri
Case no.:	22STCV37939
Court:	Los Angeles
Judge:	The Honorable Kenneth R. Freeman, Dept. SSC-014
Page subject:	Waiting Time / Final Wages
Authority:	Lab.Code § 203

Waiting Time Penalties Class Members:		41
Days waiting:		30
Average Hourly Rate:	\$	15.27
Average Overtime Rate:	\$	22.91
Average Doubletime Rate:	\$	30.54
Average Work Hours Per Day:		8.50
Regular Hours Per Day:		8.00
Overtime Hours Per Day:		0.50
Doubletime Hours Per Day:		-
Waiting time penalties:	\$	164,343.38

Confidential Settlement Communication

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Case title:	Justin Eric Lopez v. Edward Walter Sunseri
Case no.:	22STCV37939
Court:	Los Angeles
Judge:	The Honorable Kenneth R. Freeman, Dept. SSC-014
Page subject:	PAGA Civil Penalties
Authority:	Lab.Code §§ 2698, <i>et seq.</i>

PAGA Period to UCL Period ratio:	40.33%
UCL Paychecks:	5,443.00
Pay periods during PAGA Period:	2,195.19

Labor Code violation	Labor Code Civil		Subsequent		Pay periods	Total
	Penalty Statute	Initial penalty	penalty			
Overtime wages (Lab.Code § 510):	Lab.Code § 558	\$ 50.00	\$ 100.00	2,195.19	\$	219,469.34
Meal periods Lab.Code § 512):	Lab.Code § 558	\$ 50.00	\$ 100.00	2,195.19	\$	219,469.34
Rest periods (Lab.Code § 1198):	Lab.Code § 2699	\$ 100.00	\$ 200.00	2,195.19	\$	438,938.68
Improper pay stubs (Lab.Code § 226):	Lab.Code § 226.3	\$ 250.00	\$ 1,000.00	2,195.19	\$	2,194,443.39
Untimely wages (Lab.Code §§ 201-204):	Lab.Code § 2699	\$ 100.00	\$ 200.00	2,195.19	\$	438,938.68
Total:					\$	3,511,259.42

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Case title:	Justin Eric Lopez v. Edward Walter Sunseri
Case no.:	22STCV37939
Court:	Los Angeles
Judge:	The Honorable Kenneth R. Freeman, Dept. SSC-014
Page subject:	Totals
Authority:	Various

Restitution		Reduction		Demand
Unpaid weekly overtime wages:	\$ 46,627.30	5%	\$	44,295.93
Unpaid doubletime wages:	\$ 4,523.47	5%	\$	4,297.30
Unpaid OT on service charge tips:	\$ 13,118.46	5%	\$	12,462.53
Meal period premium wages:	\$ 163,497.48	5%	\$	155,322.60
Rest period premium wages:	\$ 168,989.64	5%	\$	160,540.16
Restitution subtotal:	\$ 396,756.35		\$	376,918.53
Penalties				
Statutory wage statement penalties:	\$ 211,894.21	5%	\$	201,299.50
Waiting time penalties:	\$ 164,343.38	5%	\$	156,126.21
Overtime wages (Lab.Code § 510):civil penalties:	\$ 219,469.34	5%	\$	208,495.87
Meal periods Lab.Code § 512):civil penalties:	\$ 219,469.34	5%	\$	208,495.87
Rest periods (Lab.Code § 1198):civil penalties:	\$ 438,938.68	5%	\$	416,991.74
Improper pay stubs (Lab.Code § 226):civil penalties:	\$ 2,194,443.39	5%	\$	2,084,721.22
Untimely wages (Lab.Code §§ 201-204):civil penalties:	\$ 438,938.68	5%	\$	416,991.74
Penalties subtotal:	\$ 3,887,497.01		\$	3,693,122.16
Attorney Fees through trial:	\$ 1,000,000.00	90%	\$	100,000.00
Attorney costs through trial:	\$ 200,000.00	90%	\$	20,000.00
Grand total:	\$ 5,484,253.36		\$	4,190,040.69

EXHIBIT 8

1 DAVID G. SPIVAK, State Bar # 179684
2 THE SPIVAK LAW FIRM
3 9454 Wilshire Blvd.
4 Suite 303
5 Beverly Hills, CA 90212
6 Telephone (310) 499-4730
7 Facsimile (310) 499-4739
8 Email david@spivaklaw.com

CONFORMED COPY
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Los Angeles Superior Court
FEB 24 2010

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

6 Attorney for Plaintiffs,
7 ALINA GHRDILYAN, EVGENIA SULTANIAN, and all others similarly situated

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

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

Case No.: BC430633

CLASS ACTION

13 *Plaintiffs,*

14 vs.

FIRST AMENDED COMPLAINT FOR:

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

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

19 *Defendants.*

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

22 On behalf of both himself and all other persons similarly situated, plaintiff ALINA
23 GHRDILYAN and EVGENIA SULTANIAN ("Plaintiffs") bring this action against defendants
24 RJ FINANCIAL, INC., RAMIL ABALKHAD, and the other defendants, (collectively
25

26 THE
27 SPIVAK
LAW FIRM

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

4 INTRODUCTION

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

12 PARTIES AND CONDUCT

13 A. Plaintiffs and Class Members

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

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

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

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

3 **B. Defendants**

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

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

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

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

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

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

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

8 CLASS ACTION ALLEGATIONS

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

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

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

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

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

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

1 date that final judgment is entered in this action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 O. Are class members entitled to prejudgment interest?

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

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

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

1 action cases.

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

12 **FIRST CLAIM FOR RELIEF**

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

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

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

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

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

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

23. California Labor Code § 510(a) also requires employers to compensate employees at two times their regular rates of pay for:

A. All hours worked in excess of twelve hours in one day; and,

B. All hours worked in excess of eight hours on a seventh consecutive workday during a workweek.

24. During the applicable limitations period, Plaintiffs have worked more than eight hours in one workday, more than forty hours in one workweek, and eight or more hours on a seventh consecutive workday without being paid for all of those hours at the rates required under California Labor Code § 510(a).

25. Plaintiffs are informed and believe and thereon allege that Defendants have maintained a policy or practice of not compensating him and the other members of the **Wages Class** for all hours worked. Additionally, Plaintiffs are informed and believe and thereon allege that Defendants have maintained a policy or practice of not compensating the other members of the **Wages Class** and the **Overtime Class** at the rates required under California Labor Code § 510(a) for all hours worked in excess of eight hours in one day, all hours worked in excess of forty hours in one week, the first eight hours on a seventh consecutive workday, and all worked hours in excess of eight hours on a seventh consecutive workday.

26. As a result of Defendants' conduct, Plaintiffs, on behalf of themselves and the other members of the **Wages Class** and the **Overtime Class**, seeks declaratory and injunctive relief, damages for unpaid overtime wages, interest thereon, costs of suit, and reasonable attorney's fees pursuant to California Labor Code § 1194(a).

SECOND CLAIM FOR RELIEF

FAILURE TO PROVIDE REST AND MEAL PERIODS

(By Plaintiffs, the Rest Period Class, and the Meal Period Class)

27. Plaintiffs incorporate paragraphs 1 through 26 of the Complaint as if fully alleged herein.

28. At all relevant times, Plaintiffs and other members of the **Rest Period Class** and **Meal Period Class** have been employees of Defendants covered by California Labor Code §§

1 226.7 and 512, and Wage order 11.

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

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

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

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

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

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

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

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

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

10 **THIRD CLAIM FOR RELIEF**

11 **FORFEITURE OF VACATION PAY**

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

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

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

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

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

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

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

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

7 **FOURTH CLAIM FOR RELIEF**

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

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

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

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

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

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

1 worked.

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

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

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

21 **FIFTH CAUSE OF ACTION**

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

23 **(Cal. Lab. Code §§ 201-203)**

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

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

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

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

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

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

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

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

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

9 **SIXTH CLAIM FOR RELIEF**

10 **UNAUTHORIZED DEDUCTIONS**

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

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

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

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

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

1 Procedure § 1021.5.

2 **SEVENTH CLAIM FOR RELIEF**

3 **FAILURE TO INDEMNIFY**

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

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

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

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

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

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

6 **EIGHTH CLAIM FOR RELIEF**

7 **UNFAIR COMPETITION**

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

9 65. Plaintiffs incorporate paragraphs 1 through 64 of the Complaint as if fully
10 alleged herein.

11 66. The unlawful conduct of Defendants alleged herein amounts to and constitutes
12 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
13 *seq.* California Business & Professions Code §§ 17200, *et seq.*, protects against unfair
14 competition and allows a person who has suffered an injury-in-fact and has lost money or
15 property as a result of an unfair, unlawful, or fraudulent business practice to seek restitution on
16 her own behalf and on behalf of other similarly situated persons in a class action proceeding.

17 67. As a result of Defendants' violations of the California Labor Code as during the
18 applicable limitations period as alleged herein, Plaintiffs have suffered an injury-in-fact and
19 have lost money or property in the form of earned wages. Specifically, Plaintiffs have lost
20 money or property as a result of not being paid for hours worked, not being paid at legal
21 overtime rates for all overtime hours worked, not being paid additional required wages for rest
22 and meal periods not provided to them, being provided with inaccurate written wage statements
23 that have had the effect of concealing other wage underpayments, Defendants' improper
24 deductions, and Defendants' failure to reimburse for necessary expenditures, and Defendants'
25 failure to timely pay all wages due or owed upon termination or resignation.

26 68. Plaintiffs are informed and believe that other similarly situated persons have
27 been subject to the same unlawful policies or practices of Defendants, including not being paid
for all wages earned, not being paid at overtime rates for all overtime hours worked, not being

1 paid additional required wages for rest and meal periods not provided to them, being provided
2 with inaccurate written wage statements that have had the effect of concealing other wage
3 underpayments, Defendants' improper deductions, and Defendants' failure to reimburse for
4 necessary expenditures, and/or Defendants' failure to timely pay all wages due or owed upon
5 termination or resignation.

6 69. Due to its unfair and unlawful business practices in violation of the California
7 Labor Code as alleged herein, Defendants have gained a competitive advantage over other
8 comparable companies doing business in the State of California that comply with their legal
9 obligations to compensate employees for all earned wages and to provide them with reasonable
10 means of verifying that they have been paid all earned wages with accurate written wage
11 statements.

12 70. Pursuant to California Business & Professions Code § 17203, Plaintiffs, on
13 behalf of themselves and the other members of the **All-Inclusive Class**, seek declaratory and
14 injunctive relief, and restitution of all monies rightfully belonging to them that Defendants did
15 not pay them or otherwise retained by means of its unlawful and unfair business practices.

16 71. Plaintiffs and the other members of the **All-Inclusive Class** are entitled to
17 recover reasonable attorney's fees in connection with their unfair competition claims pursuant
18 to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the
19 common fund doctrine.

20 **NINTH CLAIM FOR RELIEF**

21 **CIVIL PENALTIES**

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

23 72. Plaintiffs incorporate paragraphs 1 through 71 of the Complaint as if fully
24 alleged herein.

25 73. During the applicable time period, Defendants violated California Labor Code §§
26 204, 223, 226(a), 226.7, 227.3, 510, 512, and 1194.

27 74. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
behalf of himself and other current or former employees, to bring a civil action to recover civil

1 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

2 75. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiffs and the other
3 aggrieved employees of Defendants are entitled to recover civil penalties for Defendants'
4 violations of California Labor Code §§ 200, 201, 202, 203, 204, 224, 226(a), 226.7, 227.3, 510,
5 512, 1194 and 2802 during the applicable limitations period in the following amounts:

6 A. For violations of California Labor Code §§ 200, 201, 202, 203, 224,
7 226.7, 1194, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay
8 period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee
9 per pay period for each subsequent violation (penalty amounts established by California Labor
10 Code § 2699(f)(2));

11 B. For violations of California Labor Code § 204, one hundred dollars
12 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
13 (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount
14 unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional
15 violation (penalty amounts established by California Labor Code § 210);

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

20 D. For violations of California Labor Code §§ 510 and 512, fifty dollars
21 (\$50.00) for each aggrieved employee for each initial violation for pay period for which the
22 employee was underpaid in addition to an amount sufficient to recover unpaid wages and one
23 hundred dollars (\$100.00) for each underpaid employee for each pay period for which the
24 employee was underpaid in addition to an amount sufficient to recover unpaid wages (penalty
25 amounts established by California Labor Code § 558).

26 76. Plaintiffs have complied with the procedures for bringing suit specified in
27 California Labor Code § 2699.3. By letters dated January 8 and February 19, 2010, Plaintiffs
gave written notice by certified mail to the Labor and Workforce Development Agency

1 (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to
2 have been violated, including the facts and theories to support the alleged violations. Plaintiffs
3 anticipate that the LWDA will soon provide Plaintiffs with written notice that it does not intend
4 to investigate the violations of the California Labor Code alleged herein.

5 77. Pursuant to California Labor Code § 2699(g), Plaintiffs and the other members of
6 the **All-Inclusive Class** are entitled to an award of reasonable attorney’s fees and costs in
7 connection with their claims for civil penalties.

8 **PRAYER FOR RELIEF**

9 78. WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly
10 situated, prays for relief and judgment against Defendants as follows:

11 A. An order that the action be certified as a class action with respect to
12 Plaintiffs’ claims for violations of California law;

13 B. An order that Plaintiffs be appointed class representatives;

14 C. An order that counsel for Plaintiffs be appointed class counsel;

15 D. Declaratory relief;

16 E. Injunctive relief;

17 F. Actual damages;

18 G. Liquidated damages;

19 H. Restitution;

20 I. Civil penalties;

21 J. Statutory penalties;

22 K. Pre-judgment interest;

23 L. Costs of suit;

24
25 ///

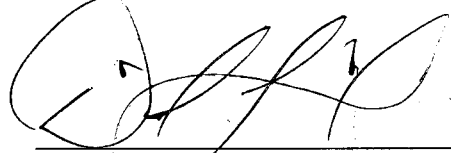
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- M. Reasonable attorney's fees; and
- N. Such other relief as the Court deems just and proper.

Respectfully submitted,

THE SPIVAK LAW FIRM



By:

Date: February 23, 2010

DAVID G. SPIVAK, Attorney for
Plaintiff, ALINA GHRDILYAN,
EVGENIA SULTANIAN, and all others
similarly situated

EXHIBIT 9

1 CASE NUMBER: BC430633
2 CASE NAME: ALINA GHRDILYAN, ET AL., VERSUS
3 RJ FINANCIAL, ET AL.,
4 LOS ANGELES, CALIFORNIA MONDAY, APRIL 23, 2012
5 DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE
6 APPEARANCES: (SEE TITLE PAGE.)
7 REPORTER: ANGELA Z. PARADELA, CSR NO. 9659
8 TIME: A.M. SESSION
9

10 (THE FOLLOWING PROCEEDINGS WERE HELD IN
11 OPEN COURT:)

12
13 THE COURT: OKAY. THANK YOU VERY MUCH. I'M GOING
14 TO ASK YOU LAWYERS TO WAIT FOR JUST A MOMENT.

15 AS YOU CAN PROBABLY TELL, FROM THE QUESTIONS
16 AND THE WAY I'VE BEEN TAKING NOTES, SO FORTH, I HAVE A CASE
17 IN MIND AND I HAVE BEEN WORKING ON IT BOTH WHILE YOU'VE BEEN
18 WITH ME AND DURING THE RECESSES LIKE WEEKENDS AND NIGHTS.
19 JUST A SECOND. I HAVE TWO MORE THINGS I HAVE TO BRING OUT.
20 I WILL DO SOME MORE WORK WITH YOU.

21 (A PAUSE IN THE PROCEEDINGS.)

22 THE COURT: OKAY. YOU PROBABLY ALREADY GOT THE
23 IMPRESSION THAT I AM A JUDGE WHO TRIES TO DOCUMENT AND SHOW
24 THE LEGAL PREMISES FOR PROCEDURAL STEPS WE TAKE, AND I INTEND
25 TO DO THAT. I JUST WANT TO TELL YOU WHAT I'M GOING TO DO
26 HERE AND I GUESS I WILL START THIS WAY.

27 I SAID I AM GOING TO BRING OUT TWO THINGS. I
28 BROUGHT OUT ONLY ONE.

1 (A PAUSE IN THE PROCEEDINGS.)

2 THE COURT: THE -- I'M GOING TO CALL YOUR ATTENTION
3 TO SOME CASES THAT HAVEN'T BEEN CITED. I'M GOING TO DEAL
4 WITH THE MERITS OF YOUR CLIENTS'S CASE. SO HERE WE GO.

5 UNDER CALIFORNIA CONSTITUTION ARTICLE VI,
6 SECTION 6 AND GOVERNMENT CODE 68070(B) AND 68603(A), THE
7 CALIFORNIA JUDICIAL COUNCIL HAS CONSTITUTIONALLY GRANTED AND
8 LEGISLATIVELY AFFIRMED POWER TO ADOPT RULES, REPORT
9 ADMINISTRATION PRACTICE AND PROCEDURE THAT ARE CONSISTENT
10 WITH STATUTES. THE CALIFORNIA RULES OF COURT HAVE THE FORCE
11 OF LAW AND BINDING AS PROCEDURAL STATUTES AS LONG AS THEY ARE
12 CONSISTENT WITH LEGISLATIVE ENACTMENTS AND CONSTITUTIONAL
13 GUARANTEES.

14 I WILL CITE YOU THREE CASES WHERE THAT POINT
15 IS MADE. THEY ARE IN RE JUAN -- THAT'S J-U-A-N -- C.,
16 (1993), 20 CALIFORNIA APPELLATE 4TH, 748, PARTICULARLY AT
17 PAGES 752 TO 753; ALICIA T. VERSUS COUNTY OF LOS ANGELES,
18 (1990), 222 CALIFORNIA APPELLATE 3D 869 AT 884, AND OATS
19 VERSUS OATS. OATS IS SPELLED O-A-T-S, (1983) 14 CALIFORNIA
20 APPELLATE 3D 416 AT 420. THIS IS HOW THE OATS VERSUS OATS
21 COURT EXPRESSED THIS VIEW.

22 RULES OF COURT HAVE THE FORCE OF POSITIVE LAW.
23 THEY ARE AS BINDING ON THIS COURT AS PROCEDURAL STATUTES
24 UNLESS THEY TRANSCEND LEGISLATIVE ENACTMENTS OR
25 CONSTITUTIONAL GUARANTEES.

26 SO THE HIERARCHY THEN WOULD BE CONSTITUTION,
27 STATUTES AND CALIFORNIA RULES OF COURT, AND THEN CASE LAW.

28 I SAY THAT BECAUSE THE CASE OF WHITTINGTON

1 VERSUS MCKINNEY -- WHITTINGTON IS SPELLED

2 W-H-I-T-I-N-G-T-O-N, VERSUS MCKINNEY, CAPITAL M, C, CAPITAL
3 K, I-N-N-E-Y, (1991), 234 CALIFORNIA APPELLATE 3D 123 --
4 CRITICIZED THE CONDUCT OF A NOW FORMER JUDGE, I BELIEVE, AT
5 THE ORANGE COUNTY SUPERIOR COURT, WHO ANNOUNCED A DECISION,
6 GAVE A STATEMENT OF DECISION ORALLY AND SAID IF YOU WANTED A
7 WRITTEN STATEMENT OF DECISION, YOU COULD MAKE REFERENCE TO
8 THE COURT TRANSCRIPT. THAT CASE, WHITTINGTON VERSUS MCKINNEY
9 WAS, AS I SAY, DECIDED IN 1991.

10 IN 2010, EFFECTIVE JANUARY 1, 2010, THE
11 CALIFORNIA RULES OF COURT WERE AMENDED WITH RESPECT TO, AMONG
12 OTHER PROVISIONS OF THE CALIFORNIA RULES OF COURT, RULE
13 3.1590 HAVING TO DO WITH ANNOUNCEMENT OF TENTATIVE DECISION
14 AND STATEMENT DECISION AND JUDGMENT.

15 THE (C) SUBSECTION OF RULE 15 -- RULE 3.1590
16 WAS AMENDED BY THE ELIMINATION OF SOME PROVISIONS AND BY
17 BEING INSERTION OF OTHER PROVISIONS. I'M GOING TO REFER TO
18 THE (C) SUBSECTION.

19 IT READS NOW, (READING:)

20 THE COURT IN ITS TENTATIVE DECISION MAY:
21 STATE THAT IT IS THE COURT'S PROPOSED
22 STATEMENT OF DECISION, SUBJECT TO A PARTY'S
23 OBJECTION UNDER SUBSECTION (G);

24 (2) INDICATE THAT THE COURT WILL PREPARE
25 A STATEMENT OF DECISION;

26 (3) ORDER A PARTY TO PREPARE A STATEMENT
27 OF DECISION; OR

28 (4) DIRECT THAT THE TENTATIVE DECISION

1 WILL BECOME THE STATEMENT OF DECISION UNLESS,
2 WITHIN 10 DAYS AFTER ANNOUNCEMENT OR SERVICE
3 OF THE TENTATIVE DECISION, A PARTY SPECIFIES
4 THOSE PRINCIPAL CONTROVERTED ISSUES AS TO
5 WHICH THE PARTY IS REQUESTING A STATEMENT OF
6 DECISION OR MAKES PROPOSALS NOT INCLUDED IN
7 THE TENTATIVE DECISION.

8 NOW, I WILL NOT USE METHOD TWO. THAT'S THE
9 COURT WILL PREPARE A STATEMENT OF DECISION. I WILL USE
10 EITHER (1), (3), OR (4) EITHER SAYING THAT THIS IS A PROPOSED
11 STATEMENT OF DECISION SUBJECT TO OBJECTIONS UNDER SUBSECTION
12 (G), OR ORDER A PARTY TO PREPARE A STATEMENT OF DECISION, OR
13 DIRECT THAT THE TENTATIVE DECISION WILL BECOME THE STATEMENT
14 OF DECISION UNLESS WITHIN TEN DAYS A PARTY SPECIFIES
15 PRINCIPAL CONTROVERTED ISSUES AS TO WHICH THE PARTY IS
16 REQUESTING A STATEMENT OF DECISION OR MAKES PROPOSALS NOT
17 INCLUDED IN THE TENTATIVE DECISION.

18 I WOULD LIKE TO HEAR FROM BOTH SIDES NOW
19 CONCERNING WHICH OF THREE ALTERNATIVES WHICH I PROPOSED THEY
20 PREFER, AND THEN I WILL MAKE THE DECISION CONCERNING THAT
21 THAT IS PROPER. LET'S START WITH THE DEFENSE. DEFENDANT?

22 MR. SABZEVAR: YOUR HONOR, I PREFER THAT THE COURT
23 ISSUES A STATEMENT OF DECISION ITSELF AND NOT LEAVE IT TO THE
24 PARTIES OR TEN DAYS.

25 THE COURT: I TOLD YOU I'M NOT GOING TO PREPARE A
26 STATEMENT OF DECISION. I'M GOING TO USE EITHER METHOD (1),
27 (3), OR (4). (1) IS THIS IS THE PROPOSED STATEMENT OF
28 DECISION SUBJECT TO OBJECTIONS UNDER (D). (3) IS ORDER A

1 PARTY TO PREPARE A STATEMENT OF DECISION; OR (4), DIRECT THAT
2 THE TENTATIVE DECISION WILL BECOME THE STATEMENT OF DECISION
3 UNLESS WITHIN TEN DAYS AFTER ANNOUNCEMENT OR SERVICE OF THE
4 TENTATIVE DECISION, THE PARTY SPECIFIES THOSE PRINCIPAL
5 CONTROVERTED ISSUES AS TO WHICH THE PARTY IS REQUESTING A
6 STATEMENT OF DECISION OR MAKES PROPOSALS NOT INCLUDED IN THE
7 TENTATIVE DECISION.

8 MR. SABZEVAR: DEFENSE PREFERENCE IS NUMBER ONE.

9 THE COURT: STATE THAT THIS IS THE COURT'S
10 STATEMENT OF DECISION SUBJECT TO A PARTY'S OBJECTION UNDER
11 (G)?

12 MR. SABZEVAR: YES, YOUR HONOR.

13 THE COURT: PLAINTIFF?

14 MR. SPIVAK: WE PREFER TO WRITE THE DECISION, YOUR
15 HONOR, ONCE THE COURT HAS MADE ITS POSITION KNOWN.

16 THE COURT: ALL RIGHT.

17 MR. SPIVAK: BY "WE" I MEAN WE BELIEVE IT SHOULD BE
18 PREVAILING PARTY.

19 THE COURT: UH-HUH. I'M GOING TO USE -- I
20 APPRECIATE -- I'M GOING TO USE METHOD (4). THIS TENTATIVE
21 DECISION WILL BECOME THE STATEMENT OF DECISION UNLESS WITHIN
22 TEN DAYS AFTER ANNOUNCEMENT, AND SO FORTH. THAT'S
23 3.1590(C)(4).

24 SO WHAT I'M GOING TO DO NOW IS ANNOUNCE A
25 TENTATIVE WHICH, AS YOU CAN SEE, IS ALSO A CONDITIONAL
26 STATEMENT OF DECISION.

27 THIS CASE CAME BEFORE ME PRESIDING IN THIS
28 DEPARTMENT 41 ON THE 10TH OF APRIL, 2012, FOR TRIAL WITHOUT

1 JURY. DAVID G. SPIVAK, STATE BAR 179684, APPEARED AS
2 ATTORNEY FOR PLAINTIFFS ALINA GHRDILYAN AND EVGENIA
3 SULTANIAN, AND F. MICHAEL SABZEVAR, STATE BAR 172312 APPEARED
4 AS ATTORNEY FOR DEFENDANT, RAMIL ABALKHAD.

5 THE CASE WAS SUBMITTED FOR DECISION TODAY, THE
6 23RD OF APRIL, 2012.

7 IN THIS CASE, TWO PLAINTIFFS CLAIM THAT
8 DEFENDANT ABALKHAD IS LIABLE TO THEM ON VARIOUS
9 EMPLOYMENT-DERIVED THEORIES INCLUDING AND ESPECIALLY FOR
10 PENALTIES AND THAT THEY CAN ENFORCE VARIOUS REMEDIES AGAINST
11 THEM UNDER THE LABOR CODE PRIVATE ATTORNEY GENERAL ACT, WHICH
12 IS AT LABOR CODE 2698, AND FOLLOWING.

13 IN OPEN COURT ON THE 10TH OF APRIL, 2012, THE
14 ATTORNEYS CONFIRMED THAT THE OPERATIVE PLEADINGS ARE THE
15 PLAINTIFFS'S FIRST AMENDED COMPLAINT, ET CETERA, FILED
16 FEBRUARY 24, 2010, AND THE DEFENDANT'S ANSWER TO THEIR FIRST
17 AMENDED COMPLAINT FILED SEPTEMBER 13, 2010. I WILL MAKE A
18 COUPLE OF QUICK COMMENTS ABOUT THOSE TWO DOCUMENTS NOW.

19 THE FULL NAME OF THE PLAINTIFFS'S OPERATIVE
20 PLEADING IS FIRST AMENDED COMPLAINT FOR -- AND THEN THERE ARE
21 NINE THEORIES LISTED: FAILURE TO COMPENSATE EMPLOYEES FOR
22 ALL HOURS WORKED; NUMBER TWO IS FAILURE TO PROVIDE BOTH REST
23 AND MEAL PERIODS; NUMBER THREE IS FORFEITURE OF VESTED
24 VACATION BENEFITS; NUMBER FOUR IS FAILURE TO PROVIDE ACCURATE
25 WRITTEN WAGE STATEMENTS; NUMBER FIVE IS FAILURE TO TIMELY PAY
26 ALL FINAL WAGES; NUMBER SIX IS UNAUTHORIZED DEDUCTIONS;
27 NUMBER SEVEN IS FAILURE TO INDEMNIFY; NUMBER EIGHT IS UNFAIR
28 COMPETITION; AND NUMBER NINE IS CIVIL PENALTIES.

1 THE DEFENDANT'S ANSWER TO THE FIRST AMENDED
2 COMPLAINT WAS ON A JUDICIAL COUNCIL FORM PLEADING.

3 INSOFAR AS IT'S PERTINENT TO THIS PORTION OF
4 MY ANALYSIS, LABOR CODE 2699 READS, (READING:)

5 SUBSECTION (A), NOTWITHSTANDING ANY OTHER
6 PROVISION OF LAW, ANY PROVISION OF THIS CODE
7 THAT PROVIDES FOR A CIVIL PENALTY TO BE
8 ASSESSED AND COLLECTED BY THE LABOR AND
9 WORKFORCE DEVELOPMENT AGENCY OR ANY OF ITS
10 DEPARTMENTS, DIVISIONS, COMMISSIONS, BOARDS,
11 AGENCIES, OR EMPLOYEES FOR A VIOLATION OF THIS
12 CODE MAY, AS AN ALTERNATIVE, BE RECOVERED
13 THROUGH A CIVIL ACTION BROUGHT BY AN AGGRIEVED
14 EMPLOYEE ON BEHALF OF HIMSELF OR HERSELF AND
15 OTHER CURRENT OR FORMER EMPLOYEES PURSUANT TO
16 THE PROCEDURES SPECIFIED IN SECTION 2699.3.

17 THE PLAINTIFFS HAD ORIGINALLY DENOMINATED THIS
18 CASE AS A CLASS ACTION AND THEY CONTINUED THAT DESIGNATION
19 THROUGH VARIOUS OTHER FILINGS, BUT THEY HAVE NEVER OBTAINED
20 AN ORDER CERTIFYING THE CLASS. THEY CLAIM, THOUGH, THAT THEY
21 ARE ENTITLED TO PROCEED ON BEHALF OF OTHERS PURSUANT TO THE
22 CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL ACT AS TO
23 DEFENDANT ABALKHAD.

24 THE PLAINTIFFS HAD TRIED THIS CASE BEFORE ME
25 SOLELY AS TO CAUSE OF ACTION NINE. THEY CONCEDE THAT THIS
26 CASE IS STAYED IN THIS COURT IN PART BECAUSE OF THE FACT THAT
27 DEFENDANT RJ FINANCIAL, INC., ORIGINALLY THE ONLY NAMED
28 DEFENDANT, BUT BY VIRTUE OF THE FIRST AMENDED PLEADING, A

1 CODEFENDANT, THAT CORPORATION IS A DEBTOR IN CHAPTER 11
2 PROCEEDING, WHICH IS STILL PENDING.

3 PURSUANT TO 11 U.S.C. 362, THIS CASE WOULD BE
4 STAYED AS TO THAT PARTY. BUT MR. ABALKHAD HAS NOT BEEN SHOWN
5 TO BE A DEBTOR IN A BANKRUPTCY PROCEEDING AND DURING CLOSING
6 ARGUMENT OF THE 17TH OF APRIL, 2012, MR. SPIVAK CONFIRMED HIS
7 CLIENTS HAVE CLAIMS PENDING IN THE BANKRUPTCY CASE. THAT
8 WILL MEAN THAT THE CASE CAN PROCEED AND HAS PROCEEDED ON THE
9 BASIS PLEADED AGAINST MR. ABALKHAD AS AN INDIVIDUAL.

10 ALTHOUGH BECAUSE OF 11 U.S.C. 362, IT IS STAYED AS TO THE
11 CORPORATION.

12 THE PERSONS WHO GAVE TESTIMONY AT THE TRIAL
13 WERE JOSEPH HARSANY, H-A-R-S-A-N-Y, AN EMPLOYEE OF PAYROLL
14 CHECK WRITING SERVICE USED BY THE DEFENDANTS; BREK OYAMA --
15 BREK IS SPELLED B-R-E-K; AND OYAMA IS O-Y-A-M-A, MR. SPIVAK'S
16 PARALEGAL; RAMIL ABALKHAD, ONE OF THE DEFENDANTS, THE
17 PRESIDENT AND CHIEF EXECUTIVE OFFICER OF DEFENDANT RJ
18 FINANCIAL AND, INDEED, THAT -- APPARENTLY THAT COMPANY'S ONLY
19 OFFICER AND ONLY DIRECTOR. THE FOURTH WITNESS WAS ALINA
20 GHRDILYAN, ONE OF THE PLAINTIFFS, AND THE FIFTH WAS EVGENIA
21 SULTANIAN, ONE OF THE PLAINTIFFS, THE OTHER PLAINTIFF.

22 I'M GOING TO REFER TO THE LABOR CODE PRIVATE
23 ATTORNEY GENERAL ACT IN THE WAY THE ATTORNEYS HAVE -- IT
24 SEEMS TO ME TO BE SERVICEABLE -- AND I'M GOING TO REFER --
25 I'M GOING TO USE THE ACRONYM PAGA, P-A-G-A.

26 PAGA ACTIONS DO NOT HAVE BEEN MAINTAINED AS
27 CLASS ACTIONS. THEY CAN BE, BUT THEY ARE NOT REQUIRED TO BE.
28 THE AUTHORITY ON THAT IS ARIAS VERSUS SUPERIOR COURT, (2009),

1 46 CALIFORNIA 4TH, 969, 981 TO 982.

2 WE WILL GO INTO RECESS NOW. COME BACK AT
3 1:30, PLEASE.

4 (AT 11:58 A.M., A LUNCH RECESS WAS TAKEN.)

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1 (THE FOLLOWING PROCEEDINGS WERE HELD AT 1:47 P.M.)
2 THE COURT: NOW, WE WILL GO BACK TO THE GHRDILYAN
3 AGAINST RJ CASE.

4 OKAY. WHEN WE LEFT, I HAD, I THINK, TALKED
5 ABOUT SOME GENERAL POINTS OF LAW HAVING TO DO WITH PAGA
6 ACTIONS, AND I WILL JUST OVERLAP SLIGHTLY.

7 I WAS SAYING THAT PAGA ACTIONS DO NOT HAVE TO
8 BE HAVE MAINTAINED AS CLASS ACTIONS. THEY CAN BE, BUT ARE
9 NOT REQUIRED TO BE. AND ONE OF AUTHORITIES ON THAT IS ARIAS,
10 A-R-I-A-S, VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH
11 969 FROM PAGES 981 TO 982. PAGA IS NOT THE EMPLOYEE'S
12 EXCLUSIVE REMEDY. THEY MAY SEPARATELY OR CONCURRENTLY SEEK
13 OTHER REMEDIES. LABOR CODE 2699(G) AND CALIBER BODY WORKS
14 VERSUS SUPERIOR COURT, (2005) 134 CALIFORNIA APPELLATE 4TH
15 365 AT 375.

16 THE KINDS OF PENALTIES THAT PAGA PLAINTIFFS
17 CAN SEEK TO RECOVER, ASSUMING THAT THE FACTS SUPPORT IT, ARE
18 THOSE FOR FAILURE TO PAY STATUTORILY PRESCRIBED WAGES --
19 THAT'S LABOR CODE 210 -- UNLAWFULLY WITHHELD WAGES -- THAT'S
20 LABOR CODE 225.5 -- OR FOR VIOLATING, FOR EXAMPLE, AN
21 INDUSTRIAL WELFARE COMMISSION ORDER -- THAT'S LABOR CODE 558.
22 AN AGGRIEVED EMPLOYEE -- THAT WOULD MEAN ANYONE EMPLOYED BY
23 THE ALLEGED VIOLATOR AND AGAINST WHOM ONE OR MORE VIOLATIONS
24 WAS COMMITTED -- AND I PICKED UP THAT DEFINITION FROM LABOR
25 CODE 2699(C) AND FROM THE COMMENTS IN AMALGAMATED TRANSIT
26 UNION VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH 993 AT
27 1004 TO 1005 -- AN AGGRIEVED EMPLOYEE CAN SUE TO RECOVER
28 CIVIL PENALTIES FOR VIOLATIONS OF THE LABOR CODE ON BEHALF OF

1 HIMSELF, OR HERSELF, AND OTHER CURRENT OR FORMER EMPLOYEES
2 AGAINST WHOM ONE OR MORE OF THE ALLEGED VIOLATIONS WAS
3 COMMITTED. THAT'S LABOR CODE 2699(G)(1).

4 THE ATTORNEYS HAVE FROM TIME TO TIME REFERRED
5 TO WHAT THEY HAVE CALLED THE BRINKER CASE.

6 NOW, WHAT THEY ARE REFERRING TO IS THE CASE
7 ENTITLED BRINKER RESTAURANT CORPORATION VERSUS SUPERIOR
8 COURT, REAL PARTY IN INTEREST, HOHNBAUM H-O-H-N-B-A-U-M. THE
9 VERSION OF THAT THAT I HAVE USED IN MY ANALYSIS AND
10 PREPARATION IS THE VERSION THAT WAS PRINTED AT 2012 DAILY
11 JOURNAL, DAILY APPELLATE REPORT, PAGE 4615, AND FOLLOWING.

12 I HAVE BEEN REQUIRED TO EVALUATE THE TESTIMONY
13 OF THE PARTY WITNESSES IN THIS CASE, THAT IS, MS. GHRDILYAN,
14 MS. SULTANIAN, AND MR. ABALKHAD WITH SOME CAUTION AND
15 RESERVATIONS. THOSE THREE PERSONS IN THEIR CAPACITIES AS
16 WITNESSES ARGUED AND WRANGLLED WITH THE QUESTIONERS DURING
17 TRIAL, AND SOME OF THAT WAS PROVOKED BY THE QUESTIONERS; SOME
18 OF IT WAS NOT. THAT BECOMES AN IMPORTANT FACTOR IN
19 EVALUATING RELATIVE CREDIBILITIES UNDER EVIDENCE CODE 780(A).
20 THOSE THREE PARTIES ALL HAVE AN INTEREST, BIAS, AND OTHER
21 MOTIVE FOR SLANTING THEIR TESTIMONY, OBVIOUSLY, AND THAT
22 BECOMES SIGNIFICANT UNDER EVIDENCE CODE 780(F) AND EVIDENCE
23 CODE 780(J).

24 MR. ABALKHAD HAS SUFFERED FELONY CONVICTIONS
25 ON HIS PLEA OF NOLO CONTENDERE AS TO PERJURY AND TAX EVASION
26 AND DID NOT OWN UP TO THAT COMPLETELY IN DISCOVERY. THAT'S
27 EVIDENCE -- THAT BECOMES PERTINENT UNDER EVIDENCE CODE 780(E)
28 AND EVIDENCE CODE 780(H), AND EVIDENCE CODE 780(I) AND IS

1 COMMENTED ON IN THE CASE OF RUSHEEN, R-U-S-H-E-E-N, VERSUS
2 DREWS, D-R-E-W-S, (2002) 99 CALIFORNIA APPELLATE 4TH 279 AT
3 PAGES 283 TO 284.

4 ASPECTS OF THE TESTIMONY OF THESE WITNESSES,
5 THESE THREE PEOPLE AS WITNESSES, WERE EXAGGERATED AND
6 OVERSTATED. THAT BECOMES PERTINENT UNDER EVIDENCE CODE
7 780(B).

8 FURTHERMORE, EVIDENCE CODE SECTION 412
9 PROVIDES THAT IF WEAKER AND LESS SATISFACTORY EVIDENCE IS
10 OFFERED WHEN IT WAS IN -- WHEN IT WAS WITHIN THE POWER OF THE
11 PARTY TO PRODUCE STRONGER AND MORE SATISFACTORY EVIDENCE, THE
12 EVIDENCE ACTUALLY OFFERED SHOULD BE VIEWED WITH DISTRUST.
13 THIS, OF COURSE, IS A PERMISSIBLE INFERENCE AND NOT A
14 MANDATORY ONE, BUT THIS COURT HAS, AS THE LAW INDICATES,
15 TAKEN THIS INTO CONSIDERATION.

16 BUT ALL THAT HAVING BEEN SAID, THE COURT DOES
17 NOT ACCEPT MR. SABZEVAR'S INVITATION TO REJECT THE ENTIRETY
18 OF THE PLAINTIFFS'S TESTIMONY. INSTEAD, THIS COURT HAS HAD
19 TO ACCEPT THE PART OF THE TESTIMONY OF THE WITNESSES WHICH
20 THIS COURT FOUND -- HAS FOUND TO BELIEVE TRUE AND -- AND WILL
21 REJECT THE REST. THIS IS PRECISELY WHAT THE COURT -- PARDON
22 ME -- IS AUTHORIZED TO DO OR ANY FINDER OF FACT WOULD BE
23 AUTHORIZED TO DO. ONE MODEL FOR THAT IS CACI INSTRUCTION
24 107, FOURTH PARAGRAPH.

25 THE DATES INVOLVED IN THIS CASE -- AND THE
26 DATES BECOME SIGNIFICANT -- ARE AS FOLLOWS. MS. SULTANIAN
27 WAS HIRED ON -- IN NOVEMBER, 2007, AND WAS FIRED ON NOVEMBER
28 19, 2009. MS. GHRDILYAN WAS HIRED IN AUGUST, 2008, AND WAS

1 FIRED ON DECEMBER 3, 2009. ONE OF THE QUESTIONS WHICH I HAVE
2 BEEN CALLED UPON TO ANSWER IS WHETHER MR. ABALKHAD AS AN
3 INDIVIDUAL WAS AN EMPLOYER OF PLAINTIFFS AND -- UNDER WAGE
4 ORDER 7. I FIND THAT HE WAS NOT. BUT I FIND THAT THE
5 THEORIES OF LIABILITY UNDER -- I SHOULD BACK OFF. BUT I FIND
6 THAT THE OTHER BASES FOR ASSERTING LIABILITY ON THE PART OF
7 MR. ABALKHAD DO HAVE MERIT, AND LIABILITY DOES ATTACH TO HIM
8 UNDER THOSE THEORIES.

9 THE THEORIES I'M REFERRING TO ARE LABOR CODE
10 558 TO WHICH LABOR CODE 510 AND 512 ARE APPENDED OR INCLUDED
11 SUBSTANTIVE PROVISIONS AND LABOR CODE 1197.1 TO WHICH THE
12 SUBSTANTIVE PROVISIONS OF LABOR CODE 1198 AND THE WAGE ORDER
13 ARE ASSOCIATED THEORIES OF LIABILITY.

14 IN OTHER WORDS, I AM FINDING THAT UNDER 558
15 LABOR CODE AND 1197.1 LABOR CODE FOR THE SUBSTANTIVE REASONS
16 REFERRED TO IN THE OTHER TWO SOURCES AS TO EACH OF THOSE
17 SECTIONS, THAT IS 510 AND 512 LABOR CODE, AND 1193 AND WAGE
18 ORDER, LIABILITY CAN ATTACH TO MR. ABALKHAD AND UNDER THE
19 CIRCUMSTANCES OF THIS CASE, WILL ATTACH.

20 I'M GOING TO MAKE A FINDING ON THAT, AS YOU
21 WILL SEE, IN FAVOR OF -- PARDON ME -- OF THE PLAINTIFFS'S
22 POSITION.

23 NOW, I SAY IN FAVOR OF THE PLAINTIFFS'S
24 POSITION BECAUSE THAT MEANS NOT JUST IN FAVOR OF THE
25 PLAINTIFFS BUT SINCE WE HAVE A PAGA ACTION, I AM REFERRING TO
26 THE PLAINTIFFS'S POSITION.

27 NOW -- PARDON ME. I WILL SAY THIS.

28 AS YOU CAN TELL, I AM AT SOME PAINS TO GO

1 THROUGH THE LEGAL REASONING AND STEPS PREPARATORY TO REACHING
2 A DECISION IN THIS CASE WITH SOME CARE BECAUSE IT MAY VERY
3 WELL BE THAT THIS CASE WILL REACH ITS WAY INTO THE APPELLATE
4 COURTS AND THAT IT IS ALSO POSSIBLE THAT THE APPELLATE COURTS
5 MAY DECIDE THIS CASE IN A PUBLISHED OPINION, AND I WILL SAY
6 THAT THE DETERMINATION I HAVE MADE ABOUT ABALKHAD AS AN
7 EMPLOYER -- I SAID THAT HE'S NOT -- OR ABALKHAD AS A
8 POTENTIALLY LIABLE PARTY UNDER LIABILITY-ENHANCING STATUTES
9 OTHER THAN LABOR CODE 558 AND LABOR CODE 1197.1, THAT IS, THE
10 ABALKHAD-FAVORING DETERMINATIONS I HAVE MADE ON THOSE POINTS,
11 ARE NOT BEYOND REASONABLE ARGUMENT.

12 MY DECISION IS, AS I HAVE EXPRESSED IT, AND I
13 BELIEVE THAT I AM CORRECT -- BUT I -- BUT I DO RECOGNIZE THAT
14 THERE ARE ARGUMENTS THAT CAN BE MADE -- AND THEY HAVE BEEN
15 MADE HERE IN THIS COURTROOM -- ON THOSE POINTS.

16 I HAVE COMPARED THE EMPLOYEE HANDBOOKS,
17 EXHIBIT 3 AND EXHIBIT D. IT APPEARS TO ME THAT EXHIBIT D
18 FROM THE EVIDENCE IN THIS CASE WAS NOT SUPPLIED BY ABALKHAD
19 DURING THE DISCOVERY PHASE OF THIS CASE. THE PARTICULAR
20 PROVISIONS THAT I AM DEALING WITH ARE THOSE HAVING TO DO WITH
21 OVERTIME AND LUNCH AND EXHIBIT 3 IS COMMENTED ON BY THE
22 PLAINTIFFS AS BEING DEFICIENT BECAUSE THEY SAY THAT A LUNCH
23 PERIOD MUST BE PROVIDED AFTER FIVE HOURS OF WORK, NOT SIX
24 HOURS OF WORK, AND THE PLAINTIFFS'S POSITION IS THAT THAT WAS
25 THE ONLY PERTINENT EMPLOYEE HANDBOOK.

26 I THINK THE PLAINTIFFS ARE RIGHT AS TO BOTH
27 THOSE CONTENTIONS. EXHIBIT 3 BEARS THE DATE OF JANUARY,
28 2003. PLAINTIFFS ADMIT THAT THIS IS THE CORRECT DATE. THAT

1 IS, IT SEEMS TO ME, THE OPERATIVE EMPLOYEE HANDBOOK. EXHIBIT
2 D WHICH HAS DIFFERENT PROVISIONS IN IT CONCERNING THE SAME
3 TOPICS WAS, IN MY VIEW, FIRST NOT PRODUCED DURING DISCOVERY;
4 SECOND, A WRITING THAT CAME INTO EXISTENCE IN AUGUST, 2010,
5 SUBSTANTIAL PERIOD OF TIME AFTER THE PLAINTIFFS HAD ALREADY
6 HAD THEIR EMPLOYMENT TERMINATED AND INDEED AUGUST, 2010, IS
7 EVEN AFTER THE PRESENT SUIT WAS FILED. THIS CAN BE SEEN FROM
8 EXHIBIT D PAGE 17, SECOND FULL PARAGRAPH.

9 AS I HAVE SAID, THIS SUIT WAS FILED ON THE
10 28TH OF JANUARY, 2010.

11 ONE OF THE COMPLICATING FACTORS IN THIS
12 CASE -- AND THE LAWYERS HAVE RECOGNIZED IT, AND IT'S OBVIOUS
13 TO ANYONE WITH ANY LEGAL EXPERIENCE -- IS THAT ALTHOUGH THE
14 LAWSUIT ORIGINALLY NAMED RJ FINANCIAL, INC., THAT DEFENDANT
15 IS A DEBTOR IN A CHAPTER 11 BANKRUPTCY. AS I HAVE SAID, THE
16 CASE IS OBVIOUSLY STAYED AS TO THAT PARTY, BUT THE PLAINTIFFS
17 HAVE HAD TO REORGANIZE THEIR CASE TO PRESS IT AGAINST
18 MR. ABALKHAD WHO IS NOT IN BANKRUPTCY AND IT SEEMS TO ME THEY
19 HAVE DONE SO SUCCESSFULLY.

20 THERE IS NO SERIOUS QUESTION BETWEEN THE SIDES
21 CONCERNING THE FOLLOWING PROPOSITIONS OF LAW. AN EMPLOYEE IS
22 ENTITLED TO OVERTIME COMPENSATION FOR WORK IN EXCESS OF EIGHT
23 HOURS IN ONE WORKDAY, FOR WORKING IN EXCESS OF 40 HOURS IN
24 ONE WORKWEEK, AND FOR WORK ON THE SEVENTH DAY IN ONE WORK
25 WEEK. THE OVERTIME COMPENSATION DIFFERS, BUT THOSE ARE
26 OVERTIME ITEMS.

27 IT IS ALSO TRUE -- BY THE WAY, THIS IS
28 PROVIDED FOR UNDER LABOR CODE 510(A). IT'S ALSO TRUE THAT

1 EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EMPLOYEES WHO ARE
2 SPECIFICALLY EXEMPTED BY THE CALIFORNIA INDUSTRIAL WELFARE
3 AND COMMISSION ARE EXEMPT FROM THE HOURS WORKED AND DAYS
4 WORKED PER WEEK LIMITATIONS AS PROVIDED FOR IN LABOR CODE 515
5 BUT -- PARDON ME -- THE PLAINTIFFS IN THIS CASE DO NOT FALL
6 INTO THAT EXEMPTED CATEGORY AND INDEED THE DEFENDANT DOES NOT
7 CLAIM THAT THEY DO.

8 FOR THE REASONS THAT I HAVE MENTIONED EARLIER
9 ABOUT THE RESERVATIONS WITH WHICH THE TESTIMONY OF THE
10 WITNESSES HAVE TO BE INTERPRETED WITH, I DO NOT ATTEMPT TO
11 SUMMARIZE ALL THE TESTIMONY OF ALL THE WITNESSES.

12 IT IS ALSO TRUE THAT SUCCESSFUL EMPLOYEE
13 PLAINTIFFS WHO ARE AWARDED UNPAID OVERTIME ARE ENTITLED TO
14 INTEREST ACCRUING FROM THE DATE ON WHICH THE RIGHT TO RECOVER
15 THEIR OVERTIME VESTS. THIS WOULD BE ON THE MODEL INDICATED
16 IN CIVIL CODE 3287(A) COMPUTED TO THE DATE OF ENTRY OF
17 JUDGMENT. THIS IS LABOR CODE 1194(A), AND IT'S ALSO
18 DISCUSSED IN ESPINOSA VERSUS CLASSIC PIZZA, WHICH IS A CASE
19 THAT APPEARS IN 114 CALIFORNIA APPELLATE 4TH. THE PARTICULAR
20 PASSAGE THAT I'M MAKING REFERENCE TO IS AT PAGE 975.

21 THE TERM "WILLFUL" UNDER THE LABOR CODE --
22 THIS APPEARS IN LABOR CODE 203 -- IT MEANS ONLY THAT AN
23 EMPLOYER INTENTIONALLY FAILED OR REFUSED TO PERFORM AN ACT
24 THAT WAS REQUIRED TO BE DONE. THAT POINT IS MADE IN BARNHILL
25 VERSUS ROBERT SAUNDERS & COMPANY, (1981) 125 CALIFORNIA
26 APPELLATE 3D 1 AT PAGES 7 AND 8.

27 OBVIOUSLY, IN THE CURRENT CASE, UNLIKE THE
28 SITUATION IN BARNHILL, THERE'S NO EVIDENCE OF OFFSET. I'M

1 CITING BARNHILL JUST FOR THE PURPOSE OF THE DEFINITION OF THE
2 WORD "WILLFUL."

3 I WILL MAKE A COUPLE OF OTHER POINTS.

4 I RECOGNIZE THE INTENSITY WITH WHICH THE
5 DEFENSE HAS MAINTAINED THAT THIS IS A CASE DRIVEN BY
6 ATTORNEYS AND ATTORNEY'S FEES ON THE PLAINTIFFS'S SIDE. FOR
7 THE REASONS THAT I HAVE MENTIONED PREVIOUSLY, THAT IS, THAT
8 ONE OF THE PURPOSES OF PAGA IS PRECISELY TO INCENTIVIZE
9 ATTORNEYS TO -- TO FILE AND TO PROSECUTE SUCH CASES -- THAT
10 ARGUMENT EXISTS AND IT DOES HAVE A CERTAIN AMOUNT OF
11 OCCURRENCE, BUT I DO NOT REGARD IT AS BEING A STRONG
12 ARGUMENT. IT IS THE PURPOSE OF THE LAW PRECISELY TO PROVIDE
13 AN INCENTIVE FOR ATTORNEYS WHO MIGHT OTHERWISE BE UNABLE TO
14 HANDLE CASES OF THIS TYPE TO BE ABLE TO HANDLE CASES OF THIS
15 TYPE.

16 I WILL SAY THAT APPLICATIONS FOR ATTORNEYS'S
17 FEES, IF ANYBODY CLAIMS ENTITLEMENT TO ANY, CAN BE MADE BY
18 POST-JUDGMENT MOTION FOR ALLOWANCE OF ATTORNEY'S FEES AS
19 PARTS OF COSTS UNDER CIVIL CODE 1717(A), IF THAT'S WHAT
20 APPLIES, OR UNDER THE CORRESPONDING STATUTE IN THE LABOR
21 CODE. AND THE METHOD OF MAKING A POST-JUDGMENT MOTION FOR
22 ALLOWANCE IS REFERRED TO IN SUCH CASES AS ALLSTATE INSURANCE
23 VERSUS LEW, (1996) 46 CALIFORNIA APPELLATE 4TH 174 -- 1794 AT
24 1797, AND BANKES VERSUS LUCAS -- BANKES IS SPELLED
25 B-A-N-K-E-S, VERSUS LUCAS -- (1992) 9 CALIFORNIA --
26 9 CALIFORNIA APPELLATE 4TH, 365 AT 370.

27 I CITE THOSE TWO CASES NOT FOR THE PROPOSITION
28 THAT THEY APPLY IN LABOR CASES OR THAT THEY ARE DISPOSITIVE

1 ON THE ISSUE OF THE AMOUNT OF LEGAL FEES BUT JUST TO SHOW
2 THAT THAT IS AN APPROPRIATE TIME TO MAKE APPLICATIONS FOR
3 FEES.

4 IN THE PREMISES OF THIS CASE, THOUGH, FOR
5 REASONS THAT I WILL EXPLAIN IN JUST A SECOND, THE APPLICATION
6 FOR ATTORNEY'S FEES, IF THERE IS GOING TO BE ONE ON THE PART
7 OF THE PLAINTIFFS'S ATTORNEY, SHOULD BE, IT SEEMS TO ME, MADE
8 AFTER DISTRIBUTION OF ALL THE FUNDS THAT WILL BE DISTRIBUTED
9 UNDER MY AWARD WHICH I'M GOING TO MAKE UNDER PAGA SO THAT WE
10 DON'T HAVE THE SITUATION WHERE THE ATTORNEY IS PAID,
11 PLAINTIFFS'S ATTORNEY IS PAID FIRST OR SEEKS PAYMENT FIRST
12 WITHOUT ALSO DOING ALL THE, IT SEEMS TO ME, RATHER LABORIOUS
13 WORK THAT'S GOING TO BE REQUIRED UNDER PAGA, AND IT'S 25
14 PERCENT, 75 PERCENT SHARING ARRANGEMENT WITH THE PLAINTIFFS
15 TO GET 25 PERCENT AND WITH THE STATE OF CALIFORNIA TO GET THE
16 75 PERCENT.

17 SO I'M GOING TO TREAT THAT ASPECT OF THIS CASE
18 AS CALLING FOR ATTORNEY FEE MOTIONS, IF ANY ARE TO BE MADE,
19 AT A TIME AFTER THAT STEP OF CONCURSUS OF CLAIMS AND
20 DISTRIBUTION OF FUNDS HAS EITHER BEEN COMPLETELY FINISHED OR
21 HAS BEEN FINISHED WITH THE EXCEPTION OF A FEW SMALL
22 MINISTERIAL ACTS.

23 PARDON ME.

24 WITH RESPECT TO THE -- TO THE REMEDIES, IT
25 SEEMS TO ME THAT THE EVIDENCE STRONGLY SUPPORTS THE
26 PLAINTIFFS'S ARGUMENTS AS TO WHAT I WILL CALL THE 558-510-512
27 THEORY AND THE 1197.1-1198-WORK ORDER THEORY.

28 I THINK THAT THE EVIDENCE ESTABLISHES

1 VIOLATIONS OF THOSE SUBSTANTIVE PROVISIONS AND THAT THE
2 EVIDENCE ESTABLISHES A RIGHT TO RECOVER ON BEHALF OF THE
3 PAGA-AGGRIEVED EMPLOYEES AND ON BEHALF OF THE PLAINTIFFS BUT
4 IN AMOUNTS THAT ARE DIFFERENT FROM THOSE -- THE THEORIES ARE
5 THOSE ADVOCATED BY MR. SPIVAK AND HIS CLIENTS. THE AMOUNTS
6 ARE AMOUNTS THAT I AM GOING TO ALTER, THOUGH, AS WILL BE
7 CLEAR.

8 WITH RESPECT TO THE GHRDILYAN 558-510-512
9 LABOR CODE RECOVERY, I AM GOING TO AWARD \$7,654.60 -- THAT'S
10 EXACTLY AS CALCULATED BY MR. SPIVAK AND THOSE ARE -- THAT'S
11 IN FAVOR OF MS. GHRDILYAN AND AGAINST MR. ABALKHAD.

12 WITH RESPECT TO THE 1197.1 THEORY, WITH 1198
13 AND WORK ORDER BEING THE SUBSTANTIVE BASES, I AGREE WITH
14 MR. SPIVAK THAT MS. GHRDILYAN'S RECOVERY SHOULD BE \$14,218
15 AND THAT COMES OUT TO A TOTAL OF 21,872.60 FOR GHRDILYAN.

16 WITH RESPECT TO SULTANIAN, MY DETERMINATION IS
17 THAT REGARDING THE LABOR CODE 558-510-512 THEORY,
18 MS. SULTANIAN IS ENTITLED TO RECOVERY AGAINST MR. ABALKHAD OF
19 \$5,264.19, AND WITH RESPECT TO HER THEORY UNDER 1197.1 LABOR
20 CODE, MS. SULTANIAN IS ENTITLED TO RECOVER AGAINST
21 MR. ABALKHAD \$13,936.50. TOTAL IS \$19,200.69, AND THAT'S THE
22 AMOUNT THAT SULTANIAN IS ENTITLED TO RECOVER ON HER ACCOUNT
23 AGAINST MR. ABALKHAD.

24 THIS NOW BRINGS US TO THE AWARD IN FAVOR OF
25 THE SO-CALLED AGGRIEVED EMPLOYEES.

26 MY DETERMINATION IS THAT THE AGGRIEVED
27 EMPLOYEES'S CLAIMS ARE VALID AND MERITORIOUS CLAIMS; THAT
28 THEY CAN BE AND HAVE BEEN VALIDLY ASSERTED BY, PROSECUTED BY

1 THE TWO PLAINTIFFS IN OUR CASE.

2 I AM GOING, HOWEVER, NOT TO ACCEPT THE DOLLAR
3 FIGURES IN THE ULTIMATE SENSE THAT MR. SPIVAK AND HIS CLIENTS
4 HAVE ADVOCATED. IN DOING THIS, I AM GOING TO SPECIFICALLY
5 EXERCISE MY POWERS, WHICH IT SEEMS TO ME ARE IN THE NATURE OF
6 JUDICIAL DISCRETION, TO REDUCE THE AMOUNT OF RECOVERY FROM
7 THE AMOUNTS ADVOCATED BY MR. SPIVAK AND HIS CLIENTS.

8 WITH RESPECT TO THE LABOR CODE 558, 510, AND
9 512 THEORIES, AS TO THE AGGRIEVED EMPLOYEES, MY DETERMINATION
10 IS THAT THE AMOUNT WHICH MR. ABALKHAD MUST PAY IS NOT THE
11 \$2,164,278 AMOUNT THAT MR. SPIVAK ARGUED FOR BUT RATHER
12 \$125,000.

13 WITH RESPECT TO THE 1197.1-1198-WAGE-ORDER
14 CLAIM, MY DETERMINATION IS THAT THE AMOUNT THAT MR. ABALKHAD
15 WILL BE REQUIRED TO PAY IS NOT \$3,269,490, WHICH WAS THE
16 AMOUNT ADVOCATED BY MR. SPIVAK ON BEHALF OF HIS CLIENTS BUT
17 RATHER \$200,000.

18 NOW, THAT COMES OUT TO A TOTAL THEN OF
19 \$325,000.

20 NOW, IN DOING THIS, I HAVE EXERCISED MY
21 DISCRETION TAKING INTO CONSIDERATION THE FOLLOWING POINTS. I
22 AGREE WITH MR. SPIVAK'S CHARACTERIZATION OF MR. ABALKHAD AS A
23 PERSON WHO WAS INADEQUATELY OBSERVANT OF CALIFORNIA LAW.
24 MR. SPIVAK REFERS TO HIM AS A "SCOFFLAW." THAT'S A
25 JOURNALISTIC RATHER THAN A -- A LEGAL TERM. BUT I THINK HE
26 DID HAVE THE INTENTION SIMPLY OF TRYING TO RUN THINGS THROUGH
27 AND GET OFF AS CHEAPLY AS HE COULD WHILE HE WAS RUNNING HIS
28 BUSINESSES.

1 BUT I ALSO FIND THAT ONE OF THE PROBLEMS IN
2 THE OPERATION OF HIS BUSINESS WAS THAT HE GOT IN WAY OVER HIS
3 HEAD. HE SIMPLY EXPANDED BEYOND HIS OR HIS CORPORATION'S
4 CAPACITY PROPERLY TO RUN THESE BUSINESSES. HE RAN THEM AS
5 THOUGH HE WERE RUNNING A KIND OF SMALL OPERATIONS OUT OF HIS
6 HIP POCKET, AND I RECOGNIZE THAT THAT IS NOT A PRAISEWORTHY
7 BEHAVIOR, BUT IT SEEMS TO ME THAT IT IS NOT BEHAVIOR OF A
8 HIGHLY BLAMEWORTHY SENSE AND THAT IT IS BEHAVIOR WHICH MERITS
9 A REDUCTION OR SOFTENING OF THE PENALTIES.

10 NOW, I WILL ALSO SAY THE FOLLOWING. IF ON
11 APPEAL, THE APPELLATE COURT DETERMINES THAT I AM MISTAKEN
12 CONCERNING THE POTENTIAL OTHER THEORIES OF LIABILITY ASSERTED
13 BY MR. SPIVAK AND HIS CLIENTS AGAINST MR. ABALKHAD, I WILL
14 TELL YOU WHAT I WOULD HAVE AWARDED ON THOSE THEORIES SO THAT
15 IT MAY BE THAT THE APPELLATE COURT CAN SIMPLY TAKE WHAT I
16 HAVE SAID HERE AND RATHER THAN MAKING A DISPOSITION WHICH
17 REMANDS THE CASE FOR FURTHER CALCULATION OF DAMAGES, THE
18 APPELLATE COURT CAN SIMPLY INSERT THE MONETARY REMEDY THAT I
19 WOULD HAVE INSERTED MYSELF HAD I NOT BEEN PERSUADED THAT
20 MR. ABALKHAD WAS NOT LIABLE EXCEPT UNDER THE THEORIES THAT I
21 HAVE MADE REFERENCE TO.

22 HAD THAT BEEN DONE, I WOULD HAVE AWARDED AN
23 ADDITIONAL \$200,000 AS TO THE AGGRIEVED EMPLOYEES.

24 NOW, I WILL SAY THAT THESE AMOUNTS ARE, I
25 RECOGNIZE, EXTREMELY LENIENT AND PERMISSIVE TO MR. ABALKHAD.
26 IN OTHER WORDS, THIS IS NOT A CASE WHERE THE COURT HAS TRIED
27 TO SOCK IT TO HIM. IT IS, RATHER, A CASE IN WHICH I HAVE
28 TREATED IT AS A SERIES OF OFFENSES BUT ONE AS TO WHICH

1 MR. ABALKHAD SHOULD BE GIVEN AT LEAST SOME LENIENCY IN THE
2 FASHIONING OF A REMEDY. I THINK THAT'S IT. LET ME ASK THE
3 LAWYERS.

4 FIRST OF ALL, PLAINTIFFS'S LAWYER. ARE THERE
5 OTHER MATTERS AS TO WHICH YOUR CLIENTS CONTEND I SHOULD MAKE
6 A STATEMENT OF SOME KIND OR A FINDING OF SOME KIND?

7 MR. SPIVAK: WAS THERE SOME FINDING AS TO THE
8 ADDITIONAL \$200,000 WITH RESPECT TO THE INDIVIDUAL
9 PLAINTIFFS, YOUR HONOR?

10 YOU SPOKE TO THE OTHER CLAIMS WHICH PERHAPS
11 WOULD AFFECT THE APPELLATE COURT SHOULD IT SEND BACK FOR
12 CALCULATION.

13 THE COURT: YEAH.

14 MR. SPIVAK: I KNOW YOU GAVE AN AGGRIEVED EMPLOYEE
15 NUMBER BUT NOT FOR THE TWO PLAINTIFFS.

16 THE COURT: SHOW ME -- JUST A SECOND. COULD YOU,
17 PLEASE, TURN BACK TO -- OH, I GUESS I OUGHT TO SAY THAT. LET
18 ME DO THAT NOW.

19 THE PLAINTIFFS CONTEND THAT THERE WERE THESE
20 WRONGS AS TO BOTH THEMSELVES AND AS TO THE AGGRIEVED
21 EMPLOYEES, AND I WILL JUST REFER TO THEM IN SHORT, COMPRESSED
22 TERMS. AND ESSENTIALLY IT BOILS DOWN TO I THINK NINE
23 THEORIES AND I WILL ENUMERATE THEM NOW: OVERTIME, REST AND
24 MEAL PERIODS, WAGE STATEMENT, IN OTHER WORDS, LABOR CODE 226,
25 UNPAID TRAVEL EXPENSES AND MILEAGE -- THAT'S FOUR --
26 OFF-THE-CLOCK WORK, UNTIMELY PAYMENT OF WAGES, VACATION PAY
27 AT TERMINATION, AND FAILURE FAIRLY TO ADVISE THE EMPLOYEES OF
28 CHANGE IN THE COMMISSION STRUCTURE SO THAT WHAT HAPPENED WAS

1 THAT THEY WERE MADE TO DO WORK WITHOUT KNOWING -- WITHOUT, AS
2 IT TURNED OUT, WHAT THE ULTIMATE PAYMENT FOR IT WAS GOING TO
3 BE.

4 EACH OF THOSE CONTENTIONS -- EACH OF THOSE
5 THEORIES IS A THEORY THAT WOULD BE DECIDED IN FAVOR OF THE
6 PLAINTIFFS AND AGAINST THE -- AND AGAINST THE DEFENDANT
7 ABALKHAD EXCEPT FOR MY DETERMINATION THAT HE INDIVIDUALLY IS
8 NOT LIABLE. BUT IF HE IS LIABLE, THAT IS, IF THE APPELLATE
9 COURT DECIDES THAT I HAVE MADE AN ERROR REGARDING EXCESSIVELY
10 NARROW INTERPRETATION OF THE LABOR CODE PROVISIONS, I WOULD
11 AWARD EACH OF THE PLAINTIFFS AS PENALTIES \$60,000 EACH; 60
12 PLUS 60 IS 120.

13 NOW, I WILL SAY, AGAIN, I RECOGNIZE THAT THIS
14 IS WAY BELOW THE PLAINTIFFS'S TARGET NUMBER, BUT IT IS A
15 NUMBER THAT I THINK IS APPROPRIATE.

16 NOW, I WANT TO SAY SOMETHING ELSE ABOUT THIS,
17 AND THIS IS A COMPLICATION CREATED BY FACTORS THAT I HAD
18 REFERRED TO PREVIOUSLY. THIS IS THE BANKRUPTCY OF THE
19 CORPORATION.

20 WHAT I AM SAYING CONCERNING THESE OTHER
21 PENALTIES AND OTHER AMOUNTS, THAT IS, AMOUNTS I AM NOT
22 ACTUALLY AWARDING ARE FOR THE BENEFIT OF THE APPELLATE COURT
23 IN ASSISTING IT TO FRAME A DISPOSITIONAL ORDER IF THE CASE IS
24 SENT BACK TO THE SUPERIOR COURT UPON A REVERSAL IN PART OR IN
25 WHOLE.

26 I WANT TO PUT THESE PEOPLE IN A POSITION SO
27 THEY WILL HAVE A REMEDY ON BOTH SIDES WITHOUT THE NECESSITY
28 OF THE SUPERIOR COURT HAVING TO REVISIT THIS AND BY THE

1 SUPERIOR COURT TELLING THE APPELLATE COURT WHAT THE SUPERIOR
2 COURT WOULD HAVE DONE HAD THE SUPERIOR COURT'S REASONING NOT
3 FORECLOSED IT.

4 I AM EXTREMELY CONCERNED TO STATE THIS IN THAT
5 WAY SO THAT THE BANKRUPTCY PROCEEDINGS ARE NOT IN SOME WAY
6 SPOILED OR IMPROPERLY AFFECTED BY THE WORK DONE HERE IN THE
7 -- IN THE TRIAL COURT. AND I AM TRYING TO SUPPLY ALL OF THE
8 INFORMATION THAT I CAN WHILE STILL BEING TRUE TO AND
9 OBSERVANT OF THE NECESSITY FOR TRYING TO ACHIEVE AS MUCH
10 FINALITY AS I CAN WHILE STILL ASSISTING IN THE LITIGATION
11 PROCESS AS MUCH AS THIS COURT CAN.

12 NOW, I HAVE PREVIOUSLY DISCUSSED AND I WILL
13 MAKE A PART OF MY STATEMENT OF DECISION HERE THE SET OF DATES
14 THAT PIVOT AROUND THE APPEAL. AS I HAVE SAID PREVIOUSLY, THE
15 CASE THAT I HAVE BEEN TRYING, THIS CASE, WAS FILED ON THE
16 26TH OF JANUARY, 2010. THE DEFENDANT WAS AT THAT TIME ONLY
17 RJ FINANCIAL, AND THE CASE WAS DENOMINATED A CLASS ACTION. A
18 LITTLE LESS THAN MONTH AFTER THAT, ON THE 24TH OF FEBRUARY,
19 2010, THE PLAINTIFFS FILED A FIRST AMENDED COMPLAINT. THEY
20 ADDED MR. ABALKHAD AS A NAMED DEFENDANT. THEY CONTINUED WITH
21 THE DESIGNATION OF THIS CASE AS A CLASS ACTION.

22 ON THE 8TH OF MARCH, 2010, THE PLAINTIFFS
23 FILED A 170.6 AS TO JUDGE WILLIAM FAHEY OF THIS COURT.

24 ON THE 22ND OF MARCH, 2010, THE LAWYER WHO THE
25 TESTIMONY HAS IDENTIFIED AS MR. SANFORD FREY, F-R-E-Y -- THAT
26 NAME ALSO APPEARS ON THE DOCUMENT I'M GOING TO DESCRIBE --
27 FILED A NOTICE OF STAY AS TO THE CORPORATE DEFENDANT,
28 REFERRING TO THE CHAPTER 11 BANKRUPTCY. THAT BANKRUPTCY

1 PETITION APPEARS TO HAVE BEEN FILED ON THE 7TH OF JANUARY,
2 2010, THAT IS, BEFORE THE CASE WAS EVER FILED.

3 THAT ACCOUNTS FOR THE MODIFICATION OF THE NAME
4 OF THE PARTIES TO INCLUDE ABALKHAD AS AN INDIVIDUAL. I THINK
5 IT IS THAT OBVIOUS THAT -- BUT I WANT TO MAKE IT VERY, VERY
6 CLEAR THAT THIS IS NOT ONLY OBVIOUS, BUT IT IS A FACT THAT --
7 THIS CASE IS STAYED AS TO THE RJ FINANCIAL CORPORATION UNDER
8 THE STATUTORY CITATION I HAVE GIVEN, 11 U.S.C. 362.

9 MR. ABALKHAD'S DEFAULT WAS TAKEN IN THIS CASE
10 AND IN AUGUST OF 2010, HE MOVED TO SET ASIDE THE DEFAULT. IN
11 THAT SET OF PAPERS, THERE WAS THE CLAIM MADE THAT PLAINTIFFS
12 ADDED ABALKHAD ON THE 26TH OF MARCH, 2010. AS I HAVE
13 INDICATED, THAT WAS NOT TRUE. IT WAS ON THE 26TH -- 24TH OF
14 FEBRUARY, 2010, BUT THAT WAS NOT A SIGNIFICANT INACCURACY
15 BECAUSE IN THE COURT'S VIEW, ABALKHAD WAS ENTITLED TO HAVE
16 THE DEFAULT SET ASIDE.

17 NOW IS THERE ANYTHING THAT I AM SUPPOSED TO
18 SAY?

19 MR. SPIVAK: I DON'T THINK SO, YOUR HONOR.

20 THE COURT: OKAY. HOW ABOUT YOU, MR. SABZEVAR?

21 MR. SABZEVAR: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT. HERE'S WHAT I'M GOING TO DO
23 THEN.

24 I'M GOING TO SET A HEARING OUT IN THE FUTURE.
25 FIRST OF ALL, THE STATEMENT OF DECISION IS SUFFICIENT IF IT
26 STATES ALL THE FACTS. IT NEED NOT STATE EVIDENTIARY FACTS.
27 I THINK THE STATEMENT OF DECISION I HAVE MADE DOES THAT.

28 SECONDLY, I'M GOING TO ORDER THE PLAINTIFFS

1 THROUGH COUNSEL TO PREPARE, SERVE, OBTAIN APPROVAL AS TO FORM
2 FROM DEFENDANT ABALKHAD. THIS MAY REQUIRE A MEET AND CONFER
3 AND COURT EXPECTS COUNSEL TO BE ATTENTIVE AND COOPERATIVE IN
4 THIS REGARD. SO SUBMIT THAT TO DEFENSE COUNSEL AND LODGE
5 WITH THE COURT A JUDGMENT SUITABLE FOR COURT'S SIGNATURE IN
6 CONFORMITY WITH THE FOREGOING.

7 I AM GOING TO ORDER ALSO THAT THE PARTIES
8 AND/OR COUNSEL PICK UP ALL EXHIBITS LODGED WITH THE CLERK AND
9 ALL EXHIBITS MARKED AND/OR RECEIVED IN EVIDENCE, EACH SIDE TO
10 PICK UP THE ITEM PROFFERED BY THAT SIDE FOR RECEIPT INTO
11 EVIDENCE WITHIN FIVE DAYS FROM THE COURT'S SIGNING OF THE
12 JUDGMENT.

13 NOW, TODAY IS THE 23RD OF APRIL, 2010 -- 2012,
14 I SHOULD SAY. I WANT TO HAVE A HEARING AT WHICH THE JUDGMENT
15 IS PRESENTED TO ME FOR SIGNATURE AND I WANT TO DO THESE
16 THINGS AT THAT HEARING. I WANT TO SETTLE THE FORM AND
17 SUBSTANCE OF THE DECISION -- OF THE JUDGMENT. IF THERE'S ANY
18 OTHER WORK THAT NEEDS TO BE DONE, I WANT TO DO THAT AT THIS
19 HEARING. I WANT TO DETERMINE WHAT, IF ANYTHING, REMAINS TO
20 BE DONE REGARDING FUTURE PROCEEDINGS IN THIS CASE, AND I WANT
21 TO DETERMINE WHAT THE STATUS OF THIS CASE IS AND I WANT TO
22 HAVE THE LAWYERS FOR THE PARTIES PERSONALLY PRESENT.

23 MY IDEA WOULD BE THE JUDGMENT SHOULD BE
24 SUBMITTED BEFORE THE HEARING BUT THAT PLAINTIFFS'S COUNSEL
25 SHOULD BRING WITH HIM A DUPLICATE ORIGINAL OF THE JUDGMENT IN
26 CASE THE PAPERWORK HANDLING PRODUCES A SITUATION WHERE I
27 CAN'T LAY MY HANDS ON THE JUDGMENT THAT I AM SUPPOSED TO SIGN
28 IMMEDIATELY. I LOOK TO THE ATTORNEYS NOW FOR SOME

1 SUGGESTIONS AS TO THE DATE WHEN THAT HEARING SHOULD BE
2 SCHEDULED.

3 MR. SABZEVAR, DO YOU HAVE ANY IDEAS ABOUT WHEN
4 I SHOULD SCHEDULE IT?

5 MR. SABZEVAR: FORTY-FIVE DAYS, YOUR HONOR?

6 THE COURT: FORTY-FIVE DAYS.

7 MR. SPIVAK: THAT'S FINE FOR PLAINTIFFS.

8 THE COURT: SO TODAY IS THE 23RD. LET'S SET IT FOR
9 HEARING ON THE -- LET'S GO OUT MORE THAN 45 DAYS.

10 AS YOU CAN SEE, FROM THE 4TH TO THE 8TH, I
11 WON'T BE ABLE TO WORK WITH YOU -- OF JUNE. I WON'T BE ABLE
12 TO WORK WITH YOU. SO WOULD IT ALL RIGHT WITH YOU LAWYERS IF
13 I PICK THE 21ST OF JUNE, 2012, 8:30, THIS DEPARTMENT?

14 MR. SABZEVAR: THAT'S FINE, YOUR HONOR.

15 THE COURT: ARE YOU GOING TO BE AVAILABLE ON THOSE
16 DATES?

17 MR. SPIVAK: YES, YOUR HONOR.

18 THE COURT: ARE YOU GOING TO BE ABLE TO DO THE
19 THINGS I TALKED ABOUT, SETTLING THE FORM AND SUBSTANCE OF THE
20 JUDGMENT?

21 MR. SPIVAK: YES, YOUR HONOR.

22 MR. SABZEVAR: THAT'S FINE.

23 THE COURT: THANK YOU VERY MUCH. I APPRECIATE YOUR
24 PARTICIPATION AND -- AND YOUR ADVOCACY, AND I WILL SEE YOU
25 WHEN WE NEXT HAVE TO WORK ON THE CASE.

26 NOW, I WILL TELL YOU SOMETHING ELSE. PLEASE
27 STAY ALERT AND PLEASE LOOK IN ADVISES TO ATTORNEYS, OR
28 NOTICES, OR WHATEVER WE ARE GOING TO DO IN THE NEXT THREE OR

1 FOUR WEEKS. HERE'S OUR SITUATION.

2 AS OF 15TH OF MAY, WE WON'T HAVE REPORTERS IN
3 THESE DEPARTMENTS ANYMORE FOR TRIAL MATTERS -- THEY WILL HAVE
4 TO BE SUPPLIED BY THE PARTIES -- AND WE WON'T HAVE THE
5 REPORTERS EXCEPT TWO LAW AND MOTION SESSIONS A WEEK. THE
6 IDEA IS IT WILL BE ONE MORNING AND ONE AFTERNOON. THAT WILL
7 BE ALL THE REPORTERS WE ARE GOING TO HAVE SUPPLIED BY THE
8 COURT.

9 MOREOVER, THEY ARE GOING TO, AS I MENTIONED TO
10 YOU PREVIOUSLY, THEY ARE GOING TO REDUCE THE STAFF.

11 SO I HAD GIVEN YOU DATE, BUT I AM NOT ONE
12 HUNDRED PERCENT CERTAIN ABOUT HOW THAT DATE IS GOING TO WORK.
13 PLEASE KEEP YOUR EYES AND EARS OPEN. IF THERE'S SOME FOUL UP
14 OR SOMETHING, DO WHATEVER YOU NEED TO DO TO MAKE IT RIGHT. I
15 MEAN, WE ARE -- I WISH I COULD SAY SOMETHING THAT SOUNDED
16 MORE EMPHATIC AND MORE DEFINITIVE, BUT I CAN'T. I JUST DON'T
17 KNOW WHAT'S GOING TO HAPPEN.

18 WHAT I WANT TO DO IS TO FINISH UP YOUR CASE
19 AND GET YOU ALONG FOR THE NEXT STEP FOR OBVIOUS REASONS. AND
20 I DON'T WANT THE COLLAPSE OF THE SYSTEM'S ABILITY TO HANDLE
21 MATTERS TIMELY TO REDOUND TO YOUR DISADVANTAGE OR TO
22 ADDITIONAL EXPENSE ON THE PART OF EITHER SIDE THAT MIGHT
23 OTHERWISE BE AVOIDED IF YOU LAWYERS KEPT YOUR EYES PEELED FOR
24 WHAT'S HAPPENING IN THE COURTS AND IF I WERE ABLE TO PREDICT
25 A LITTLE BIT, I JUST CAN'T PREDICT THAT. I DON'T EVEN KNOW.
26 BUT KEEP YOUR EYES OPEN. TRY TO DO WHAT'S RIGHT, AND I WILL
27 TRY TO DO WHAT'S RIGHT. IT'S ABOUT THE BEST I CAN DO FOR
28 YOU.

1 ALL RIGHT. THANK YOU ALL VERY MUCH.

2 MR. SPIVAK: THANK YOU, YOUR HONOR.

3 MR. SABZEVAR: THANK YOU, YOUR HONOR.

4 THE COURT: SEE YOU WHEN WE NEXT HAVE TO WORK ON

5 THE CASE.

6 (PROCEEDINGS CONCLUDED.)

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DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE

CERTIFIED COPY

MONDAY, APRIL 23, 2012

REPORTED BY:
ANGELA ZARATAN PARADELA
OFFICIAL COURT REPORTER
CSR NO. 9659

EXHIBIT 10

2013 WL 766535
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.
Court of Appeal,
Second District, Division 2, California.

Pearline ZALEWA et al., Plaintiffs and Respondents,
v.
TEMPO RESEARCH CORPORATION et al., Defendants and Appellants.

B238142 | Filed March 1, 2013

APPEAL from a judgment of the Superior Court of Los Angeles County. [Charles F. Palmer](#), Judge. Reversed and remanded. (Los Angeles County Super. Ct. No. BC319156)

Attorneys and Law Firms

Dickstein Shapiro, [Arthur Silbergeld](#), [Christine de Bretteville](#) for Defendants and Appellants.

Altshuler Berzon, [Michael Rubin](#), [Eileen B. Goldsmith](#); Law Offices of Joseph D. Tuchmayer, [Joseph D. Tuchmayer](#); Law Offices of Todd Arron, [Todd S. Arron](#) for Plaintiffs and Respondents.

Opinion

[BOREN](#), P.J.

***1** We remanded this employment case to the trial court to determine (1) if attorney fees are authorized by statute following our reversal of the judgment in favor of plaintiffs, and (2) if fees are authorized, are they warranted by the facts of the case. On remand, both sides submitted demands for attorney fees to the trial court. The court awarded fees to plaintiff former employees as the “**prevailing** party” under [Labor Code section 218.5](#).¹

We reverse. Plaintiffs were not the **prevailing** party: they lost the case because their demands for bonuses were unfounded. Given that plaintiffs had no right to bonuses after they were laid off, defendants’ payment of money to some former employees during the litigation was a gift that cannot be viewed—as a matter of law—as a “catalyst” warranting an award of attorney fees to plaintiffs.

FACTS²

Plaintiffs are former employees of defendant Rifocs, a fiber optics company. In 1999, Rifocs merged with codefendant Textron. The merged entity was subsequently acquired by codefendant Tempo Research Corporation. The 1999 merger agreement contained a bonus clause. The bonus was intended to reward key employees for past performance and give them an incentive to remain with the company after the merger. Plaintiff employees were not third party beneficiaries of the merger agreement, which expressly forbids them from suing to enforce its terms.

To qualify for a bonus, plaintiffs had to be employed by the corporation at the end of the calendar year from 2000 through 2003. Plaintiffs received bonuses pursuant to the merger agreement beginning in December 2000. Plaintiff Laws received a bonus of \$10,000 for 2000–2001 and Zalewa received a bonus of \$75,000 for 2000–2002.

In 2001, defendants began employee layoffs because the market for fiber optics cooled. Defendants’ employment roster declined from 125 employees in April 2001 to seven employees in 2003. After being laid off, plaintiffs received no further

bonuses; however, they were entitled to—and received—severance pay. They signed releases agreeing not to sue on any claim arising from their employment with defendants.

In 2004, plaintiffs filed suit alleging Labor Code violations, unfair business practices, breach of contract, conversion, promissory estoppel, bad faith, and private attorney general (PAGA) penalties. In July 2005, defendants offered payments to laid-off employees, though not to the plaintiffs. After defendants made the payments, plaintiffs amended their complaint to allege a class action and assert a new claim for a “residual bonus.” A class was certified in 2007.

A bench trial was conducted in 2008. The court found that plaintiffs are entitled to recover a direct bonus, but no residual bonus. Because the bonus was unpaid wages, plaintiffs were awarded prejudgment interest and attorney fees under § 218.5. The court denied penalties to plaintiffs, finding that it would be unjust because defendants voluntarily tendered almost all of the outstanding direct bonus amounts to class members. The court awarded 11 employees \$0 because they were paid *more* money by defendants than they were owed. The remaining eight former employees were awarded sums ranging from \$455 to \$35,719. The court awarded plaintiffs’ counsel attorney fees of \$881,715. The court rejected plaintiffs’ claim under PAGA for lack of standing, because plaintiffs left defendants’ employ before PAGA took effect in 2004.

*2 Plaintiffs appealed the judgment because they felt entitled to residual bonuses and waiting time penalties, among other things. Defendants cross-appealed, challenging the trial court’s award of a direct bonus, its invalidation of the releases signed by plaintiffs, and the court’s award of attorney fees.

This Court reversed the judgment in favor of plaintiffs.

First, the trial court improperly invalidated the releases signed by plaintiffs after finding that defendants reasonably and in good faith believed that they did not owe plaintiffs a bonus. In a bona fide dispute over wages, defendants can legitimately offer plaintiffs money in return for their release of all claims. There was no evidence that the releases were coerced or improperly obtained. We wrote that plaintiffs “could, and did, accept payments that exceeded their earned severance, in return for releasing all claims, when there was a bona fide dispute over the wages owing. This is proper, even if the payment made by defendants was less than the bonus amounts claimed by the employees.”

Second, the trial court erred by finding that plaintiffs are entitled to a direct bonus. Although plaintiffs benefit from the bonus clause, the merger agreement prohibits them from suing to enforce its terms. Further, plaintiffs did not rely on any written or oral promises from defendants that they would receive a bonus even if they were laid off from their jobs due to depressed economic conditions. Because plaintiffs are not entitled to a bonus after they were laid off, they are not entitled to waiting time penalties, other Labor Code penalties, or prejudgment interest.

Finally, we reversed the trial court’s award of \$881,715 in attorney fees. We remanded the case to the trial court to determine whether an award of attorney fees is authorized by statute and warranted by the facts. Notably, we did *not* specify that either plaintiffs or defendants might be entitled to fees.³

On remand, the parties filed cross-motions for attorney fees. Plaintiffs requested an award of \$307,146 as the **prevailing** party pursuant to § 218.5, reasoning that this litigation was the catalyst for defendants’ July 2005 payments. Plaintiffs did not request attorney fees for litigation occurring after the 2005 payments, because the claims that went to trial were found by this Court to lack merit.

Defendants countered with a request for \$2,210,360 in costs and attorney fees incurred at trial and on appeal. Defendants argued that they are the **prevailing** parties: the appeal showed that they had no obligation to pay anything to plaintiffs. Like plaintiffs, defendants relied upon § 218.5 as authority for their right to recover attorney fees. In opposition to plaintiffs’ request for fees, defendants observed that their 2005 payments were made to nonparties, not to plaintiffs, and plaintiffs are not the **prevailing** parties because they did not recover any relief against defendants at trial. In defendants’ view, the “catalyst” theory is inapposite because no public interest was vindicated by plaintiffs’ lawsuit.

THE TRIAL COURT’S RULING

*3 The trial court denied defendants' motion for attorney fees. Citing § 218.5, the court granted plaintiffs' motion for fees, finding that plaintiffs are the prevailing parties, even if they did not obtain a favorable judgment in the litigation. The court reasoned that plaintiffs' lawsuit was a catalyst, provoking defendants to make the 2005 payments to some former employees. Plaintiffs initially won their lawsuit in the trial court and other employees recovered their bonuses from defendants in administrative proceedings; these factors demonstrated that the lawsuit was not frivolous, groundless or unreasonable. Finally, plaintiffs made demands for their bonus before the action was filed but were rebuffed, demonstrating that the litigation was necessary. Plaintiffs' attorneys were awarded a total of \$346,947.

DISCUSSION

1. Appeal and Review

The appeal arises from a postjudgment order awarding attorney fees and costs. (Code Civ. Proc., § 904.1, subd. (a)(2); *Raff v. Raff* (1964) 61 Cal.2d 514, 519; *Breckler v. Thaler* (1978) 87 Cal.App.3d 189, 193.) An attorney fee award generally is reviewed for an abuse of discretion; however, when the parties dispute whether the trial court was legally authorized to make an award because "the criteria for making an award" were unmet, this calls for statutory construction and presents a question of law. (*Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1213–1214; *Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169, 1175.) Specifically, we are asked whether § 218.5 permits, under a catalyst theory, an award of attorney fees to plaintiffs who did not prevail on any of the claims made in their lawsuit. Review is de novo, because the issue is whether there is a legal basis for awarding attorney fees. (*Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 1426; *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 149.)

2. Overview of § 218.5

Section 218.5 reads, in relevant part, "In any action brought for the nonpayment of wages ... the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action." The statute is a reciprocal fee recovery provision that works in favor of either employees or employers, whichever is the prevailing party in a lawsuit claiming unpaid wages. (*Earley v. Superior Court, supra*, 79 Cal.App.4th at p. 1427.) In employee class action suits, class representatives assume a fiduciary responsibility on behalf of absent parties and are potentially responsible for defense fees if their case fails. (*Id.* at pp. 1434–1436.) An unpaid bonus is treated as a claim for unpaid wages. (*Hunter v. Ryan* (1930) 109 Cal.App. 736, 738.)

3. The Catalyst Theory

The catalyst theory arises from the private attorney general doctrine codified in Code of Civil Procedure section 1021.5.⁴ It allows courts to award attorney fees to a "successful party" in an action that results in "the enforcement of an important right affecting the public interest" if there is (a) a significant benefit conferred on the general public or a large class of persons, (b) the financial burden of private enforcement makes the award appropriate, and (c) the fees should not be paid out of any recovery. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565 (*Graham*).)

*4 The doctrine " " "rests upon the recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible." " " (*Graham, supra*, 34 Cal.4th at p. 565.) It does not apply when a lawsuit's "primary effect was the vindication of [plaintiff's] personal right and economic interest." (*Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 637.)

"Under the catalyst theory, attorney fees may be awarded even when litigation does not result in a judicial resolution if the defendant changes its behavior substantially because of, and in the manner sought by, the litigation.... In order to be eligible for attorney fees[,] a plaintiff must not only be a catalyst to defendant's changed behavior, but the lawsuit must have some merit [] and the plaintiff must have engaged in a reasonable attempt to settle its dispute with the defendant prior to

litigation.” (*Graham, supra*, 34 Cal.4th at pp. 560–561.)

“ ‘A plaintiff will be considered a “successful party” where an important right is vindicated “by activating defendants to modify their behavior.” ’ ” (*Graham, supra*, 34 Cal.4th at p. 567.) Plaintiff need not secure a favorable final judgment to succeed: the case may be won on a preliminary issue; or by convincing a public agency to implement state law; or by reaching a settlement with a corporation in a shareholder derivative suit. (*Id.* at pp. 565–567, citing cases.) In *Graham*, the plaintiffs sued Chrysler for making false statements about the towing capacity of its trucks, inspiring the company to offer to repurchase or replace the trucks. The lawsuit caused Chrysler to change its behavior, “implicated an issue of public safety, and [] benefited thousands of consumers and potentially thousands more by acting as a deterrent to discourage lax responses to known safety hazards.” (*Id.* at pp. 577–578.)

4. Plaintiffs’ Right to Recover Attorney Fees

Plaintiffs originally brought suit in 2004 “on behalf of themselves and the general public.” They requested attorney fees pursuant to § 218.5. While the case was pending, but before plaintiffs amended their complaint to include class allegations, defendants paid money to some of the laid-off employees, but not to plaintiffs. Plaintiffs proceeded to trial, where they won their unpaid bonus money. The victory was short-lived, as defendants had a successful appeal.

To determine the prevailing party under § 218.5, we import the definition used in the Code of Civil Procedure (*On-Line Power, Inc. v. Mazur* (2007) 149 Cal.App.4th 1079, 1085–1087), which defines a prevailing party as “the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant.” (*Code Civ. Proc.*, § 1032, subd. (a)(4).) Plaintiffs did not have a net monetary recovery against defendants. In fact, they recovered nothing. Under the plain language of § 218.5, plaintiffs were not the prevailing party because all of their claims against defendant were denied.

While no court has yet applied the catalyst theory to a case arising from § 218.5, plaintiffs argue that the theory should apply, based on defendants’ July 2005 payments to some former employees. It is unclear whether the permissive fee shifting described in the catalyst theory applies to a statute like § 218.5, which mandates an award of attorney fees to the “prevailing party.” Assuming the catalyst theory applies to Labor Code cases, its application does not assist plaintiffs in their quest for attorney fees.

*5 The opinion in the prior appeal shows that plaintiffs had no right to collect a bonus after they were laid off from their jobs with defendants. By extension, the laid-off, nonparty employees who received payments from defendants in July 2005 also had no right to collect a bonus. Had the employees not accepted the 2005 payments, they would have received nothing in the litigation. In the eyes of the law, defendants’ 2005 payments were a gift, not a contractual or statutory obligation to remit unpaid wages.

When deciding whether to award attorney fees, the court reviews the facts “not only to determine the lawsuit’s catalytic effect but also its merits. Attorney fees should not be awarded for a lawsuit that lacks merit.” (*Graham, supra*, 34 Cal.4th at p. 576.) Plaintiffs cannot be a “successful party” if a reviewing court flatly rejects their case on the merits. (*Marine Forests Society v. California Coastal Com.* (2008) 160 Cal.App.4th 867, 877.) Although plaintiffs’ lawsuit provoked the 2005 payments, the lawsuit itself lacked merit, because plaintiffs demanded bonuses and penalties that they were not entitled to collect.

A lawsuit that provokes a defendant to make a gift is not a ground for awarding attorney fees: no significant benefit is conferred on the public or a large class of persons by such a lawsuit (*Graham, supra*, 34 Cal.4th at p. 578), and defendants engaged in no detrimental behavior that needed to be changed. As discussed in our prior opinion, defendants had the right to behave the way they did, laying off employees they could not afford to keep and denying bonuses to employees who were not on the payroll at year’s end. (Compare *Tipton–Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 607–610 [city instituted remedial practices in its police department after plaintiff sued for race and sex discrimination, justifying application of the “catalyst” theory of fee recovery]; *Harbor v. Deukmejian* (1987) 43 Cal.3d 1078, 1103 [catalyst theory applied when plaintiffs successfully challenged the governor’s constitutional veto authority, which conferred a significant benefit on the general public]; *Hogar Dulce Hogar v. Community Development Com. of City of Escondido* (2007) 157 Cal.App.4th 1358,

1368 [plaintiffs successfully obtained an amendment to a tax sharing agreement and a \$1.35 million reimbursement to a city housing fund, giving rise to catalyst fees].)

In sum, this lawsuit was instigated by a handful of employees who felt entitled to collect a bonus for years after they stopped working. By no stretch of imagination did this lawsuit aim to vindicate an important right affecting the public interest; nor did it confer a significant benefit on the general public or a large class of persons; nor did it cure detrimental behavior by defendants, who did not engage in improper conduct. This was not a lawsuit “ ‘that genuinely provide[d] a public benefit.’ ” (*Vasquez v. State of California* (2008) 45 Cal.4th 243, 255.) The catalyst theory does not apply here.

5. Defendants’ Right to Recover Attorney Fees

Section 218.5 is a reciprocal attorney fees statute that requires an award of fees to the “prevailing party” so long as one of the parties demands those fees upon the initiation of the action. Here, plaintiffs demanded fees pursuant to § 218.5 when they filed suit. Defendants were the prevailing parties on appeal, which resolved the entire lawsuit in their favor. (Code Civ. Proc., § 1032, subd. (a)(4) [prevailing party is the defendant if neither plaintiff nor defendant obtains any relief, and the defendant when the plaintiff recovers no relief against that defendant].) Plaintiffs did not prevail on any claims.

*6 Plaintiffs contend that their claims for fees under § 218.5 were inextricably intertwined with their PAGA claim, making it impossible to award attorney fees to defendants as the prevailing party under § 218.5. As the trial court found, plaintiffs had no standing to bring a PAGA claim because PAGA did not exist when plaintiffs were terminated from their employment with defendants. In any event, § 218.5 lists only one remotely pertinent exception: “This section does not apply to any action for which attorney’s fees are recoverable under Section 1194.”⁵ Plaintiffs did not proceed under section 1194, a one-way fee shifting statute authorizing attorney fees to employees who prevail on their minimum wage or overtime compensation claims.

Section 218.5 contains no equitable exemption allowing the courts to give a pass to employees who invoke its provisions then lose their case, causing the employer to become the prevailing party in the litigation. Defendants are the prevailing party under § 218.5, and are entitled to recover reasonable attorney fees they incurred in this litigation, including the two appeals.⁶

DISPOSITION

The postjudgment order awarding attorney fees and costs to plaintiffs is reversed. The case is remanded to the trial court to determine a reasonable award of attorney fees and costs for defendants. Defendants are entitled to recover their costs on appeal, as the prevailing party.

We concur:

ASHMANN–GERST, J.

FERNS, J.*

Footnotes

¹ Labor Code section 218.5 will be referred to in this opinion as § 218.5.

² The facts are largely derived from our opinion in *Zalewa v. Tempo Research Corporation* (Sept. 27, 2010) B210429 (nonpub. opn., as modified Oct. 27, 2010).

³ Plaintiffs misinformed the trial court that the case was remanded to resolve “whether and in what amount *plaintiffs are entitled to*

reasonable fees for having achieved [a] substantial result for so many of the affected employees.” (Italics added.) The opinion does not give a nod to plaintiffs’ claim for fees.

- 4 The statute reads, in relevant part, “Upon motion, a court may award attorneys’ fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement ... are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any.”
- 5 [Section 218.5](#) contains several express exceptions: it does not apply to an action brought by the Labor Commissioner; it does not apply to a surety issuing a bond pursuant to the Business and Professions Code; and it does not apply to an action to enforce a mechanics lien under the Civil Code. The statute does not mention PAGA.
- 6 The issue of attorney fees following reversal of the judgment first arose in plaintiffs’ petition for rehearing, when it was procedurally inopportune to resolve a new issue, hence the remand. We never intended to confuse the trial court by remanding for further proceedings on the issue of attorney fees.
- * Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).

EXHIBIT 11

2011 WL 5979937
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
Only the Westlaw citation is currently available.

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.

Court of Appeal, First District, Division 5, California.

Maria Tun CUN, Plaintiff and Appellant,
v.
CAFE TIRAMISU LLC, Defendant and Respondent.

No. A131241. | (San Francisco County Super. Ct. No. CGC-09-484879). | Nov. 30, 2011.

Attorneys and Law Firms

[Michael Paul Guta](#), Law Offices of John E. Hill, Oakland, CA, for Plaintiff and Appellant.

[Wesley Jerome Fastiff](#), [Michael Gayland Pedhirney](#), Littler Mendelson, San Francisco, CA, for Defendant and Respondent.

Opinion

[NEEDHAM](#), J.

***1** Maria Tun Cun appeals from an order awarding attorney fees to respondent Café Tiramisu LLC, pursuant to [Labor Code section 218.5](#), after the court granted respondent's motion for summary judgment. Appellant contends: (1) [Labor Code section 218.5](#) did not apply, because the action she brought for unpaid wages was really for unpaid overtime, for which an award of attorney fees is available only to successful plaintiffs under [Labor Code section 1194](#); (2) the court should have apportioned the attorney fees between appellant's unpaid wages claim and her constructive termination claim, for which no attorney's fee award is available; and (3) the court improperly awarded amounts for attorney services rendered in defense of claims other than those asserted by appellant. We will affirm the order.

I. FACTS AND PROCEDURAL HISTORY

In February 2009, appellant Maria Tun Cun, along with Vicente Tapia Gonzalez and Evangelina Tun Cun, filed a complaint against respondent Café Tiramisu LLC.¹

Maria asserted three causes of action. In a cause of action for recovery of unpaid wages, she alleged that she was employed by Café Tiramisu between February 9, 2005 until her termination on March 21, 2007, she was "owed wages" and was "owed for accrued paid time off," and she was entitled to a statutory penalty for unpaid wages under [Labor Code section 203](#) and reasonable attorney fees and costs pursuant to [Labor Code section 218.5](#). In a cause of action for constructive termination in violation of public policy, Maria alleged that Café Tiramisu's "conduct in refusing to pay plaintiffs wages owed created an intolerable working condition, necessitating plaintiffs to leave employment." In her cause of action for unfair business practices, she alleged that Café Tiramisu violated [Business and Professions Code section 17200](#) by committing these same acts.

In her prayer for relief, Maria sought, among other things, damages and "reasonable attorney's fees, pursuant to [Labor Code Section 218.5](#)." Nowhere in the complaint did Maria allege that Café Tiramisu owed her for unpaid overtime.

A first amended complaint, filed in April 2010, retained Maria's allegations and causes of action. Like the original complaint, it did not allege entitlement to unpaid overtime.

Café Tiramisu filed a motion for summary judgment or, in the alternative, summary adjudication. In September 2010, the court granted the motion, finding that Maria could not **prevail** on any of her causes of action as a matter of law because, before the lawsuit, the parties had entered into settlement agreements by which Maria released all of her employment-related claims.

Judgment was entered against Maria on September 21, 2010. The judgment noted that Café Tiramisu, as the **prevailing** party, was eligible to recover its reasonable attorney fees and costs.²

Café Tiramisu filed a motion for attorney fees on November 18, 2010, contending it was the **prevailing** party and entitled to recover its fees and costs under [Labor Code section 218.5](#). Café Tiramisu requested \$36,612.50 in fees, supporting its request with a declaration from one of its attorneys and invoices for the fees incurred.

*2 Maria opposed the motion. She contended that Café Tiramisu was not entitled to recover attorney fees under [Labor Code section 218.5](#), which authorizes recovery by the **prevailing** party, because her action was for overtime wages governed by [Labor Code section 1194](#), which authorizes recovery only by successful plaintiffs. She further contended that Café Tiramisu could not recover for the portion of attorney fees incurred in connection with her claim for wrongful termination. Café Tiramisu's reply brief addressed these arguments.

By written order filed on or about January 5, 2011, the court granted the motion and awarded Café Tiramisu attorney fees in the full amount of \$36,612.50. This appeal followed.

II. DISCUSSION

As mentioned, Maria contends the court erred because: (1) [Labor Code section 218.5](#) was inapplicable because her claim for unpaid wages was really a claim for unpaid overtime; (2) the court failed to apportion the attorney fees spent on the claim for unpaid wages as opposed to her claim for wrongful termination; and (3) Café Tiramisu should not recover for fees incurred in defending against claims by others. We address each contention in turn.

A. Recovery of Attorney Fees Under [Labor Code Section 218.5](#)

Café Tiramisu sought recovery for its attorney fees, and the trial court awarded them, pursuant to [Labor Code section 218.5](#).³ [Section 218.5](#) provides in pertinent part: "In any action brought for the *nonpayment of wages*, fringe benefits, or health and welfare or pension fund contributions, the court *shall* award reasonable attorney's fees and costs to the **prevailing** party if any party to the action requests attorney's fees and costs upon the initiation of the action." (Italics added.)

Each requirement of [section 218.5](#) was met. First, Maria brought an action for the nonpayment of wages. In her original and amended complaints, Maria claimed that she was "owed wages" and, in addition, had accrued and was owed "paid time off pursuant to [Labor Code \[sections\] 226.7 and 227.3](#)." [Section 226.7](#) refers to pay for time worked during mandated meal periods, and [section 227.3](#) refers to vested vacation pay; both are considered "wages." (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1114 [time worked during mandatory meal periods]; *Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal.3d 774, 784 [vested vacation pay].)

Second, Café Tiramisu was the **prevailing** party. Its summary judgment was granted, and judgment was entered in its favor, with Maria taking nothing by her amended complaint. ([Code Civ. Proc. § 1032, subd. \(a\)\(4\)](#).)

Third, Maria expressly requested attorney fees and costs pursuant to [section 218.5](#) upon the initiation of her action, in both the original and amended complaints. Accordingly, Café Tiramisu was entitled to recover its reasonable attorney fees under

section 218.5.

Maria's sole argument to the contrary is that her cause of action for unpaid wages was really a claim for unpaid *overtime*, such that section 1194, rather than section 218.5, should govern. Section 1194, subdivision (a) provides for one-way fee shifting to a successful plaintiff only: "Notwithstanding any agreement to work for a lesser wage, any *employee* receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee *is entitled to recover* in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, *reasonable attorney's fees*, and costs of suit." (Italics added.)

*3 Because section 1194 authorizes an award of attorney fees only to a successful plaintiff, and not to the prevailing party, Maria contends that the trial court erred and Café Tiramisu was not entitled to an award of attorney fees. Indeed, section 218.5 provides: "This section does not apply to any action for which attorney's fees are recoverable under Section 1194." The question Maria presents, therefore, is whether her claim for unpaid wages was really a claim for overtime compensation.

Maria's effort to recast her complaint as one seeking recovery for unpaid overtime is unpersuasive. Neither her original complaint nor the amended complaint mentions "overtime," "overtime wages," or section 1194. It refers instead to "wages," paid time off (also wages), and section 218.5.

Ignoring this, Maria argues that the claim she eventually tried to *prove* was that she was not paid wages at the overtime rate. In particular, in opposition to respondent's summary judgment motion, she contended that she repeatedly worked overtime hours, presented payroll records evincing overtime hours, and purportedly asserted that it was her exhaustion from overtime hours that led to her constructive termination.⁴

Maria's argument is unconvincing. The fact that she was eventually unable to support her broadly-alleged claim for unpaid wages except with evidence of unpaid overtime does not mean that her "action" was really for overtime compensation. (See §§ 218.5, 1194.) Nor does it convert the action she brought into a different action she had never specifically alleged. To hold otherwise would reward a plaintiff for not having any evidence to support her claims as pled, and penalize a defendant who incurs attorney fees in defending against the claims *as they were pled*. Thus, while Maria may have tried to prove her cause of action for unpaid wages with evidence of unpaid overtime, the court did not err in concluding that the "action" Maria actually "brought" was for nonpayment of wages within the meaning of section 218.5, not for nonpayment of overtime within the meaning of section 1194.

Maria further argues that this court, by its August 2011 decision in appeal number A129899 from the grant of summary judgment, characterized her claim as one for overtime wages. Her argument has no merit. In the first place, our August 2011 opinion in appeal number A129899 was not before the trial court when it granted the attorney fees motion in January 2011, and Maria does not explain how the trial court could have erred in January based on our characterization of her claim in August. Furthermore, any characterization of Maria's cause of action in appeal number A129899 would not be germane to this case, because it did not involve the issue we address now. At issue in appeal number A129899 was whether the settlement release was enforceable; we were not called upon in that case, as we are in this case, to decide whether her cause of action for unpaid wages was really a cause of action for unpaid overtime. Lastly, contrary to Maria's representations, we did *not* characterize Maria's claim as one for overtime wages. Rather, we stated: "On April 2, 2010, a First Amended Complaint (Complaint) was filed; appellant alleged causes of action for recovery of *unpaid wages*, constructive termination and unfair business practices." (Italics added.) While we acknowledged that Maria ended up claiming damages for unpaid overtime in her summary judgment motion, we also noted that her underlying complaint to the Department of Labor contended that she was "entitled to additional unpaid wages, *including* for unpaid overtime," but not exclusively for unpaid overtime. (Italics added.) In short, for all of these reasons, our opinion in appeal number A129899 does not establish that the trial court erred in deciding respondent's motion for attorney fees.

*4 Maria also refers us to *Earley v. Superior Court* (2000) 79 Cal.App.4th 1420 (*Earley*). There, petitioners had brought a class action to recover unpaid overtime compensation. (*Id.* at p. 1423.) They objected to an order requiring petitioners to notify absent class members that they might be liable for attorney fees and costs if their claim was unsuccessful. (*Id.* at pp. 1423–1424.) To decide the appeal, the appellate court had to determine, among other things, if section 1194 alone governed whether attorney fees could be awarded in the defendant's favor, or if section 218.5 also applied, such that the two statutes could be read together to allow the prevailing party to recover attorney fees. (*Earley*, at p. 1426.) The court ruled that only

section 1194 applied to the petitioner's cause of action for unpaid overtime, in light of legislative history, the distinct legislative source of the right to overtime compensation, and the fact that the Legislature specifically provided that only plaintiffs should recover attorney fees in overtime cases. (*Earley*, at pp. 1429–1431.) The court concluded: “The only reasonable interpretation which would avoid nullification of section 1194 would be one which bars employers from relying on section 218.5 to recover fees in any action for minimum wages or overtime compensation. Section 218.5 would still be available for an action brought to recover nonpayment of contractually agreed-upon or bargained-for ‘wages, fringe benefits, or health and welfare or pension fund contributions.’ [Footnote omitted.]” (*Earley*, at p. 1430.)

Maria's reliance on *Earley* is unavailing. There, the plaintiffs expressly alleged a claim for unpaid overtime. (*Earley*, *supra*, 79 Cal.App.4th at p. 1424.) Here, Maria did not bring a claim specifically for unpaid overtime, but a broader claim for unpaid wages, which did not refer to overtime but instead to other types of wages. In other words, while *Earley* decided that only section 1194 applies to an action alleged explicitly and solely to recover unpaid overtime, Maria did not allege such an action to recover unpaid overtime.⁵

B. Apportionment Among Causes of Action

Maria argues that the trial court erred in failing to apportion the attorney fees between the first cause of action for unpaid wages and her cause of action for wrongful termination. We disagree.

In general, where attorney fees are recoverable for one cause of action but not another, a court need not apportion attorney fees between the causes of action if there is an issue common to the causes of action or the issues are so interrelated that it would be impossible to separate them. (See, e.g., *Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 129–130; *Erickson v. R.E.M. Concepts, Inc.* (2005) 126 Cal.App.4th 1073, 1083–1086; *Akins v. Enterprise Rent-A-Car Co.* (2000) 79 Cal.App.4th 1127, 1133.)

Here, Maria expressly based her wrongful termination claim on her allegation that her resignation from Café Tiramisu was due to its “refusal to pay [her] wages owed.” As such, the issue of whether Café Tiramisu owed Maria wages was common to both the unpaid wages claim and the constructive termination claim. Furthermore, Maria's unfair business practice claim was based on the acts underlying her other claims. Thus, from the outset, all of Maria's causes of action required resolution of one common issue: whether Café Tiramisu owed Maria “wages.”

*5 Moreover, the successful defense to *all* of Maria's causes of action was the same: Maria was not entitled to pursue any of the claims, or obtain any recovery by her lawsuit, because of the settlement agreement in which she released all of her employment-related claims. For this reason as well, the court did not err in deciding not to apportion fees among the causes of action.

C. Apportionment as to Other Plaintiffs

Maria further argues that the trial court awarded fees for work Café Tiramisu's attorneys performed in defending against the claims of the other plaintiffs. She asserts the trial court awarded attorney fees for the “deposition of Spinoso and Scopetta which necessarily involved all three plaintiff's cases.” She also states: “respondent's attorneys time records does not distinguish between deposition time for Mr. Scopetta and Spinosso [sic] spent on the claim of Tapia–Gonzalez which was settled and Evangelina Tun Cun [record citation] which respondent sought attorney fees by a separate Motion and which appeal is pending before this court.”

As Café Tiramisu points out, however, Maria did not raise this argument in the trial court. Although she argued that the court should apportion the time spent on the wrongful termination claim, she did not raise any issue concerning time purportedly spent on other cases or with respect to other plaintiffs. The issue is therefore waived. (See *North Coast Business Park v. Nielsen Construction Co.* (1993) 17 Cal.App.4th 22, 28–29.)

Maria fails to establish error.

III. DISPOSITION

The order is affirmed.

We concur: [SIMONS](#), Acting P.J., and [BRUINIERS](#), J.

Footnotes

- ¹ The appeal of Evangelina Tun Cun is pending in appeal number A131240. Because Evangelina Tun Cun and Maria Tun Cun have the same last names, we will refer to them by their first names for purposes of clarity, without disrespect.
- ² Maria appealed from the summary judgment (appeal number A129899), contending that the settlement agreements were void under [Labor Code section 206.5](#). In August 2011, we affirmed the judgment.
- ³ Except where otherwise indicated, all statutory references hereafter are to the Labor Code.
- ⁴ Maria's opposition to the motion for attorney fees quoted an excerpt from her opposition to the summary judgment motion as follows: " 'Maria Tun Cun's pay stubs for several periods immediately before she was constructively terminated show she worked as many as 140 hours in a bimonthly pay period.... It is mathematically impossible to work more than 96 hours in a bimonthly pay period without working overtime hours (i.e. more than 40 hours in any week).' "
- ⁵ It might be argued that Maria's first "cause of action" covered both a claim for unpaid overtime *and* a claim for other unpaid wages, and an attorney fees award cannot include amounts incurred in defense of the unpaid overtime claim. Maria does not make an apportionment argument on this ground, so we need not and do not decide this issue.

EXHIBIT 12

2003 WL 352422
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
Only the Westlaw citation is currently available.

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.

Court of Appeal, Fourth District, Division 1, California.

Cecilia CSASZI, Plaintiff and Appellant,

v.

SHARP HEALTHCARE, Defendant and Respondent.

No. D038558. | (Super.Ct.No. 740594). | Feb. 18, 2003.

Former employee brought action against former employer, claiming employer was liable for unlawful discrimination and unpaid wages pertaining to on-call time. The Superior Court, San Diego County, No. 740594, [S. Charles Wickersham, J.](#), granted employer's motion for summary adjudication with respect to discrimination claims, and, following a bench trial, entered judgment for employer on wage claim. Employee appealed. The Court of Appeal, [Haller, J.](#), held that: (1) employee's motion to reconsider summary adjudication order based on new or different facts was untimely; (2) employee failed to set forth any new or different facts, and thus motion to reconsider summary adjudication order was properly denied; (3) employee did not qualify for mandatory relief from summary adjudication order allegedly entered as a result of attorney's neglect or mistake; (4) attorney who failed to file an opposition to employer's summary adjudication motion engaged in positive misconduct, justifying relief from summary adjudication order; (5) employer was not required to compensate employee for time spent on-call but not actually answering calls at same rate established for time she spent on-call and actually answering calls; and (6) statute authorizing award of attorney fees only to successful plaintiff in actions seeking to recover unpaid overtime did not prohibit award of attorney fees to employer.

Affirmed in part and reversed in part.

APPEAL from a judgment of the Superior Court of San Diego County, [S. Charles Wickersham](#), Judge. Affirmed in part and reversed in part.

Opinion

[HALLER, J.](#)

***1** Cecilia Csaszi sued her former employer, Sharp Healthcare¹ (Sharp), claiming Sharp was liable for unlawful discrimination and unpaid wages pertaining to on-call time. The court granted summary adjudication on all claims except for the unpaid wages cause of action. After a court trial on this claim, the court found Csaszi did not prove she was owed any wages, and entered final judgment in Sharp's favor on all of Csaszi's causes of action. The court denied Csaszi's motions seeking relief from the summary adjudication ruling. ([Code Civ. Proc.](#), §§ 473, 1008.) Csaszi appeals.

We affirm the portions of the judgment finding in Sharp's favor on Csaszi's claim for unpaid wages and awarding Sharp attorney fees for prevailing on this claim. ([Lab.Code](#), § 218.5.) We reverse the portion of the judgment entered on the summary adjudication of Csaszi's employment discrimination causes of action. The trial court shall vacate its order granting summary adjudication on these causes of action, permit the parties to file opposition and reply briefs, and then consider Sharp's summary adjudication motion on its merits.

FACTUAL AND PROCEDURAL SUMMARY

In March 1996, Sharp hired Csaszi as a utilization review/quality assurance nurse responsible for evaluating patients for discharge at Tri-City Medical Center. Two and one-half years later, Csaszi's supervisors readjusted the workloads of Csaszi and a co-worker. Csaszi was unhappy about the change in her assignment, and complained about what she believed was unfair treatment. In March 1999, Csaszi was given several written notices regarding perceived problems with her performance and the need to improve to avoid being terminated. Two months later, in May 1999, Sharp terminated Csaszi, stating she had failed to properly perform her job assignments and acted in an improper manner toward other health care employees.

In December 1999, Csaszi filed a complaint against Sharp, alleging (1) employment discrimination claims (wrongful termination in violation of public policy, unlawful discrimination and retaliation in violation of the Fair Employment and Housing Act (FEHA), and wrongful demotion in retaliation for complaining about racial discrimination); and (2) a claim for the failure to properly pay "on-call" wages in violation of [Labor Code section 201](#).

Sharp moved for summary adjudication on Csaszi's discrimination claims on the grounds that Csaszi could not establish she was performing her job in a satisfactory manner, Sharp had legitimate, nondiscriminatory reasons for terminating Csaszi, and Csaszi had no evidence that Sharp's stated reasons were a pretext for unlawful discrimination. Csaszi's attorney, Michael W. Loker, did not file an opposition to that motion, even though (as detailed below) Loker told Csaszi that he *had* filed an opposition.

On November 22, 2000, the court granted Sharp's summary adjudication motion, ruling that Sharp met its burden to establish a legitimate reason for Csaszi's termination and Csaszi failed to present any evidence that the proffered reason for the termination was untrue or pretextual.

*2 On the date scheduled for trial on her remaining claim, Csaszi appeared with attorney Loker, and informed the trial court that she wished to terminate Loker. The trial court granted the request and, over Sharp's objections, granted Csaszi's request for a 90-day trial continuance.

On December 14, 2000, Csaszi, represented by new counsel William Evans, filed a [Code of Civil Procedure section 1008](#) motion ([section 1008](#)), requesting the court to reconsider its summary adjudication ruling. The court denied the motion, finding the motion was not timely (it was filed more than 10 days after the summary adjudication order was entered) and Csaszi "fail[ed] to set forth any 'new or different facts, circumstances, or law' that would affect the outcome of" the summary adjudication motion.

On March 9, 2001, a court trial began on Csaszi's remaining claim for unpaid wages relating to her on-call time. After considering all the evidence (which will be detailed below), the court found Csaszi failed to meet her burden to show she was entitled to unpaid wages for her on-call time.

The next month, on April 6, 2001, Csaszi moved for relief from the summary adjudication order under [Code of Civil Procedure section 473](#) ([section 473](#)). In support, Csaszi submitted her declaration, the declaration of her former attorney (Loker), and proposed responsive papers to Sharp's summary adjudication motion. The court denied the [section 473](#) motion, stating Csaszi "made no showing that a judgment, dismissal, order, or other proceeding has been taken against her as a result of her or her attorney's mistake, inadvertence, surprise, or excusable neglect, as is required by the section."

Sharp then moved for its attorney fees as the prevailing party on the FEHA and unpaid wage claims. The court initially granted the motion on both grounds, but after oral argument, concluded that Csaszi's "discrimination case was not totally groundless" and therefore awarded only those fees pertaining to the unpaid wage claim (\$20,269) based on [Labor Code section 218.5](#).

On appeal, Csaszi challenges the denial of her motions to vacate the summary adjudication and the court's rulings pertaining to the unpaid wage claim.

DISCUSSION

I. Motion for Reconsideration

Csaszi first contends the court abused its discretion in denying her motion to reconsider the summary adjudication order under [section 1008](#), which permits a court to revoke a previous order based on new or different facts and an adequate justification for the failure to previously produce those facts. The contention is unavailing.

^[1] First, the motion was untimely. [Section 1008](#) requires that a reconsideration motion be brought “within 10 days after service upon the party of written notice of entry of the order...” (See *Advanced Building Maintenance v. State Comp. Ins. Fund* (1996) 49 Cal.App.4th 1388, 1392, 57 Cal.Rptr.2d 310.) Sharp served written notice of entry of the order on November 22, 2000, and Csaszi filed her reconsideration motion 22 days later, on December 14, 2000.

*3 ^[2] Additionally, the trial court properly denied the motion on the basis that Csaszi “fail[ed] to set forth any ‘new or different facts, circumstances, or law’ that would affect the outcome of” the summary adjudication motion. Csaszi did not proffer any new facts or law relevant to the summary adjudication ruling. Instead, she focused exclusively on explaining the circumstances of her prior attorney’s failure to adequately represent her. These circumstances do not constitute the type of “new or different facts” that permit a reconsideration of the trial court’s order under [section 1008](#).

II. Section 473 Ruling

Csaszi alternatively contends the trial court erred in denying her [section 473](#) motion seeking to vacate the summary adjudication order because of her attorney’s neglect.

A. Relevant Facts

In moving for relief under [section 473](#), Csaszi requested the trial court to vacate the summary adjudication order because the motion was granted without the benefit of her opposition papers and the failure to file an opposition was caused by her attorney’s misconduct. In support, she submitted her own declaration and copies of facsimiles (faxes) received from attorney Loker, which set forth the following facts:

Csaszi retained Loker in September 1999. Loker thereafter filed the complaint and, in April 2000, “began discovery requests.” In May 2000, Loker notified Csaszi he had attended a case management conference, and the trial date was scheduled for October 20, 2000. During the next two months, Csaszi made numerous attempts to contact Loker, but Loker did not return any of Csaszi’s telephone calls or respond to her written correspondence. In August 2000, Csaszi’s husband went to the superior court and discovered that Sharp had obtained a continuance of the trial to December 1, 2000.

On September 7, 2000, Loker called Csaszi and told her Sharp wanted to take her deposition. Csaszi expressed her concern about being unable to contact Loker, but Loker did not explain why he failed to respond to her calls and letters, and said only that he now intended to “move” on Csaszi’s case. Csaszi thereafter met with Loker on two separate days to prepare for her deposition. Sharp deposed Csaszi on three different dates, and each time Loker was present to represent her.

On October 12, Sharp filed its summary adjudication motion, but Loker did not tell Csaszi of this filing. Loker thereafter scheduled depositions of three Sharp employees, but these depositions were postponed for unspecified reasons and later rescheduled to October 30. On October 26, Csaszi met with Loker to review her deposition transcript, and she also gave Loker \$1,000 to pay for the three upcoming Sharp employee depositions. On that date, Loker also informed Csaszi about Sharp’s summary adjudication motion for the first time. Loker told her he would be filing an opposition to the summary judgment motion, but did not tell her the opposition was due on October 26.

*4 On October 30, Csaszi met with Loker to determine why the Sharp employees’ depositions were cancelled that morning. During that meeting Loker did not tell Csaszi that he had filed an ex parte application to continue the hearing on the summary judgment motion.

Ten days later, on November 9, Loker faxed Csaszi a note stating that he was in the library and that he would:

“[F] ile our response in opposition to the summary judgment today and argument is on [November] 17th, for which you will be present. Contrary to my message yesterday, I do not need your signature at this time, but I do need to see you Saturday, and I need you to drop off today the filing fee for the opposition to the Summary Judgment, payable to the Clerk of the Superior Court, in the amount of \$116. Also, the copies of your deposition are payable at this time, because I am using them in our opposition, in the amount of \$615.46, which should be by separate check, made payable to this office.... Therefore, though I need not, and cannot meet today (*because of the fact that I am in the law library today all day working on the opposition*), please drop off two drafts for the filing fee and deposition copy fee, in the amounts noted respectively. Also please leave a time in which we may meet Saturday, if you are not otherwise occupied. *I am optimistic.*” (Italics added.)

Csaszi thereafter wrote the requested checks, but Loker was not in his office when she delivered them. Csaszi telephoned Loker on a daily basis for the next eight days, but was unable to reach him and Loker did not respond to these calls. In the early morning of November 17 (the date scheduled for oral argument on the summary adjudication motion), Csaszi received a fax from Loker stating:

“The court announced yesterday that it will review the briefs submitted and rule telephonically on 22 Dec. (on the summary judgment). *I will fax you our opposition if you haven’t received.* Therefore there are no hearings today. P.S. *There was no charge for filing the opposition, a rule change.* You may ‘void’ that check, which I will destroy. Tx.” (Italics added.)

In fact, Loker never filed an opposition. Further, the applicable rules have never required a party opposing a summary judgment to pay a fee. (See Super. Ct. San Diego County, Fee Schedule & Forms List .)

In response to this fax, Csaszi repeatedly attempted to contact Loker, but was unable to reach him. Csaszi then directly contacted the superior court, and learned from the court that a trial call on her remaining claim was scheduled for December 1, 2000. The morning of December 1, Loker faxed Csaszi a note stating there was no hearing and that he intended to meet with her during the weekend to discuss the overtime pay claim. Csaszi nonetheless attended the trial call, and at the hearing, the court said that Loker was scheduled to call the court at 9:30 a.m. Csaszi confirmed that Loker was still her attorney.

*5 That weekend, Csaszi met with Loker and discussed the unpaid wage claim, but Loker refused to discuss the court’s summary adjudication ruling. The next day, Csaszi appeared at court with a written statement stating that she wanted to obtain new counsel, and the court granted the motion.

In support of her [section 473](#) motion, Csaszi also submitted Loker’s declaration which stated in relevant part: “I did not prepare an opposition to Defendant Sharp’s motion for summary adjudication on the discrimination claims. I did not feel that Csaszi would prevail on the discrimination claims and I felt that to oppose Sharp’s motion might impair her credibility on the remaining issues dealing with the overtime claim and that she would incur additional costs in opposing the discrimination part of the case. However, I was apparently unable to adequately convey my feelings regarding her chances of prevailing on these issues to her. I thought I had convinced her of my recommendations prior to the scheduled opposition to Sharp’s summary adjudication motion. She did inform me that she wanted to proceed with her discrimination claims at the December 4, 2000, hearing. [¶] There was no fault attributable to Plaintiff in any failure to make a timely filing of the opposition to Defendant’s Motion For Summary Adjudication.”

B. Legal Analysis

Under [section 473](#), a party may potentially seek two types of relief for orders entered as a result of an attorney’s neglect or mistake: one that is mandatory and one that is discretionary. (*Metropolitan Service Corp. v. Casa de Palms, Ltd.* (1995) 31 Cal.App.4th 1481, 1486, 37 Cal.Rptr.2d 575 (*Metropolitan Service*).)

First, under the mandatory provision, a court “shall” grant relief whenever an application for relief meets the six-month statutory time period *and* the motion is “accompanied by an attorney’s sworn affidavit attesting to his or her mistake,

inadvertence, surprise, or neglect” (§ 473; see *In re Marriage of Hock & Gordon-Hock* (2000) 80 Cal.App.4th 1438, 1442, 96 Cal.Rptr.2d 546.) “The purpose of this law is to relieve the innocent client of the burden of the attorney’s fault, to impose the burden on the erring attorney, and to avoid precipitating more litigation in the form of malpractice suits.” (*Metropolitan Service, supra*, 31 Cal.App.4th at p. 1487, 37 Cal.Rptr.2d 575.)

^[3] This mandatory relief provision is inapplicable here because Loker, Csaszi’s former attorney, did not “attest[] to [a] mistake, inadvertence, surprise, or neglect....” Instead, in his affidavit, attorney Loker said he did not file an opposition because he made the tactical decision not to oppose the motion. This assertion does not satisfy the statute’s requirement that the attorney admit a “mistake, inadvertence, surprise, or neglect.” (§ 473, see *Metropolitan Service, supra*, 31 Cal.App.4th at p. 1487, 37 Cal.Rptr.2d 575 [mandatory relief provisions apply “if the attorney *admits* neglect”], italics added.)²

^[4] But even if a party cannot satisfy section 473’s mandatory relief requirements, the party may obtain relief under the statute’s discretionary provisions. Specifically, a court “may” grant relief if the moving party shows an order was taken against him or her because of the attorney’s *excusable neglect*. (§ 473; see *Metropolitan Service, supra*, 31 Cal.App.4th at pp. 1486-1487, 37 Cal.Rptr.2d 575.) Generally, conduct falling below the professional standard of care is considered inexcusable and therefore discretionary relief cannot be granted based on such conduct. (See *Carroll v. Abbott Laboratories, Inc.* (1982) 32 Cal.3d 892, 895, 187 Cal.Rptr. 592, 654 P.2d 775 (*Carroll*); *Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 682, 68 Cal.Rptr.2d 228.) Csaszi asserts Loker’s conduct in failing to oppose the summary judgment was the result of professional incompetence. Therefore Loker’s conduct was not “excusable” under section 473.

*6 However, an exception to the rule requiring a showing of excusable neglect applies if the party establishes the attorney’s neglect was of an extreme degree amounting to “‘positive misconduct.’” (*Carroll, supra*, 32 Cal.3d at pp. 898-899, 187 Cal.Rptr. 592, 654 P.2d 775; see *Fleming v. Gallegos* (1994) 23 Cal.App.4th 68, 72-73, 28 Cal.Rptr.2d 350.) “‘Positive misconduct is found where there is a total failure on the part of counsel to represent his client.’” (*People v. One Parcel of Land* (1991) 235 Cal.App.3d 579, 584, 286 Cal.Rptr. 739; *Aldrich v. San Fernando Valley Lumber Co.* (1985) 170 Cal.App.3d 725, 738-739, 216 Cal.Rptr. 300.) The attorney’s conduct is said to obliterate the existence of the attorney-client relationship and therefore cannot be imputed to the client. (*Carroll, supra*, 32 Cal.3d at p. 898, 187 Cal.Rptr. 592, 654 P.2d 775 [“‘[a]n attorney’s authority to bind his client does not permit him to impair or destroy the client’s cause of action or defense,’” quoting *Orange Empire Nat. Bank v. Kirk* (1968) 259 Cal.App.2d 347, 353].)

Carroll held an attorney who “grossly mishandled” a document production did not engage in “‘positive misconduct’” because he otherwise acted on behalf of his client in the litigation including attending his client’s deposition, propounding and timely responding to interrogatories, propounding requests for admissions, settling with one of the defendants, and timely filing a section 473 motion. (*Carroll, supra*, 32 Cal.3d at pp. 899-900, 187 Cal.Rptr. 592, 654 P.2d 775.) *Carroll* contrasted these circumstances with the situations in *Daley v. County of Butte* (1964) 227 Cal.App.2d 380, 38 Cal.Rptr. 693 and *Orange Empire Nat. Bank v. Kirk, supra*, 259 Cal.App.2d 347, 66 Cal.Rptr. 240, where the courts found attorney misconduct had effectively deprived a party of representation. (*Carroll, supra*, 32 Cal.3d at pp. 899-900, 187 Cal.Rptr. 592, 654 P.2d 775.) In *Daley*, the plaintiff’s attorney abandoned his client by failing to communicate with the plaintiff, serve necessary parties, and appear at critical hearings. (*Daley v. County of Butte, supra*, 227 Cal.App.2d at pp. 391-392, 38 Cal.Rptr. 693.) In *Orange Empire*, the defendant’s attorney failed to assert a defense, appear at the trial, or file relief from a default judgment within the statutory period. (*Orange Empire Nat. Bank v. Kirk, supra*, 259 Cal.App.2d at p. 354, 66 Cal.Rptr. 240.)

We conclude the circumstances here fall within the *Daley-Orange Empire* line of cases. Although Loker filed the complaint and was initially involved in some limited discovery, Loker completely abandoned Csaszi at a critical time by failing to file an opposition to the summary adjudication motion. Further, by falsely telling Csaszi that he was filing, *and had filed*, an opposition to the summary adjudication motion, Loker did more than abandon his client—he affirmatively precluded Csaszi from protecting herself and seeking other counsel to file an opposition or seeking timely section 1008 relief. Loker additionally continued to affirmatively harm Csaszi’s interests when he asserted in his declaration in support of her section 473 motion that his decision not to file the summary judgment motion was a tactical decision, an assertion that is flatly contradicted by his own words reflected on the faxes sent to his client. This false assertion prevented Csaszi from obtaining mandatory relief under the statute.

*7 In light of Loker’s misrepresentations to Csaszi and his submission of a declaration that contradicts his written correspondence to his client, Loker’s activities amounted to positive misconduct justifying relief under section 473. In so

concluding, we are unpersuaded by Sharp's reliance on a list of the various contacts between Loker and Csaszi during the relevant times. If anything, Loker's sporadic contacts with Csaszi made the situation worse by misleading Csaszi into believing he was taking care of her interests. (See *Fleming v. Gallegos*, *supra*, 23 Cal.App.4th at p. 73, 28 Cal.Rptr.2d 350 [trial court erred by failing to find attorney abandonment where plaintiff's "attorneys displayed an unwillingness to either prosecute her lawsuit or to cease representing her"].) Further, these contacts do not show a lack of abandonment, instead they reveal merely that Loker remained Csaszi's attorney of record. *Carroll* does not require that an attorney-client relationship be formally severed before positive misconduct may be proven.

Although a [section 473](#) motion lies within the sound discretion of the trial court, " 'the trial court's discretion is not unlimited and must be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice.' [Citation.] The law strongly favors trial and disposition on the merits. Therefore any doubts in applying [section 473](#) must be resolved in favor of the party seeking relief. When the moving party promptly seeks relief and there is no prejudice to the opposing party, very slight evidence is required to justify relief. We will more carefully scrutinize an order denying relief than one which permits a trial on the merits." (*Mink v. Superior Court* (1992) 2 Cal.App.4th 1338, 1343, 4 Cal.Rptr.2d 195; see *Stafford v. Mach* (1998) 64 Cal.App.4th 1174, 1180-1181, 75 Cal.Rptr.2d 809.) Applying these principles here, we conclude the trial court abused its discretion in failing to vacate the summary adjudication based on Csaszi's showing that her counsel engaged in "positive misconduct."

¹⁵¹ We note that Sharp does not argue, nor does the law permit, this court to sustain the trial court's denial of the [section 473](#) motion on the alternate ground that Csaszi's proposed opposition to the summary adjudication motion does not raise a triable issue of fact. In considering the propriety of a court's ruling on a [section 473](#) motion, an appellate court is limited to the question whether the court abused its discretion in granting or denying the motion, and may not reach the substantive issue as to whether the position proffered by the party seeking relief has merit. (*Uriarte v. United States Pipe & Foundry Co.* (1996) 51 Cal.App.4th 780, 786-787, 59 Cal.Rptr.2d 332; see 8 Witkin, Cal. Procedure (4th ed. 1997) Attack on Judgment in Trial Court, § 184 at p. 692, 59 Cal.Rptr.2d 332.)³

Finally, we reject Sharp's argument that the trial court properly denied the [section 473](#) motion because the motion constituted an "end-run" around [section 1008](#) governing reconsideration motions. Because Csaszi satisfied the requirements of a [section 473](#) motion, the fact that the motion was not timely under [section 1008](#) does not defeat the grounds for granting the motion under [section 473](#).

III. Unpaid Wage Claim

*8 Csaszi next contends the court erred in failing to find in her favor on the unpaid wage claim, which was tried before the court sitting without a jury.

The evidence at trial showed that Csaszi was assigned to on-call shifts during which she was given a pager and was responsible for answering telephone calls pertaining to patients discharged outside of regular business hours. Sharp paid its on-call employees \$2.50 per hour for time spent on-call but not actually working, i.e., being available for a call. For time spent actually answering a call (known as "call-back time"), Sharp paid its employees one and one-half times the employee's regular hourly rate of pay, regardless whether this time reflected overtime work. Csaszi was paid \$2.50 for each hour that she reported she was on-call, and would have been paid her overtime rate if she had reported any time answering calls.

The essential basis of Csaszi's unpaid wages claim at trial was that Sharp was required to pay her time and one-half for her on-call time (when she was not actually answering calls) instead of \$2.50 because this time was devoted primarily to her employer's interests. In support, Csaszi relied on federal law providing that an employee should be fully compensated for on-call time if the time is spent " 'primarily for the benefit of the employer and his business.' " (*Armour & Co. v. Wantock* (1944) 323 U.S. 126, 132, 65 S.Ct. 165, 89 L.Ed. 118.)

To show that her on-call time was spent primarily for Sharp's benefit, Csaszi testified that when she was on-call she was unable to attend to her personal activities and she was paged "very frequently." She said that during her entire on-call period, she would sit in a room with a telephone, facsimile machine and documents needed to perform her job duties. Csaszi claimed she could not shop, cook, sleep, travel, interact with her family or otherwise engage in any personal activities. Csaszi sought \$40,380, calculated as the total number of on-call hours multiplied by the time and one-half rate subtracted by the amount she

was paid per hour (\$2.50). Csaszi had no record of the time she actually responded to calls, explaining that she never identified this time on her timesheets because she did not understand how to do so.⁴

In contrast to this evidence, Sharp presented the testimony of its human resource director who said that employees were instructed on the manner in which they should report call-back time and that the employees did not need to limit their activities while waiting for a call. Sharp employees corroborated this testimony. These employees testified that while on-call, they wore pagers and attended to various personal activities, including cooking, shopping, attending church services, and entertaining. The pagers given to the employees had a range of at least 250 miles, and therefore the employees were free to travel throughout Southern California. Csaszi's co-workers testified they received varying numbers of calls while on-call, which averaged two to four per week, and that they knew how to claim this call-back time on their timesheets. The employees were required to respond to a pager within a 15- or 20-minute period. The employees were always paid time and one-half for the time they were actually answering a call.

***9** After considering the evidence, the court stated: "The issue to be decided is whether the requirements of being on-call as a discharge planner precluded [Csaszi] from using the time effectively for her own purposes, thus entitling her to back wages. [Citations.] [¶] The Court finds that although [Csaszi] may have subjectively believed that she needed to avoid engaging in personal activities while on-call, the evidence shows that the job duties of being on-call did not require her to do so. The fact that Ms. Csaszi elected not to engage in personal activities while on-call may be laudable, but it does not transform the on-call time to working time compensable under statute. Both the written policies of the employer as well as the actions of the employees indicate that the express and implied agreement was that employees would be paid \$2.50 for time spent on-call but not actually working and one and one-half times their regular hours rate for time spent actually working while on-call. [¶] Based on the above-stated findings and the fact that [Csaszi] did not offer any evidence specifying the dates or hours she actually worked while on-call, the Court finds that [Csaszi] has failed to meet her burden to show that she is entitled to back wages...."

^[6] We find no error. Although there is no California law directly on point, federal law sets forth appropriate standards for determining Csaszi's claim to additional wages for on-call time. Under this law, an employee must be fully compensated for on-call time spent primarily for the employer's benefit, and the question whether the time is spent primarily for the employer depends on numerous factors and a consideration of these factors in the context of the particular circumstances of the case. (See *Armour & Co. v. Wantock*, *supra*, 323 U.S. at p. 133; *Berry v. County of Sonoma* (9th Cir.1994) 30 F.3d 1174, 1183.) Although no single factor is dispositive, the predominant considerations are the agreement of the parties and the degree to which the employee is free to engage in personal activities. (*Owens v. Local No. 169, Assn. of Western Pulp & Paper Workers* (9th Cir.1992) 971 F.2d 347, 350-354.) The court must balance the factors permitting personal pursuits against the factors restricting personal pursuits to determine whether the employee is "so restricted that he is effectively engaged to wait." (*Berry v. County of Sonoma*, *supra*, 30 F.3d at p. 1183.)

Applying these principles, the trial court found Sharp's evidence credible, and concluded that the time Csaszi spent on-call was not time that was required to be spent predominately for the employer's benefit. Substantial evidence supports the court's factual conclusion. The court, as the finder of fact, was entitled to reject Csaszi's contrary evidence.

In nonetheless challenging the court's factual conclusions, Csaszi contends that Sharp's agreement to pay \$2.50 during on-call hours "amounted to an admission that [Sharp] maintained control over the employees" and therefore the trial court was required to find as a matter of law that Sharp was under a mandatory obligation to pay the same pay rate that it applied for call-back work.

***10** This argument is unsupported factually and legally.

First, the fact that Sharp paid employees \$2.50 per hour to be available to respond to phone calls was not an admission that the time spent was primarily for Sharp's benefit. Instead, Sharp's human resources director specifically testified that employees were paid for being on-call as "an incentive for carrying the pager and being available on call." She explained the pay was "additional compensation that was paid to carry the pager, to be available during a specific time should additional work be needed by that individual." She emphasized that during this waiting time, the "time is not controlled [by Sharp]" and that employee "is free to move around, engage in personal activities."

Csaszi's position is also legally unsupported. Csaszi relies solely on *Paniagua v. City of Galveston, Texas* (5th Cir.1993) 995 F.2d 1310 and *Berry v. County of Sonoma, supra*, 30 F.3d at p. 1178. In *Paniagua*, the court specifically rejected the identical argument asserted here-that an employer's agreement to compensate employees for the inconvenience of being on call "automatically render[s] the time spent on standby 'working time'...." (995 F.2d at p. 1317.) In *Berry*, the court noted that an employer's agreement to provide "at least some type of compensation for on-call waiting time may suggest the parties characterize waiting time as work," but the court made clear that this was merely one of many factors in the overall analysis. (*Berry v. County of Sonoma, supra*, 30 F.3d at p. 1181 .)

The trial court here expressly noted the evidence showing that Sharp paid \$2.50 for on-call waiting time, but stated that based on the totality of the circumstances, this payment was merely compensation for the inconvenience of carrying a pager and did not reflect that the time spent by on-call employees was for the employer's benefit. Substantial evidence supported the trial court's conclusion.

Csaszi failed to establish that the trial court erred in reaching its factual conclusions with respect to the unpaid wage claim or that the court erred in applying these factual findings to the applicable legal principles.

IV. Attorney Fees

^[7] The trial court awarded \$20,269 in attorney fees to Sharp under [Labor Code section 218.5](#), which provides in relevant part: "In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action."⁵

Csaszi contends the court erred in awarding fees under this section because the applicable statute is [section 1194](#), which contains a "one-way" fee provision, permitting attorney fees only for a prevailing employee and not for a prevailing employer. [Section 1194](#), subdivision (a) states: "[n]otwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance ..., including interest thereon, reasonable attorney's fees, and costs of suit."

***11** Both [sections 218.5](#) and [1194](#) potentially apply to an action seeking overtime wages, but establish different attorney fees rules. In *Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 95 Cal.Rptr.2d 57, the court noted the potential conflict between the code sections, and concluded the Legislature intended that [section 1194](#) alone applies to recovery of attorney fees for overtime compensation claims, even though such claims could be construed as seeking payment of wages under [section 218.5](#). In a well-reasoned decision, the court explained that the only reasonable interpretation of the Legislature's one-way fee shifting rule in [section 1194](#) "would be one which bars employers from relying on [section 218.5](#) to recover fees in any action for *minimum* wages or *overtime* compensation. [Section 218.5](#) would still be available for an action brought to recover nonpayment of contractually agreed-upon or bargained for 'wages....' [¶] Such a harmonization of these two sections is fully justified. An employee's right to wages and overtime compensation clearly have different sources. Straight-time wages ... are a matter of private contract between the employer and employee. Entitlement to overtime compensation, on the other hand, is mandated by statute and is based on an important public policy.... 'California courts have long recognized [that] wage and hour laws "concern not only health and welfare of the workers themselves, but also the public health and general welfare." ... [¶] There can be no doubt that the one-way fee-shifting rule in [section 1194](#) was meant to 'encourage injured parties to seek redress-and thus simultaneously enforce [the minimum wage and overtime laws]-in situations where they otherwise would not find it economical to sue.' [Citation.] To allow employers to invoke [section 218.5](#) in an overtime case would defeat that legislative intent and create a chilling effect on workers who have had their *statutory* rights violated. Such a result would undermine statutorily-established public policy. That policy can only be properly enforced by a recognition that [section 1194](#) alone applies to overtime compensation claims." (*Earley v. Superior Court, supra*, 79 Cal.App.4th at p. 1430, 95 Cal.Rptr.2d 57.)

We agree with the *Earley* court that when an employee seeks overtime wages, the attorney fees rules are exclusively set forth in [section 1194](#). However, that principle is inapplicable here because Csaszi never alleged, or sought to prove at trial, that Sharp failed to pay her for overtime work. Instead, Csaszi brought her claim to enforce Sharp's alleged agreement that it would pay time and one-half for time spent working outside of the hospital's physical environment and that on-call time constituted "working" under established legal principles. The claim at issue concerned solely a matter of private contract

between the employer and employee, i.e., that Sharp had agreed to pay a certain wage for time answering calls, and that because her time spent waiting for those calls primarily benefited Sharp, Sharp was required to compensate her at this same established wage rate. Because Csaszi never claimed or presented evidence that she was working overtime without overtime pay, the case does not come within the ambit of [section 1194](#). Thus, the court properly concluded that attorney fees were mandatory to the prevailing employer under [section 218.5](#).

*12 Csaszi alternatively argues that even if [section 218.5](#) is the correct statute to apply, the code section does not permit a defendant to recover attorney fees because the fees must be requested at “the initiation of the action.” (§ 218.5.) Csaszi, however, ignores the beginning part of this sentence which provides for reasonable attorney fees “if *any* party to the action requests attorney’s fees and costs upon the initiation of the action .” (§ 218.5, italics added.) Read in context, this statutory language does not limit an attorney fees award to a plaintiff, and instead merely requires that the prevailing party show it had sought attorney fees at the beginning of the litigation. Here, Sharp stated in its answer that it was seeking to be “awarded its costs of suit and attorney fees incurred therein....” That statement is sufficient to satisfy [section 218.5](#)’s requirement that attorney fees be requested at the “initiation of the action.”

DISPOSITION

We affirm the portions of the judgment finding in Sharp’s favor on Csaszi’s claim for unpaid wages and awarding attorney fees to Sharp for prevailing on this claim. We reverse the portion of the judgment dismissing Csaszi’s first, second, third and fifth causes of action based on the summary adjudication. The court is ordered to vacate its order granting summary adjudication on these causes of action, permit Csaszi to file an opposition, and consider Sharp’s motion on the merits.

The parties to bear their own costs on appeal.

WE CONCUR: [KREMER](#), P.J., and [BENKE](#), J.

Footnotes

- ¹ Although it appears that the correct name of Csaszi’s former employer is Sharp Mission Park, the defendant is named in the caption of Csaszi’s complaint as Sharp Healthcare. Our review of the record on appeal does not reveal an amendment to the complaint correcting the defendant’s name.
- ² Because Csaszi did not submit an attorney fault declaration satisfying the mandatory relief provision requirements, we do not reach the issue raised by the parties in their supplemental briefs whether [section 473](#)’s mandatory provision applies to provide relief for summary adjudication orders, an issue that has been the subject of different conclusions by the appellate courts. (Compare [English v. Ikon Business Solutions, Inc.](#) (2001) 94 Cal.App.4th 130, 114 Cal.Rptr.2d 93 with [Avila v. Chua](#) (1997) 57 Cal.App.4th 860, 67 Cal.Rptr.2d 373.)
- ³ We recognize that this rule may lead to an empty victory for Csaszi if she is unable to come forward with any real evidence that she was discriminated against based on her race. However, the standard of review on a [section 473](#) motion does not permit this court to reach the merits of the underlying claim. Moreover, the policy of providing a party with a hearing on the merits of his or her claim in the trial court outweighs any possible judicial economy objectives that would be served if we were to consider the merits of the discrimination claim based solely on Csaszi’s proposed opposition filings contained in the appellate record.
- ⁴ Although it appears that Csaszi was not paid the time and one-half for all of her call-back time, at trial she never claimed any unpaid wages for such time, presumably because she never recorded this *call-back* time on her timesheets except for one occasion. Thus, this appeal concerns only the question whether Csaszi was owed any wages for her *on-call* time.
- ⁵ All further statutory references are to the Labor Code.

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EXHIBIT 13

2009 WL 4718721
Only the Westlaw citation is currently available.
United States District Court,
E.D. California.

Boanerges VILLALOBOS, et al., Plaintiffs,
v.
James GUERTIN, et al., Defendants.

No. CIV. S-07-2778 LKK/GGH. | Dec. 3, 2009.

Attorneys and Law Firms

[Adam Wang](#), Law Office of Adam Wang, San Jose, CA, for Plaintiffs.

Kimberley Ann Worley, [Stephen R. Holden](#), Holden Law Group, Auburn, CA, for Defendant.

Opinion

ORDER

[LAWRENCE K. KARLTON](#), Senior District Judge.

*1 On August 19, 2009, the court granted defendants' motion for judgment on the pleadings, dismissing four of plaintiffs' causes of action for failure to state a claim, and dismissing the fifth and sole remaining cause of action for lack of subject matter jurisdictions. Defendants have submitted a bill of costs and separately moved for attorneys' fees, both of which have been opposed by plaintiffs. The court resolves the matter on the papers and after oral argument. For the reasons stated below, defendants' motion for fees and costs is granted in part.

I. BACKGROUND

Defendants Heidi and James Guertin allegedly operate a business under the name Norcal Plastering. Plaintiffs, four individuals formerly employed by Norcal, filed suit purporting to represent themselves and others similarly situated. The complaint stated five causes of action, for violations of (1) [California Labor Code section 1194](#), (2) the Fair Labor Standards Act, (3) [California Labor Code section 226.7](#), (4) [California Labor Code section 203](#), and (5) [California Business and Professions Code section 17203](#).

On August 19, 2009, the court held that plaintiffs' allegations were insufficient to support the second through fifth claims. The Fair Labor Standards Act claim failed because plaintiffs had not alleged facts sufficient to support the inference that Norcal Plastering or plaintiffs themselves engaged in interstate commerce, a predicate for liability under the act. Order at 8–11. The Third, Fourth, and Fifth claims failed because the allegations therein pertained to entities not party to this suit. *Id.* at 11–12. The court denied plaintiff's request for leave to amend to correct these deficiencies, explaining that plaintiffs had notice of these deficiencies before the scheduling order was entered, but that plaintiffs had taken no action to correct them until discovery in the case had closed. The court dismissed these claims, and declined to retain supplemental jurisdiction over plaintiffs' sole remaining claim. Judgment on the pleadings under [Fed.R.Civ.P. 12\(c\)](#) was entered for defendants on August 19, 2009.

Defendants filed a bill of costs and motion for attorneys fees. Plaintiffs oppose both, arguing that defendants were not

“prevailing parties” because, as plaintiffs understood this court’s August 19, 2009 order, the state law claims had been dismissed without prejudice, and plaintiffs were free to refile the federal claim in federal court. Plaintiffs alternatively argue that even if defendants prevailed, they are not entitled to a fee award under the court’s inherent power or under any statute.

II. DISCUSSION

A. Defendants Are A Prevailing Party

Under all of the fee shifting authorizations at issue in this case, fees and costs are only available to prevailing parties. Under California law, “a defendant in whose favor a dismissal is entered” is a prevailing party. [Cal.Code Civ. P. § 1032\(a\)\(4\)](#). Under federal law, a party has not prevailed unless it “experienced an alteration in the legal relationship” with the other parties. [Avery v. First Resolution Management Corp.](#), 568 F.3d 1018, 1024 (9th Cir.2009). Plaintiffs argue that the court’s order permits plaintiffs to refile each of their claims, and that as a result, no such change has occurred. *Id.*, [Oscar v. Alaska Dep’t of Educ. & Early Dev.](#), 541 F.3d 978, 982 (9th Cir.2008).

*2 Plaintiffs misunderstand the nature of the prior order and its effect under California and federal law. [Fed.R.Civ.P. 41\(b\)](#) provides that “[u]nless the dismissal order states otherwise ... any dismissal not under [Rule 41]—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.” Thus, although the dismissal order did not specifically state that it was “on the merits” or “with prejudice,” dismissal of the second through fifth claims was precisely such an adjudication. [Stewart v. United States Bancorp](#), 297 F.3d 953, 956 (9th Cir.2002). Plaintiffs’ contention that a dismissal for failure to allege the elements of a cause of action is not a substantive dismissal is without merit. *Id.*

Plaintiffs’ first claim, which was dismissed for lack of subject matter jurisdiction, was not adjudicated on the merits. [Avery](#), 568 F.3d at 1024. The fact that plaintiff may refile this one claim does not defeat defendants’ claim to prevailing party status as to the others.

B. Particular Fee Shifting Provisions

Defendants argue that they are entitled to fees under [28 U.S.C. section 1927](#), under [Cal. Lab.Code section 218.5](#), and under the court’s inherent authority. The court discusses each in turn.

1. [28 U.S.C. § 1927](#)

“Any attorney ... who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys’ fees reasonably incurred because of such conduct.” [28 U.S.C. § 1927](#). Here, defendants have not identified any act by which plaintiffs multiplied the proceedings. Filing of the initial complaint cannot itself violate this section. “Because the section authorizes sanctions only for the ‘multipli[cation of] proceedings,’ it applies only to unnecessary filings and tactics once a lawsuit has begun.” [Moore v. Keegan Mgmt. Co. \(In re Keegan Mgmt. Co., Sec. Litig.\)](#), 78 F.3d 431, 435 (9th Cir.1996). Nor did plaintiffs’ counsel’s response to depositions noticed by defendants “multipl[y] the proceedings.”

Rather than identify affirmative acts, defendants argue that plaintiffs’ counsel multiplied proceedings by failing to withdraw and dismiss the case after the close of discovery. The only authority provided for this interpretation of [section 1927](#) is a case from the Southern District of Florida. See [Murray v. Playmaker Servs., LLC](#), 548 F.Supp.2d 1378, 1383 (S.D.Fla.2008). The court respectfully disagrees, and thereby declines to conclude that an attorney multiplies proceedings simply by failing to voluntarily dismiss an existing lawsuit.

2. The Court's Inherent Powers

The court has an inherent authority to order payment of fees as a sanction “when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons, delaying or disrupting litigation, or has taken actions in the litigation for an improper purpose.” *Fink v. Gomez*, 239 F.3d 989, 992 (9th Cir.2001) (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45–46 and n. 10, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991)); see also *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 767, 100 S.Ct. 2455, 65 L.Ed.2d 488 (1980). In this case, defendants argue that plaintiffs have done a poor job of litigating this case, and that this demonstrates that they filed their a purported class action for the allegedly improper purpose of pressuring defendants to settle, rather than for any belief as to the action's merits. This argument is unsupported. Although, as noted in the order granting defendants' motion for judgment on the pleadings, plaintiffs did little in the litigation of this case, this does not demonstrate bad faith or other grounds for sanction under the court's inherent authority.

*3 Defendants also argue that plaintiffs have demonstrated bad faith by filing a complaint in state court that re-alleges the four the state-law claims previously filed in this court. Whether that filing is in bad faith is an issue for the state court.

3. Cal. Lab.Code § 218.5

Lastly, defendants argue that the court should award fees under [California Labor Code section 218.5](#). This statute provides that “in any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party.” [Cal. Lab.Code § 218.5](#). The Ninth Circuit has held that this provision may be applied in suits filed in federal court. *Winterrowd v. Am. Gen. Annuity Ins. Co.*, 556 F.3d 815 (9th Cir.2009) (affirming award of fees to a prevailing plaintiff); see also *Diamond v. John Martin Co.*, 753 F.2d 1465, 1467 (9th Cir.1985) (“federal courts in diversity actions apply state law with regard to the allowance (or disallowance) of attorneys' fees.”). The court concludes that this section applies to one of plaintiffs' claims, that an award of fees is mandatory and not limited to cases in which plaintiffs acted wrongfully, and that defendants prevailed for purposes of this statute.

First, [section 218.5](#) does not apply to all wage claims. The statute contains an exemption, specifying that “[t]his section does not apply to any action for which attorney's fees are recoverable under [\[California Labor Code\] Section 1194](#).”¹ [Section 1194](#) governs actions alleging failure to pay minimum wages or overtime. Of the claims brought in this suit, plaintiffs concede that their claim for failure to pay for missed meal periods is a claim “for nonpayment of wages” under [section 218.5](#).² See *Murphy v. Kenneth Cole Production, Inc.*, 40 Cal.4th 1094, 1115, 56 Cal.Rptr.3d 880, 155 P.3d 284 (2007) (characterizing money owed for missed meal periods as wages rather than a penalty). Plaintiffs argue that their claims for waiting time penalties and for restitution of unpaid overtime do not fall within [section 218.5](#), and defendants do not dispute this argument.

Second, plaintiffs request that the court apply federal cases interpreting fee shifting under Title VII of the Civil Rights Act to the California Labor Code. Under Title VII, a court awards fees to a prevailing defendant only when the plaintiff's claim was frivolous, unreasonable, groundless, or brought in bad faith. *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 422, 98 S.Ct. 694, 54 L.Ed.2d 648 (1978). *Christiansburg*'s holding was predicated on the fact that Title VII grants courts discretion to award fees. *Christiansburg*, 434 U.S. at 416; see also 42 U.S.C. § 2000e–5(k) (“the court, in its discretion, may allow the prevailing party, ... a reasonable attorney's fee.”).³ The Court's holding directed the lower courts in their exercise of this discretion. [Section 218.5](#), in contrast, provides that the court “shall” award fees. “As used in the Labor Code, ‘shall’ is mandatory.” *Smith v. Rae–Venter Law Group*, 29 Cal.4th 345, 357, 127 Cal.Rptr.2d 516, 58 P.3d 367 (2002), *superceded on other grounds as stated in* *Eicher v. Advanced Business Integrators, Inc.*, 151 Cal.App.4th 1363, 1384, 61 Cal.Rptr.3d 114 (2007) (citing Cal. Stats.2003, ch. 93, § 1). Under California law, when a statute provides for a mandatory fee award, a court has only discretion to deny the award when it is unclear whether the party prevailed, a circumstance not present here. [Cal.Code. Civ. P. § 1032\(a\)\(4\)](#), *On–Line Power, Inc. v. Mazur*, 149 Cal.App.4th 1079, 1087, 57 Cal.Rptr.3d 698 (2007). It appears that no published California case, nor any federal case, has held that when a claim is of a type encompassed by [section 218.5](#), a party must show anything more than that it prevailed to be entitled to a mandatory award of fees.⁴

*4 Finally, plaintiffs argue that defendants did not prevail on this claim because it was not brought as to them. As noted above, the court dismissed plaintiffs' meal period claim in part because the allegations supporting the claim referred to persons other than defendants. Plaintiffs now argue that in so doing, the court concluded that this claim was not brought as to defendants in this suit, such that defendants were not party to, and therefore did not prevail on, this claim. This argument fails. Although plaintiffs' allegations of particular conduct referred to other persons, plaintiffs' prayer for relief sought from defendants an award of meal time premium payments. Defendants therefore prevailed on this claim.

C. Reasonableness and Scope of The Fees

Although defendants are entitled to an award of fees only in connection with one of plaintiffs' claims, defendants may recover all fees incurred on issues pertinent to this claim regardless of whether those issues were also pertinent to other claims. *Diamond*, 753 F.2d at 1467 (quoting *Reynolds Metals Co. v. Alperson*, 25 Cal.3d 124, 129, 158 Cal.Rptr. 1, 599 P.2d 83 (1979)).

Defendants request \$29,964.00 in fees, for 85.6 hours of work in the case not including the time spent on the motion for a fee award, billed at \$315 per hour.⁵ The court has previously held that \$300 per hour is a reasonable local rate for attorneys with defense counsel's experience, and reduces the hourly rate accordingly.

Defendants have not specified how this time was spent. At least some of this time must have been spent on issues not pertinent to plaintiffs' meal period claim. Notably, a significant fraction of the memorandum submitted in support of defendants' motion for judgment on the pleadings was specific to plaintiffs' Fair Labor Standards Act claim. (Doc. No. 23–1 pages 4–6; Doc. No. 26 pages 4–5). Defendants are not entitled to recover fees expended in connection with this issue. *Diamond*, 753 F.2d at 1467. Defendants' contention that disclosure of the amount of time spent on this issue would breach attorney-client or work-product privileges is meritless. "Where the documentation of hours is inadequate, the district court may reduce the award accordingly." *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) (concerning fee awards under 42 U.S.C. § 1988). Here, the court reduces the number of hours by the maximum amount that the court estimates were likely to have been spent on issues not pertinent to the meal period claim (which in this case means on issues solely pertinent to the FLSA claim). The record indicates that defendant's stated 85.6 hours were spent on preparation and filing of an answer, status report, motion for judgment on the pleadings, and on preparation for and attendance of a status conference, at least two depositions, and the hearing on the motion for judgment on the pleadings. See Declaration of Kimberly A. Worley Setting Forth Memorandum of Costs (Doc. No. 32–2). The court concludes that at most 15 hours of this time were spent on the FLSA issue, and reduces the fee award accordingly.

*5 Thus, defendants are entitled to a fees for 70.6 hours of work at \$300 per hour, or \$21,180. Plaintiff has not objected to defendants' statement of costs (other than to argue that defendants are not a prevailing party). Defendants are therefore further entitled to an award of \$1,525.80 in costs.

D. Who Pays The Fees

Cal. Labor Code section 218.5 provides that fees shall be awarded to the prevailing party, but does not specify where the award shall come from. Nothing in the parties' briefing indicates whether fees awarded under section 218.5 should be paid by plaintiffs' counsel or by plaintiffs themselves. Moreover, had plaintiffs' counsel offered argument on this issue, it would have been against his clients' interests. None of the cases citing section 218.5 have addressed this issue, and the court is not aware of any California law regarding fee awards generally.

It may be that as a general rule, fee awards, rather than sanctions, are to be paid by the party rather than counsel. In this particular case, however, where there is no controlling authority, equity demands that the award be paid by plaintiffs' counsel. As explained more fully in the prior order, dismissal resulted from counsel's failure to properly plead, and counsel's subsequent failure to identify his mistakes or to prosecute this litigation. It may be that defendants would have prevailed absent these failings, but the court has no way to evaluate that possibility. Although plaintiff's counsel's conduct is not sanctionable under federal law, when California law compels an award of fees, the exceptional circumstances of this case compel the court to conclude that this award should lie against plaintiff's counsel.

IV. CONCLUSION

For the reasons stated above, defendants' motion for attorney fees, Doc. No. 35 is GRANTED IN PART.

1. Plaintiff's counsel is ordered to pay \$21,180 in fees and \$1,525.80 in costs to defense counsel.
2. Counsel shall file an affidavit accompanying the payment which states that it is paid personally by counsel, out of personal funds, and is not and will not be billed, directly or indirectly, to the client or in any way made the responsibility of the client as attorneys' fees or costs.

IT IS SO ORDERED.

Footnotes

- ¹ The statute contains several other exceptions not pertinent here. In addition, for [section 218.5](#) to apply, at least one party must have requested fees at the initiation of the action. In this case, both the complaint and the answer request fees.
- ² Plaintiffs refer to this claim as their fourth. However, plaintiffs' meal break claim was enumerated as their third claim. Complaint ¶¶ 28–32.
- ³ *Christiansburg* explicitly juxtaposed Title VII's fee shifting provision, which provided discretion to award fees to any prevailing party, against statutes providing a mandatory award of fees to prevailing plaintiffs, e.g. the Fair Labor Standards Act, [29 U.S.C. § 216\(b\)](#), and against statutes providing discretion to award fees but only as to certain parties, e.g., the Privacy Act, [5 U.S.C. § 552a\(g\)\(2\)\(B\)](#). *Christiansburg*, 434 U.S. 415–16, n. 5, n. 6.
- ⁴ Although not citable as precedent by California courts, an unpublished decision of the California Court of Appeal held that [section 218.5](#) provided for mandatory fee awards to plaintiffs and defendants, despite possible policy concerns akin to those identified in *Christiansburg*. *Torres v. Auto Chlor Sys. of N. Cal.*, 2007 Cal.App. Unpub. LEXIS 7706, 2007 WL 2774706 (Cal.App. 6th Dist. Sept. 25, 2007).
- ⁵ Defense counsel declares that this is her standard rate, as an attorney with fifteen years of experience.

EXHIBIT 14

05-30-2013 | 05:13 PM | Author: [Robin Shea](#)

Employees: Better Think Twice Before Suing Your Employer (Four Reasons Why)



Earlier, I busted on "my own side" by giving [four reasons why employers shouldn't be so quick to fire their employees](#). To be fair, this week I'll talk about the other side -- four reasons why employees shouldn't be too quick to sue their employers.

DISCLAIMER: I am a defense lawyer. That means that, in any kind of workplace legal dispute, I am on the employer's side, not the employee's side. Always. Even though many of my best friends are employees and plaintiffs' lawyers. The following is not legal advice.

So, you don't have to believe what I'm about to say. But I make this post in good faith, based on my experience and observations in many years of employment litigation.

Are you still here? Cool! Here we go.

1. Even if you got the shaft at work, it is unlikely that you were treated illegally. The law does not require employers to treat their employees like "family," or to be nice, or even to be particularly fair. In fact, employers can usually be downright jerks as long as they are equally jerky to everybody. They can be arbitrary and play favorites as long as they're not making distinctions based on "protected" categories, like race or sex.

If you read this blog very often, you know that I am a strong advocate of treating employees respectfully, fairly, and with dignity. So is everybody in Human Resources who's worth a darn. But we feel that way because it's the right thing to do, not because it's the law.

The American legal system would collapse in a heap if people could sue every time their feelings were hurt. Our system is designed to prevent only the worst kinds of behavior -- you know, like murder, armed robbery, and driving 70 in a 55. It's supposed to keep us from being at each others' throats. That's it. Anything more is left to our respective senses of common decency. (Scary, I know!)

If you sue your employer, it won't be enough for you to prove that your employer made the wrong decision, or even that your employer was a no-goodnik. If you don't have a valid *legal* claim against your employer, then you will ultimately lose your case. One big reason to think twice before you sue.

2. Litigation is long, drawn-out, stressful, and painful. The only people who really enjoy litigation are lawyers. No one else could possibly be that sick. And, here's a secret: not even lawyers are that crazy about litigation. Judges (who are usually lawyers) are always after the parties to try to settle, which would end the case before the judge has to hear it. Lawyers are usually the same way -- they are rarely averse to settlement, although they'll fight to the death if that's what the client wants. Why do you think most courts nowadays have mandatory mediation? If even lawyers don't necessarily like litigation, just think about how much you will hate it.

"Well," you retort, "if lawsuits are that bad, then my employer will pay any amount to get rid of it, right? So it's still worth it to sue."

Well, no. Or, at least, not necessarily. You see, your employer gets sued a lot. This is what they call a "cost of doing business" in the United States. It is true that your lawsuit will be stressful and disruptive for your company. But it will be a lot more stressful and disruptive for you, who are not used to the court system or dealing with lawyers, and you don't even know whether it's a trap when the employer's lawyer says hello to you and offers to shake hands.

The distraction and stress of a lawsuit may also make it more difficult for you to do well in your new job. And having to continually dwell on an unpleasant experience (as you'll have to do while your lawsuit lasts) is difficult and stressful.

3. You may find out that your co-workers are not on your side. You feel very strongly that your employer did you wrong. You find a lawyer willing to take your case. You sue, and start taking depositions of all of your co-workers, who were your BFFs when you worked there. Well. It turns out that your BFFs weren't such BFFs after all. They say, "I liked Maudie, but I felt that she was out of line, and in my opinion she was treated fairly." And then you have the co-worker who saw you when you were not at your best, and she testifies about all the things you said to her in confidence when you were having a rotten day. Which are embarrassing. And which do not help your case. On the record. In a verbatim transcript, for cryin' out loud.

What happened to these people?

Most plaintiffs' lawyers will tell you that the co-workers are afraid of retaliation by the company if they don't side with the company and diss you. I am sure that happens sometimes, but I don't think it explains the majority of these situations. What I see most of the time are two phenomena:

***Most people consider a lawsuit an "act of war."** They probably *were* on your side when you all worked together and went out for mai tais and kvetched about what was going on at the office. But that was just gossip, harmless venting. Nobody thought you were really going to sue! And now, thanks to you, they're being dragged in front of lawyers and court reporters and judges and juries, and they're ticked off. And maybe what they said to you in confidence about the boss is coming out -- while the boss is sitting across the table with a stern-looking lawyer in a pinstripe suit. *AWKWARD!* No wonder they've turned on you.

***Some employees really, sincerely do believe the company was in the right.** Is the boss perfect? Of course not. But he's an overall decent guy who tries to be fair and treat employees right. And maybe you shouldn't have been so stubborn/absent from work/insubordinate/lazy yourself.

Recall No. 2, above. Finding out that your co-workers don't support you is one of the "painful" parts.

4. You may be opening up your own life to scrutiny. This is another "painful" part. In order to get more money, and because you really *were* very upset when you were fired, your lawyer includes a claim for emotional distress in your lawsuit. Next thing you know, the company has asked for your medical and psychiatric records dating back 10 years. And maybe you saw a shrink a few times and have been diagnosed as bipolar. Along with a few physical conditions that are not appropriate to mention in a family blog. Surely you don't have to share that information with the company's lawyers! Do you?

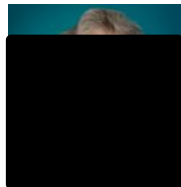
YOU ALMOST CERTAINLY DO. If you claim emotional distress (you don't have to, but you may not get as much money if you don't), most courts say you have put your own emotional condition at issue and the employer is entitled to find out how much of your (just as an example) bipolar disorder was caused by your termination and how much you had all along (in which case the company isn't responsible for it).

Your employer may also be able to dig into your past employment record, including that time you got fired from a previous job after you tested positive for angel dust, your criminal background, your five previous marriages, and your history of filing lawsuits. Perhaps you have nothing to hide. But a lot of people (most?) have a few skeletons that they'd just as soon not have the rest of the world know about.

What you probably *don't* have to worry about

Now, note what I have not mentioned: (1) That your employer will fire you for filing the lawsuit (assuming you did it while still employed); or (2) that your employer will blacklist you, and you'll never work again if you sue. The reason that I did not mention these is that they very rarely happen. Retaliation -- either during employment or afterward -- for filing a lawsuit in good faith against an employer is usually illegal, and almost all employers know that. If it happens and you can prove it, you might have a pretty good case. But don't bet on being able to do that.

Of course, I'm not saying you should never file a lawsuit against an employer, but it should almost always be a last resort. It's better to try resolving your dispute through the company's grievance procedure or open-door policy, or by going to Human Resources. If you're terminated, you may be better off negotiating a nice separation package and shaking the dust from your feet. If all of those fail, and if you've taken a good, critical look at your own performance and behavior, and still feel strongly that you were mistreated, then by all means consult with a lawyer who represents **employees** in workplace disputes. But keep in mind these hidden costs of litigation that you'll face, no matter how strong your case may be.



Visit the [Employment and Labor Law Insider](#) for additional insights from [Robin Shea](#), a partner with the national labor and employment law firm Constangy, Brooks & Smith, LLP.

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Tags: [employee lawsuits](#)

EXHIBIT 15

April 29, 2014

HUFF
POST BUSINESS

What to Expect If You Sue Your Employer

Posted: 01/10/12 02:03 PM ET

In the last half century or so, workers in the U.S. have seen improved working conditions through policies and laws addressing discrimination, harassment, whistleblower protection and safety violations. But when these protective measures are disregarded, enforcing them falls on individual workers who must pursue their claims through arbitration, investigations by external agencies (such as the EEOC) or litigation. Whatever the reason a worker might consider taking such actions, before filing any internal or external complaint or lawsuit -- or even threatening to do so -- there are some things to keep in mind. And the first thing to keep in mind is that there are a lot of myths about what it means to sue an employer.

The first myth is that the employer is afraid of a lawsuit. Employers do not like lawsuits, but they do not fear them. If they did, the worker never would have had a legal claim in the first place. Why? Because if the employer sincerely feared a lawsuit, they would have respected the law in the first place. And not only are managers who violate workplace laws unlikely to be held accountable for their actions, there are many ways they can benefit from a lawsuit, even one their own conduct brought on.

They can benefit by finding a lawful reason to fire the complaining worker, or by providing witnesses against the complainant who are either "similarly situated" (such as members of the same protected group), or who work closely with them and are persuaded to testify against the worker. By courting these people, sympathizing with their conflicting emotions regarding the worker and providing opportunities and benefits previously withheld, the manager conditions the workforce to consider ways in which distancing from the worker, and aligning with the interests of management, are in their own interests.

Once this step is taken, greater acts of distancing -- through gossip, rumors, and shunning -- make it easier for former allies and others to turn against the worker. When this happens, the manager who may have instigated the lawsuit in the first place is able to score points with higher management by demonstrating that it is "the difficult employee" -- not the manager, who is the problem, and the manager who has provided a solution -- witnesses to discredit the worker's claims.

The second myth is that once a lawsuit is filed, further adverse action will not be taken against the worker because that would be viewed as retaliation. Your employer can and will retaliate against you in a multitude of ways, many of them legal.

Federal laws protect against retaliation for certain protected acts, such as reporting sexual harassment, discrimination, and some types of "whistle blowing." But federal law also permits employers to fire such employees for legitimate reasons -- such as theft, making threats, or acts of violence.

No matter how law-abiding a worker might be, once involved in litigation against an employer, accusations of wrongdoing are likely to commence, and escalate. For that reason, by encouraging the workforce to view the litigating worker as a threat to their own livelihoods, chronically unhappy and complaining, and mentally unstable, it takes little time before gossip escalates to accusation, and the worker is accused of an escalating series of "inappropriate" behaviors and often, crimes.

Should the worker express any anger or outrage at the mistreatment they receive, that anger will be viewed as a threat. Increasingly, employers are using the slightest pretext of "threats" or accusations of theft to bring in the police and have employees publicly escorted off the premises -- a humiliating tactic that is sure to instill fear in the workforce and further erode the worker's support and reputation, regardless of whether or not there was any basis to the accusation. (And while it remains unlawful to terminate an employee for false pretext, proving pretext is difficult and the damage will have already been done.)

The third myth is that once an employer realizes they could be sued for their actions, they will obey the law. If a worker threatens to sue, or an employer receives a letter from a worker's attorney, they may well clean up their act. But chances are, every level of higher management will be alerted and go on the defense, which to their legal team will mean an offense.

They will immediately notify all coworkers that a lawsuit is pending and not to destroy any emails or other correspondence about, to or from the worker, and not to discuss the case with the worker. And when they get those memos informing them that their (potentially embarrassing) emails will end up in the hands of their bosses, those coworkers are not going to resent their bosses, they are going to resent the worker whose legal action brought it on.

At this stage, the workforce, not management, will fuel the aggression aimed at the worker. Management will encourage the workforce to keep a close eye on the worker, and document any detail, no matter how seemingly benign, that shows the worker is unstable, unproductive, or ineffective. As the workforce takes note of the severe toll on the worker who filed the complaint, they will

not only alter their perceptions of the worker to justify avoiding and testifying against them, but they will also be far less likely to ever voice a similar complaint of their own in the future -- in other words, the more severe the punishment, the less likely management will have to fear future workers coming forward with similar complaints.

The fourth myth is that if a worker does sue, they can win big money, and be vindicated. If a worker does sue, and does win, they will be very, very happy. Why? Because by the time an employment case gets to the point of "winning," the worker will have spent years fighting. They will be emotionally and financially exhausted. They will have gone into great debt to pay legal costs; even if their case was litigated on a contingency fee basis, they will have had to pay a costly retainer, costs of mediations, investigations, depositions and travel expenses. And the worker will have had one heck of a time finding work, because not only will s/he be exhausted by legal battles, they will have had little time or strength to be productive in the process.

They will also be stained by no references, a record of suing an employer -- which no potential employer wants to see -- and a reputation that has been severely damaged through rumors.

And as for that big money verdict? There are caps on what a worker can get and juries are often very conservative -- many a career has been valued at less than a whiplash, because jurors like to think they would never find themselves in such a mess, and that no one should receive big money for not being able to work, when the juror may well work a lifetime for less. And anything over \$150,000 is currently taxed at one-third; a whiplash settlement, however, is currently not taxed.

The fifth myth is that the case will never get to trial and will settle out of court. Most cases do settle out of court, and when they do, they either settle fairly early in the game, or right before trial. In the meantime, the employer's legal team will bank on delays to wear the worker out. Until that time, efforts to resolve the matter will be in vein -- the only early resolution once a suit is filed will likely be at terms favorable to the employer. In the meantime, the worker's work and even home computers will be subpoenaed, along with their medical records. Investigators may have monitored the worker, and contacted past employers -- who will have been told all kinds of unsavory things about their former employee -- even family members, friends and neighbors may be questioned, scrutinized and had their own reputations slandered.

Suing an employer is the last thing a worker should ever do if the aim is a successful career. But sometimes an employer goes so far, breaches so many laws and causes so much damage that a worker cannot possibly recover without a legal remedy. And if that happens, the worker must be prepared. They must safeguard against the assured betrayals from close friends and colleagues, the adversarial scrutiny of their lives and communications, and an avalanche of accusations and smears upon their professional and personal lives.

And for the employer facing potential litigation, it is far easier to resolve a conflict with a worker than it is to close ranks and destroy them. Rare is the lawsuit that an effective manager can't prevent by acting with integrity in the first place, and rare is the lawsuit that an effective employee can't prevent, by knowing when the management is just no good and it's best to walk away.

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Highlighted Most Recent Oldest Most Faved My Conversations

Pippen
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2

My question to myself lately has been :

Are we teaching our college age young adults - Profits over People ? Money Talks and BS walks ? Your nothing unless you financially rape your environment and destroy your economic enemies ?

Is this what we're teaching them? Because they are snugly fitting in nicely to the Money Rules All mode of capitalism.

Why can't we start a business without any intent to reflect a profit beyond paying employees a living wage building a community and moving the business into the next year with strength. Profits would not be a priority and people would be valued. The prosperity alone would jolt this countries GNP.

What shocks me are the massive amount of business leaders and upper level managers I know personally who go to church and pretend to be a respected member of the faithful community followers of faith after having offshored 20,000 employees so they can garner a bonus and a shot at CEO even though they have a salary of upper

6 figures for years.

At church they hug people, neighbors, other leaders talk about their childrens future.
How they found God.

I almost want to vomit typing this.

11 JAN 2012 5:02 AM

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DHC

SUPER USER · 56 Fans

1

Another precise and informative article. Well done.

10 JAN 2012 7:11 PM

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kjk326

2 Fans

Excellent article, right on topic. I went through this nightmare & found just how chilling & hostile a formerly friendly environment can become overnight. People who were your close friends hesitate to talk to you and avoid being seen with you. Your every move is put under the microscope and twisted into some type of bad behavior while the person who committed the illegal act is lauded and promoted and you are made to feel like a social outcast at best and I say this even though in the end I prevailed. You are left so emotionally drained, sadly it seems to be the American way; forget ethics, it's the dollar that prevails. Most of all I don't know how HR people sleep at night when they defend someone they know clearly committed an illegal act,

10 JAN 2012 8:34 PM

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ARTICLE AUTHOR

Janice Harper

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Thank you for sharing your experience. I think it's significant that you say in the end you prevailed -- sadly, that is the sixth myth -- that it will all be worth it. It rarely is. The toll on the worker who pursues an employment claim is enormous, and few attorneys, no matter how skilled, adequately prepare plaintiffs for what's up ahead. I'm so sorry you had to go through it.

Yet we have made great advances in working conditions in the U.S. in part due to lawsuits, and there are cases where workers are left with no recourse but to turn to the courts. In those cases, the more a person knows what to expect and how to be prepared, the better the emotional outcome. Thank you again for sharing your story.

10 JAN 2012 8:55 PM

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3 PEOPLE IN THE CONVERSATION

Read Conversation →

noahmarder

512 Fans · Exposing the regressive lies, one by one

There is no justice in this country. What else is new? Risk/reward probably favors stealing from your employer rather than suing them. At least with theft, your career is ruined only if you get caught. You also have a better chance of stealing significant money than of winning anything but an airtight case. I don't see a moral problem either, so long as what is stolen doesn't exceed the damage done by the employer, plus the effort required for the theft, plus the chance of being caught multiplied by the penalty

for being caught. It is the employer, after all, who has taken away any legal remedies through the retaliation mechanisms described in the article.

10 JAN 2012 9:09 PM

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Pippen

287 Fans

If you think all of that is bad apply it to Texas where employment is an "at will" state. Another way of putting this would be outright slavery and the slave master can fabricate reality on how they feel that morning and your life is forever changed.

America sets itself apart from 3rd world countries with the argument that we have a

- 1 Superior Justice System
- 2 Freedom of religion
- 3 Separation of Church and State
- 4 Opportunity to pursue your capitalist dreams of career and family
- 5 That taxes pay for your well being (roads, FDA, national safety etc..)
- 6 National security (threat of invasion and subjugation by an enemy rule...)
- 7 Democratically elected officials (fair voting)

I want you to look hard at those 7 American beliefs. See any of them that are actually working as intended ? Or are they working as intended ?

Did we just wake up or is this something that has emerged from the closet when GW Bush took office?

11 JAN 2012 4:52 AM

FAVE SHARE MORE

EXHIBIT 16



CASE ASSUMPTIONS

Class Members	203
Opt Out Rate	1%
Opt Outs Received	3
Total Class Claimants	200
Subtotal Admin Only	\$6,724.18

Flat Fee Total \$6,500.00

For 203 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

February 29, 2024

Case: Lopez v. Edward Walter Sunseri, Opt-Out & PAGA Administration

Phoenix Contact: Michael E. Moore

Contact Number: 949.331.0131

Email: mike@phoenixclassaction.com

Requesting Attorney: Nora Greer

Firm: The Spivak Law Firm

Contact Number: (818) 582-3073

Email: nora@spivaklaw.com

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

Estimate is based on **203** Class Members. Class data **Must** be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 day

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

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	2		\$200.00
Programming Database & Setup	\$100.00	2		\$200.00
Toll Free Setup*	\$100.00	1		\$100.00
Call Center & Long Distance	\$2.00	28		\$56.84
NCOA (USPS)	\$40.60	1		\$40.60
Total				\$597.44

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Website

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	2		\$200.00
Data Merge & Duplication Scrub	\$0.10	203		\$20.30
Notice Packet & Opt-Out Form	\$1.35	203		\$274.05
Estimated Postage (up to 2 oz.)*	\$0.64	203		\$129.92
Static Website	\$200.00	1		\$200.00
Total				\$824.27

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



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	2		\$110.00
Skip Tracing Undeliverables	\$1.00	30		\$30.45
Remail Notice Packets	\$1.00	27		\$27.45
Estimated Postage	\$0.64	27		\$17.57
Programming Undeliverables	\$50.00	2		\$100.00
			Total	\$285.47

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Database	\$150.00	1		\$150.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	4		\$220.00
Deficiency & Dispute Letters	\$10.00	4		\$40.00
Case Manager	\$85.00	2		\$170.00
			Total	\$780.00

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

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	1		\$135.00
Disbursement Review	\$135.00	1		\$135.00
Programming Manager	\$95.00	2		\$190.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	3		\$405.00
Mail Class Checks *	\$0.80	200		\$160.00
Estimated Postage	\$0.64	200		\$128.00
			Total	\$1,288.00

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing & Instructions for downloading tax forms from PHX secure portal



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	2		\$230.00
Remail Checks (Postage Included)	\$2.00	42		\$84.00
Case Associate	\$55.00	3		\$165.00
Reconcile Uncashed Checks	\$85.00	4		\$340.00
Conclusion Reports	\$115.00	2		\$230.00
Case Manager Conclusion	\$85.00	3		\$255.00
Final Reporting & Declarations	\$115.00	3		\$345.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting & Escheating to the State of CA Included)	\$1,300.00	1		\$1,300.00
Total				\$2,949.00

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

Estimate Total: \$6,724.18



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

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

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

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

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

Tax Reporting Requirements

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

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

EXHIBIT 17

Case Name: Lopez v. Edward Walter Sunseri

Thursday, February 29, 2024

Requesting Law Firm:	The Spivak Law Firm
Contact:	Nora Greer
E-Mail:	nora@spivaklaw.com
ILYM Contact:	Lisa Mullins
E-Mail:	Lisa@ilymgroup.com
Contact Number:	714.878.8836

ESTIMATE FOR ADMINISTRATION SOLUTIONS

Opt-Out

ASSUMPTIONS	
Total Number of Class Members	203
Estimated Percentage of Undeliverable Mail	15%
NCOA	Yes
ILYM Group Static Website	Yes

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

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

Subtotal \$650.00

PROJECT MANAGEMENT				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	4	\$480.00
Staff Hours for Processing Opt-Outs, Disputes & Objections	Hourly	\$70.00	2	\$140.00
Staff Hours for Processing Returned Mailed	Hourly	\$70.00	2	\$140.00
Report Processing	Hourly	\$70.00	3	\$210.00
NCOA	Per Piece	\$100.00	1	\$100.00
Toll-Free Call Center	Flat Fee	\$150.00	1	\$150.00
ILYM Group Static Website	Flat Fee	\$750.00	1	\$750.00
Weekly Reports	Flat Fee	\$500.00	1	Waived

Subtotal \$1,970.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity	Rate Type	Unit Cost	Volume	Amount
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NOTIFICATION/MAILING				
Fulfillment Notice, English only	Per Piece	\$1.50	203	\$304.50
USPS First Class Postage 2oz	Per Piece	\$0.88	203	\$178.64
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.00	41	\$81.20
Storage, Photocopies, Deliveries	Flat Fee	\$142.29	1	\$142.29

Subtotal \$706.63

DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	4	\$600.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	4	\$500.00
Check, Print & Mail (Including W2/1099 Stub & Release)**	Per Check	\$1.00	203	\$203.00
USPS First Class 1oz Postage	Per Piece	\$0.64	203	\$129.92
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$1.50	20	\$30.45
Preparation of Taxes	Hourly	\$120.00	5	\$600.00
Annual Filing of Tax Return	Per Year	\$750.00	1	\$750.00

***Additional Bank fees may apply*

Subtotal \$2,813.37

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	2	\$200.00
Project Manager Final Reporting	Hourly	\$120.00	3	\$360.00
Process Uncashed Funds to the State	Flat Fee	\$550.00	1	\$550.00
Declaration	Hourly	\$125.00	2	\$250.00

Subtotal \$1,360.00

Total Case Estimate: \$7,500.00

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 18

CASE NAME: LOPEZ V. EDWARD WALTER SUNSERI

Requesting Attorney: Nora Greer
Plaintiff or Defense: Plaintiff
Firm Name: The Spivak Law Firm
Telephone: (818) 582-3073
Email: nora@spivaklaw.com

Date: February 29, 2024
Prepared By: Tim Phillips
 50 Corporate Park, Irvine CA 92606
Tim@CPTGroup.com
Direct Number: (818) 415-2703
Main Number: (800) 542-0900

PROJECT ASSUMPTIONS & ADMINISTRATIVE COSTS

Class Size: 203	Undeliverable Mail Rate: 8%
Opt-Out Filing Rate: 1.5%	Payment Option: Check
No. of Checks Issued: 200	Unclaimed Funds: SCO
Language Translation Services: No	Postage Total: \$302.37
Settlement Website: Static Website	Grand Total: \$11,486.16
Notice Procedures: Mail	CPT'S DISCOUNTED FEE: \$10,000.00

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

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

CASE SETUP

After receiving the data, CPT will scrub all records to eliminate duplicates and anomalies, ensuring a higher success percentage in delivering the Class Notice. Each Class Member will receive a unique mailing ID that will be utilized for all administrative purposes. The Settlement Website will publish the complete notice and all relevant settlement documents for downloading.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Case Intake & Review	\$95.00	2	\$190.00
Programming: Data Base Setup	\$150.00	2	\$300.00
Static Website	\$500.00	1	\$500.00
Sub Total:			\$990.00

DIRECT MAIL NOTIFICATION

CPT will perform an address update via NCOA and, if necessary, conduct an additional skip trace in order to ensure that mail is delivered to the most current address possible. A detailed notice, a one-page opt-out form, a one-page dispute form, and a one-page objection form will be mailed.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Format Documents	\$95.00	2	\$190.00
National Change of Address Search (NCOA)	\$135.00	1	\$135.00
XML Lex ID Skip Trace	\$0.85	20	\$17.00
Print & Mail Notice Packets	\$1.00	203	\$203.00
First-Class Postage (up to 1 oz.)*	\$0.68	203	\$138.04
Sub Total:			\$683.04

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

PROCESS RETURNED UNDELIVERABLE MAIL

According to CPT's historical data, 8% of the notices would be returned as undeliverable. Upon notification from USPS, CPT will conduct a skip trace to try to find a current address. As a result, 70% of the undeliverable notice packets are remailed.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Clerical Staff	\$60.00	1	\$60.00
Update Undeliverable Mail Database	\$0.50	16	\$8.00
Skip Trace for Best Address	\$1.00	14	\$14.00
Print & Remail Notice Packets	\$1.00	11	\$11.00
First-Class Postage (up to 1 oz.)	\$0.68	11	\$7.48
Sub Total:			\$100.48

OPT-OUT PROCESSING

CPT will thoroughly examine the submitted responses to identify and remove any duplicates, fraudulent entries, or other invalid submissions. CPT will handle the processing and verification of any opt-outs, objections, and other responses submitted by class members. Deficient opt-outs will be sent a notice by mail, offering the class member a chance to cure.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: De-duplication/Scrubbing	\$150.00	2	\$300.00
Project Manager: Validate Opt-Outs	\$95.00	1	\$95.00
Clerical Staff	\$60.00	1	\$60.00
Opt-Out Processing	\$2.50	3	\$7.61
Print & Mail Deficiency/Dispute Notices	\$1.50	1	\$1.50
First-Class Postage (up to 1 oz.)	\$0.68	1	\$0.68
Review & Process Deficiency Responses	\$10.00	1	\$10.00
Sub Total:			\$474.79

CLASS MEMBER SUPPORT

CPT will establish a toll-free telephone number equipped with interactive voice response (IVR) capabilities and live customer support representatives. Live support will be available during regular business hours, Monday to Friday, 9:00 AM to 5:30 PM, Pacific Time (PT). The dedicated case phone number shall be operational for a maximum of 120 days following the disbursement.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Toll-Free Number Establish/Setup	\$150.00	2	\$300.00
Live Call Center Support Reps.	\$3.00	41	\$123.00
Sub Total:			\$423.00

SSN VERIFICATION

Authenticate Social Security Number for validity using IRS verification processes and/or IRS backup withholdings processes.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: SSN Selection	\$150.00	1	\$150.00
Department Manager: Analysis & Reporting	\$95.00	3	\$285.00
IRS SSN Verification	\$0.10	200	\$20.00
Sub Total:			\$455.00

DISTRIBUTION SERVICES

CPT will establish and oversee the administration of the 26 CFR § 1.468B-1 compliant Qualified Settlement Fund (QSF) for a maximum duration of one year following the distribution of funds. Once approved, CPT will conduct the essential calculations and distribute funds. CPT will send a magnetic ink character recognition (MICR) check to class members who are eligible. CPT employs a Payee Positive Pay System to reconcile cashed checks and performs monthly account reconciliations for the QSF. Undeliverable checks are skip traces to determine a current address and are remailed accordingly. Requests for check reissues will be processed continuously and mailed to class members.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: Calculation Totals	\$150.00	3	\$450.00
Project Supervisor: Review of Distribution	\$150.00	3	\$450.00
Project Manager: Correspondence w/Parties	\$95.00	2	\$190.00
Programming: Setup & Printing of Checks	\$150.00	3	\$450.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Print & Mail Notice, Checks & W2/1099	\$2.50	200	\$499.89
First-Class Postage (up to 1 oz.)	\$0.68	200	\$135.97
Project Supervisor: Account Reconciliation	\$150.00	12	\$1,800.00
Update Undeliverable Checks Database	\$0.50	10	\$5.00
Skip Trace for Best Address	\$1.00	10	\$10.00
Remail Undeliverable Checks	\$2.50	9	\$22.50
First-Class Postage (up to 1 oz.)	\$0.68	9	\$6.12
Re-Issue Checks as Required	\$5.00	8	\$40.00
First-Class Postage (up to 1 oz.)	\$0.68	8	\$5.44
Sub Total:			\$4,514.91

TAX REPORTING & SETTLEMENT CONCLUSION

CPT prepares annual tax reporting on behalf of the QSF and Federal and State taxes in accordance with current state and federal regulations.

All parties will be furnished with weekly and final reports. A declaration attesting to due process will be provided to all parties.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Supervisor: Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming: Weekly & Final Reports	\$150.00	2	\$300.00
Project Supervisor: Final Declaration	\$150.00	2	\$300.00
Project Manager: Account Files Sent to Atty	\$95.00	2	\$190.00
CA Tax Preparation*	\$600.00	1	\$600.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
Sub Total:			\$3,040.00

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

SCO ESCHEATMENT PROCESSING

Escheatment Processing to the State Controller Unclaimed Property Division / Uncashed Check Rate 21%

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
UPEnterprise Reporting Services	\$0.15	42	\$6.30
Project Manager: Reporting & Remittance	\$95.00	2	\$190.00
Project Supervisor: Review of Report	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.64	1	\$8.64
Add'l Account Recons	\$150.00	3	\$450.00
Sub Total:			\$804.94

Total Administration Costs: \$11,486.16

Courtesy Discount: -\$1,486.16

CPT'S DISCOUNTED FLAT FEE: \$10,000.00

TERMS AND CONDITIONS

These Terms and Conditions are made a part of, and incorporated by reference into, any cost proposal or Bid presented by CPT Group, Inc. to Client

1. Definitions.

- a) **"Affiliate"** means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with another party.
 - b) **"Approved Bank"** means a financial institution insured by the Federal Deposit Insurance Corporation.
 - c) **"Case"** means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.
 - d) **"Claims Administrator"** means CPT Group, Inc., a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
 - e) **"Client"** means collectively Plaintiff Counsel and Defense Counsel.
 - f) **"Client Content"** means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, and objections, which contain Client Data.
 - g) **"Client Data"** means proprietary or personal data regarding Client or any of its Class Members under this Agreement, as provided by Client.
 - h) **"Class Member"** means an individual who is eligible under the Settlement Agreement to receive a designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons so designated or addressed therein.
 - i) **"Confidential Information"** means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
 - j) **"Court Order"** means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more parties to the Case to carry out a legal obligation pursuant to the Case.
 - k) **"Defendant"** means the named party and/or parties in the Case against whom action is brought.
 - l) **"Defense Counsel"** means the attorney of record for the defendant(s) in the Case.
 - m) **"Intellectual Property Right"** means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
 - n) **"Order"** means a Product purchase in a schedule, statement of work, addendum, exhibit, or amendment signed by Client and CPT.
 - o) **"Parties"** shall mean collectively Defendants, Defense and Plaintiff as defined in the Settlement Agreement or Court Order.
 - p) **"Plaintiff"** means the named party and/or parties in the Case who are bringing the action.
 - q) **"Plaintiff Counsel"** means the attorney of record for plaintiff Class Members in the Case.
 - r) **"Products"** means any and all CPT Services, and work products resulting from Services.
 - s) **"Qualified Settlement Fund"** means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.
 - t) **"Service"** means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
 - u) **"Software"** means any and all of CPT's proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
 - v) **"Settlement"** means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.
 - w) **"Settlement Agreement"** means the contract between parties to the Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Class Members.
 - x) **"Term"** means the term of the Agreement, as set forth in the Order.
 - y) **"Transmission Methods"** means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.
 - z) **"Wire Information"** means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.
2. Client Obligations. Client will ensure that it has obtained all necessary consents and approvals for CPT to access Client Data for the purposes permitted under this Agreement and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect the Client Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.
3. Security. The Parties and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any personally identifiable information provided by Class Members and/or Client under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such personally identifiable information; (c) protect against unauthorized access to or use of such personally identifiable information that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such personally identifiable information in connection with its disposal. Each Party will respond promptly to remedy any known security breach involving the personally identifiable information provided by you and/or Client under this Agreement and shall promptly inform the other Parties of such breaches.
4. CPT Obligations. Provided that Client complies with all provisions of Section "Client Obligations", CPT will (i) maintain appropriate safeguards for the protection of Client Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Client Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Client.
5. Mutual Obligations.
- a) Resources. Each party agrees to: (i) provide the resources reasonably necessary to enable the performance of the Services; (ii) manage its project staffing, milestones, and attendance at status meetings; and (iii) ensure completion of its project deliverables and active participation during all phases of a Service project. The parties acknowledge that failure to cooperate during a Service project may delay delivery of the Service.

If there is a delay, the party experiencing the delay will notify the other party as soon as reasonably practicable, and representatives of each party will meet to discuss the reason for the delay and applicable consequences. Changes beyond the scope of an Order and/or a party's delay in performing its obligations may require an amended Order.

- b) **Incident Notification.** Each party will promptly inform the other parties in the event of a breach of Client Data in their possession and shall utilize best efforts to assist the other parties to mitigate the effects of such incident.
6. **Qualified Settlement Fund Account.** At Client's request, CPT shall be authorized to establish one or more bank accounts at an Approved Bank. The amounts held at the Approved Bank under this Agreement are at the sole risk of Client. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.
7. **Fees and Payment.** Pricing stated within the proposal is good for 90 Days. All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the Client data and /or notice documents. Client will be invoiced for any remaining fees according to the applicable Order. Pricing stated within any proposal from CPT to Client is for illustrative purposes only and is only binding upon an Order executed by CPT and Client. Payment of fees will be due within 30 days after the date of the invoice, except where this Agreement expressly prescribes other payment dates. All fees set forth in an Order are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% (or the highest rate allowable by law, whichever is lower) per month on the outstanding balance from the date due until the date of actual payment. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation.
8. **Term and Termination.**
- a) **Term.** The Term is set forth in the Order. The Agreement may be renewed by mutual written agreement of the parties.
- b) **Termination for Cause.** Either party may immediately terminate this Agreement if the other party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching party's receipt of written notice describing the breach in reasonable detail.
- c) **Bankruptcy Events.** A party may immediately terminate this Agreement if the other party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
- d) **Effect of Termination.** Immediately following termination of this Agreement, upon Client's written request, Client may retrieve Client Data via Client's secure FTP site in the same format in which the Client Data was originally inputted into the Software, at no additional charge. Alternatively, Client Data can be returned in a mutually agreed format at a scope and price to be agreed. CPT will maintain a copy of Client Data and Client Content for no more than four (4) years following the date of the final check cashing deadline for Class Members under the Settlement Agreement, after which time any Client Data and Client Content not retrieved will be destroyed.
- e) **Final Payment.** If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination," Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.

Confidentiality. Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; **provided, however,** that such party shall use at least reasonable care. These obligations shall survive termination of this Agreement.

- a) **Compelled Disclosure.** If receiving party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such party shall (i) promptly notify the other party, (ii) reasonably cooperate with the other party in such party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each party is advised by its counsel in writing is legally required to be disclosed.
- b) **Remedies.** If either party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.
10. **Intellectual Property.** As between the parties, CPT will and does retain all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. Client retains all ownership rights to Client Data.
11. **Indemnification.** Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, Covered CPT Parties") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "Damages") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Client Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.
12. **Warranties.** Each party represents and warrants to the other party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such party; (iii) the Agreement is a legally valid and binding obligation of such party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.
13. **Liability.**
- a) **Liability Cap.** EXCEPT FOR A PARTY'S WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL CLAIMS ADMINISTRATOR FEES PAID OR PAYABLE BY CLIENT TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.
- b) **Exclusion of Consequential Damages.** NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
14. **Communications.** CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.

15. Miscellaneous Provisions.

- a) Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.
- b) Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party's reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
- c) Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
- d) Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
- e) Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.
- f) Assignment. Neither party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other party's prior written consent; provided, however, either party, without the consent of the other party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of the other party are not increased by such assignment and the rights and remedies available to the other party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
- g) No Third-Party Beneficiaries. The representations, warranties, and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns and shall not be construed as conferring any rights on any other persons.
- h) Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("Statistical Data") derived from the operation of the Software, and nothing herein shall be construed as prohibiting CPT from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third-party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.
- i) Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such applicable laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j) Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k) Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other party first written above or at such other address as may hereafter be furnished in writing by either party hereto to the other party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l) Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither party may make any statement that would contradict anything in this section.
- m) Subcontractors. CPT shall notify Client of its use of any subcontractors to perform Client-specific Services. CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n) Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret, or construe its meaning, scope or intent.
- o) Waiver. No failure or delay on the part of either party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power, or remedy.
- p) Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.

EXHIBIT 19